Co-funded by the European Union

EUROPEAN UNION

COUNCIL OF EUROPE

CONSEIL DE L'EUROPE

Co-funded and implemented by the Council of Europe

REPUBLIKA SLOVENIJA
MINISTRSTVO ZA PRAVOSODJE

Building a Europe for and with children

Construire une Europe pour et avec les enfants

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 1)

Analysis of the case law related to juvenile justice with a focus on young offenders (Output 2)

Version no 2., March 2023

Prepared by dr Jasmina Arnež, Institute of Criminology of the Faculty of Law Ljubljana
Editor: dr Susanna Greijer, Council of Europe independent expert

Disclaimer

The project is co-funded by the European Union via the Technical Support Instrument, and co-funded and implemented by the Council of Europe, in cooperation with the European Commission, Directorate-General for Structural Reform Support (DG REFORM).

Table of contents

List of national laws referenced in the text

Acronym	Official Slovenian Name	English Translation
Draft ZOMSKD	Zakon o obravnavanju mladoletnih storilcev kaznivih dejanj (ZOMSKD), EVA: 2018-2030-0046 – predlog, 24. 12. 2019.	Draft Liability of Minors for Criminal Offences Act N.B. Referred to in the text as "the draft ZOMSKD" or "the ZOMSKD".
KZ	Kazenski zakonik (the KZ), Ur. l., št. 63/94	The old Criminal Code (1994) (prior to the changes of 2008), which only remains enforced in the provisions that govern juvenile criminal responsibility and sanctions for juvenile offenders.
KZ-1	Kazenski zakonik (the KZ-1), Ur. l., št. 55/08	The Criminal Code of 2008
URS	Ustava Republike Slovenije	The Constitution of the Republic of Slovenia
ZKP	Zakon o kazenskem postopku (ZKP), Ur. l., št. 63/94	The Criminal Procedure Act (1994)
ZKP-O	Zakon o spremembah in dopolnitvah Zakona o kazenskem postopku (ZKP-O) Ur. l., št. 200/20)	Act Amending the Criminal Procedure Act
ZIKS-1	Zakon o izvrševanju kazenskih sankcij (ZIKS-1), Ur. l., št. 22/00	The Enforcement of Criminal Sanctions Act (2000)
ZOOMTVI	Zakon o obravnavi otrok in mladostnikov s čustvenimi in vedenjskimi težavami in motnjami v vzgoji in izobraževanju (ZOOMTVI) Ur. l., št. 200/20)	Act on the Intervention for Children and Youth with Emotional and Behavioural disorders in Education (2020)
ZS	Zakon o sodiščih (ZS), Ur. L. št. 19/94	Courts Act (1994)
ZM-1	Zakon o prekrških-1 (ZP-1). Ur. L. št. 7/03	Code of Misdemeanours (2003)

1. Executive summary

This report presents the results of the case law analysis of criminal law cases involving young people in conflict with the law conducted in Slovenia in 2022. The overarching aim of the case law study was to detect and explore existing problems in juvenile justice in Slovenia in practice and make recommendations for further research and action.

The added value of this study compared to the work done in other parts of this project is that analysing case law allows us to look beyond the normative framework and the intended operation of the system and assess how the normative solutions play out on the ground and how procedures are carried out in practice. Moreover, it allows us to grasp the positive and negative aspects of carrying out criminal procedures involving children in conflict with the law that occur in practice and may not be easily predicted at the normative level.

The report is structured into ten substantive sections, each addressing separate but connected issues related to what is discernible about youth offending and how it is processed in Slovenia from case law. The report is based on a thorough analysis of 170 cases from four Slovenian District Courts and 149 cases from District Prosecutors' Offices. The analysis offers quantitative and qualitative insights into the issue of youth offending in Slovenia. Moreover, the report is based on discussions with practitioners, judges and prosecutors dealing with youth justice in Slovenia and their comments on draft versions of the case law analysis. The rationale and methodology for the study are presented in the introductory Chapter 2.

Chapter 3 succinctly explains the main premises on which the system of processing youth offending in Slovenia is based, explaining further how cases are supposed to be processed and the system's ethos. While mostly theoretical, this chapter offers a starting point for the subsequent comparison with how cases are processed in practice and allows the reader to discern the potential discrepancies between the normative framework and its practical execution.

Data on the offence and youth offending

The types of offences committed by young people in the sample generally reflect youth offending in Slovenia between 2015 and 2019. Juvenile delinquency in Slovenia is relatively stable concerning the number and types of offences.

Moreover, most offences committed by young people are property offences. While statistical data shows an increase in violent and drug-related offences committed by young offenders in the reference period, the sample size does not allow for such general conclusions. However, increased crime rates should always be interpreted with caution, considering changed socio-economic circumstances, societal sensitivity towards certain types of behaviour, and national or local policing practices, to name a few.

Furthermore, it is common for youth offenders to commit crimes in conjunction with others. The juvenile offenders in the sample had accomplices in 38% of cases. However, youth offending as group-based behaviour should be contextualised in Slovenia and elsewhere. Group membership is complex and might stretch beyond the clear legal categories of juvenile offenders. Peer groups include children under the age of criminal liability and, at high rates, adults, often providing their members with rare sources of respect.

Diversion is generally used in line with the statutory provisions. The prosecution used diversion and prosecuted young people for similar *offence types*. The diverted cases were, according to the descriptions in case files, *less serious* than the ones dealt with by the court.

There might, however, be some inconsistencies in the prosecution's diversion, e.g., not all similarly serious offences are prosecuted, or similarly petty offences diverted. Moreover, the prosecution's reasoning behind diverting a case is sometimes not adequately explained in the final decision. Most importantly, it is often unclear how the prosecution tests diversion is in the child's best interest based on their personal and family circumstances. In 93% of prosecutorial files, the prosecution had not obtained a social services report before making such a decision. Stakeholders explain that while this may not be ideal, a significant increase in demands for reports would overburden the social services providing them and already struggling with the current workload.

Data on the final decision

The report focuses on two types of final decisions: decisions to divert and dismissals made at the level of the prosecution and decisions made at the court level.

When observing prosecutorial decisions, the data shows that the prosecution often diverts juvenile offenders from the criminal justice system. However, apart from the abovementioned issues, there is a lack of data concerning potential recidivism, so prosecutors may not be aware of previous prosecutorial decisions regarding the same young offender.

Moreover, mediation is unequally carried out across different districts, mainly due to different practices and mediator accessibility. Such practices are unsatisfactory as they could lead to unequal treatment of children from different parts of the country.

When deferring prosecution, some inconsistencies were observed about the extent of the required community work, time given to young people to carry out their assigned tasks, and questions about the young people's own income when deciding on damages or other types of payment.

Further, there were overlaps between diversion at the prosecutorial level and court dismissals based on the expediency principle. However, these were difficult to analyse more in detail as no specific data allows for a distinction between different categories of dismissals.

When looking at final court decisions containing sanctioning young offenders, the sanctioning policy of Slovenian district courts seems appropriate. 92% of juveniles charged receive non-residential and 7,5% residential educational measures. Juvenile imprisonment is used as a measure of last resort. Committal to an institution for physically or mentally disabled youth should be thought through as it is rarely imposed and suffers from several conceptual and practical difficulties. The safety measures of compulsory psychiatric treatment at liberty/in an institution are rare and suffer from practical problems.

Judicial argumentation of final decisions is satisfactory on a normative level. Final court decisions entail references to the aims of educational measures as stated in the KZ. Still, they appear not to be always individualised enough based on concrete circumstances in a young person's life. Courts adequately explain the aims of imposed educational measures or sanctions and refer to the principles of international law on child-friendly justice, albeit implicitly.
However, one of the system's weaker points is the role of social services and their ability to advise the judiciary about the most appropriate educational measure for a particular young person.

Data related to the offender

The sixth chapter focuses on data discernible on young offenders and their backgrounds.
Most notably, there is a discrepancy in the age categories of juvenile offenders when they commit the offence and when the prosecution or court reaches their final decision, which likely indicates that prosecutorial and judicial proceedings against young offenders last too long.

When looking at specific offender characteristics, the sample confirms that most juvenile offenders are male. Male juvenile offenders commit crimes against sexual integrity, drug-related, and traffic offences almost exclusively. Furthermore, some citizens, nationals, and ethnic minorities are overrepresented among juvenile offenders. Juvenile offenders come from diverse family backgrounds and structures and are a socio-economically vulnerable group.

Moreover, there are discrepancies between juvenile offenders' ages and educational levels, which imply that these young people are falling behind or not enrolling in formal education. 60% of the juvenile offenders in the sample were regularly absent from school, disproportionately females, pupils of particular nationalities and ethnicities, young people with disabilities and substance abuse issues, and children of primary school age.

Juvenile offenders and their parents are often involved with several agencies due to their social and familial difficulties (before the young person's offending.) Many young offenders are involved with social services for offending before reaching the age of criminal liability, diverted at the prosecutorial level, or have received an educational measure or punishment. Therefore, a rethink of early intervention, preventing the escalation of social and familial difficulties that could lead to the development of offending behaviour in youth, is needed.

Data on the procedure

Gaining information on the child, their family, and extra-familial contexts is essential for an informed prosecutorial decision that diversion is in the child's best interest.

In the sample, in their efforts to get to know the juvenile offender and their family before diverting the case, prosecutors did not request information about the young person from their parents or invite the family, social workers, or other experts to a meeting. They obtained a social services report in 7% of the diverted cases. Before charging the juvenile, the police obtained a social services report or sent it to the prosecution along with their charge in 3% of cases. The prosecution and the police obtained information from the young person's school or other educational institution where they do not reside in 1% and 7% of the dismissed cases.

At the court level, in the preliminary proceedings, courts interviewed the young person and routinely gathered information about their personal and family circumstances in 92% of cases. In 95% of cases, courts interviewed the young person's parents in the preliminary proceedings. As part of the preliminary proceedings, the courts obtained a social services report in 97%, information from an educational institution where the young person resided in 22%, and information from the young person's school or other educational institution where the child did not reside in 9% of the inspected case files. In 7% of cases, courts nominated experts that were psychologists, child and adolescent psychiatrists, and clinical psychologists.
In the panel session or main hearing, the judge interviewed the young person in 88% and the young person's parents in 75% of cases and obtained information from educational institutions where the young person resided, the child's school, and other sources (social services from another region, social pedagogue's report, etc.) in 16%, 3%, and 2%. They nominated a physician, psychiatrist, psychologist, or educator to evaluate the young person in 9% of cases.

The courts updated the young person's assessment through interviews with the child, parents, and social worker at the panel session or main hearing. However, most judicial proceedings in the sample lasted more than a year. A thorough but swift one-time assessment of the child in more quickly administered judicial proceedings might be in their better interest. However, this might only be possible if social services, prosecutor's offices, and courts were specialised and dealt merely with juvenile criminal cases.

More research is needed to establish a more active role of social services in judicial proceedings against young people in trouble with the law in line with Article 458 of the ZKP or Article 43 of the draft ZOMSKD. Protocols must be developed to define social services reports' number, structure, and quality to become a better basis for the court's individualisation of sanctions. The role of court-employed social workers should be thought through so that their interviews with the young person's parents add to the social services reports rather than duplicating them.

The juvenile judges excluded the child from their environment in 1% during the preliminary proceedings and 4% during the panel session of the main hearing.

Courts rarely used pre-trial detention. When they did, they adequately explained and justified their decisions. However, courts placed 64% of young people in pre-trial detention with adults and only 18% with other children. In 18% of cases, the information about the young person's placement was unknown. The need for the judge to issue a written decision about detaining the young person with adults after they have obtained the opinion of the prison administration is now part of Article 473 of the ZKP-O and Article 67 of the draft ZOMSKD. This is a welcome and necessary normative change. However, courts should impose fewer juvenile pre-trial detentions in the long run. In addition, children should not be detained together with adults. A pre-trial detention facility or unit for juveniles only should be established.

Some welcome developments have occurred with recent procedural changes (ZKP-O) concerning the child's right to continuous legal representation, their right to be heard, and their right to be informed and accompanied by their parent or guardian.

There are discrepancies in practice regarding when courts hold the main hearing and a panel session.

Appeals against first-instance court decisions were rare and unequally distributed among the inspected districts.

One of the more poignant issues was the length of the proceedings. 13% of prosecutorial dismissals and 69% of judicial proceedings against young people lasted over a year. Delays accumulate in judicial proceedings against young people in conflict with the law, rather than any institution working particularly slowly compared to others. Many problems regarding the duration of judicial proceedings stem from juvenile judges working on cases against adults (sexual offences, domestic violence) as well as cases against juveniles.

Specialisation at the level of the courts and the prosecutorial level could be a solution for some of these issues. This would enable a more focused and coherent system, allowing prosecutors and judges to focus on individual young offenders and provide a continuous monitoring system throughout the criminal procedure and into the execution phase.

Data on the individualisation and execution of criminal sanctions

Courts usually impose sanctions for the duration allowed in the law. Sometimes, non-residential and residential educational measures last longer than the legally allowed maximum as courts experience difficulties monitoring the execution of educational measures and holding closing sessions on time.

When different district courts or judges of the same district court run separate procedures, they sometimes simultaneously impose two or more educational measures against the same young person. When the court decides about two criminal offences in the same proceeding and wants to impose a sanction, they should apply the rules for imposing sanctions 'in a series', adapted to educational measures. When proceedings run separately, the court that imposed the most severe educational measure or last imposed a sanction of equivalent severity must impose the unified sanction. That court should also monitor the execution of the imposed unified educational measure.

Young people sometimes abscond from educational institutions or the correctional home. The time the minor absconds from the educational institution or correctional home currently counts towards the duration of the measure. When a child absconds from an educational institution or a correctional home, the police can bring them back to the institution. The educational institution, correctional home, or social services should inform the court and police about the young person's absconding from a residential educational measure or lack of cooperation with a non-residential educational measure. The court can order a forced arrest to bring the young person back to the institution or a wanted notice in case of non-residential educational measures.
Before the court issues a forced arrest or a wanted notice, and orders the young person is brought back to the institution, however, the judge and court-employed social workers or other specialised professionals should interview the child to explore the reasons behind their absconding. The child should also be adequately informed of their rights to make a complaint in case of violations of their rights. The time the young person absconds from the educational institution or correctional home should always count towards the duration of the measure.

Courts rarely change non-residential educational measures due to the young person's non-compliance. In such cases, courts often do not schedule hearings to discuss the non-compliance with the young person and, if necessary, change the imposed educational measure. Monitoring the execution of educational measures is challenging due to the judges' caseloads, and the lapse of the legally allowed maximum duration of an educational measure before the court can schedule a hearing. If judges dealt only with juvenile criminal cases, they could consult with social services more often and thus commence the change of an educational measure as soon as they were informed the child's breach of the educational measure or their changed circumstances. This collaboration could be more effective if some social workers dealt only with juvenile criminal cases and communicated with the young offenders and their families regularly to check the execution of the educational measures.

Waiting for the decision that changes the educational measure to become final is reasonable from a legal perspective. However, it can be difficult in practice if the reason for the change from committal to an educational institution to committal to a correctional home is the young person's conflict with other young people in the educational institution and/or their inability to fit in the institutional environment.

The courts sometimes did not hold a closing session at the end of the measure's implementation, especially in supervision by social services or instructions and prohibitions, nor did they issue a final decision to stop the execution of the educational measure formally. Sometimes, the courts

merely informed the Ministry of Justice that the educational measure has ended due to the passage of legally allowed time. The decision to formally end the execution of an educational measure as required by law was often missing at the end of the case file. The court should formally terminate the educational measure if the young person does not require the treatment or assistance they are receiving due to changed circumstances, development, or needs. The court should also terminate the educational measure if the legally allowed duration of the educational measure has lapsed.

Social services, educational institutions, and the correctional home regularly – every six months – report the progress of the imposed educational measures to the court. However, the reports on the execution of educational measures are sometimes generic and not detailed about the specific tasks imposed by the court.

The judges deem reprimand as a necessary sanctioning option when a young person has committed a criminal offence, the criminal proceedings against them have started, but they have improved their behaviour during the criminal proceedings, and their personal and family circumstances are stable.

Although courts imposed specific instructions and prohibitions, social services sometimes carry out this educational measure as supervision by social services. They often start executing the instructions and prohibitions long after the courts impose them. Courts also rarely change the imposed instructions and prohibitions, even if the social services reports show the young person is not cooperating. More research is needed to determine the precise organisational difficulties social services and courts face in executing and monitoring the imposed instructions and prohibitions.

In some cases, social workers' meetings with young people as part of supervision by social services are rare and shallow, depending primarily on the willingness and motivation of the individual social worker. While some social workers follow up on the young person and try to build rapport to impact their development and desistance positively, others merely have telephone contact with the child. Such inconsistent practices are unsatisfactory. The social worker's contact with the young person should be in-person and regular.

Committal to a correctional home is a necessary educational measure for serious or persistent young offenders, offering them a structured and secure environment to desist from crime. One of the issues with this specific measure is that drugs are easily accessible at the correctional home. Further research should examine whether reward systems are fair and transparent and whether a zero-tolerance approach to drugs in institutional milieus where young people can get hold of drugs and suffer from drug addiction is sensible.

Adequate post-penal support, including the right to housing in the community after release, should be made available to young people after they are released from the correctional home.

One of the more problematic issues seems to be that no institution seems appropriate for housing young people who receive an educational measure of committal to an institution for physically or mentally disabled youth. Moreover, no institution can house children when a court imposes a safety measure of compulsory psychiatric treatment and confinement in a mental health institution. An institution for young people in trouble with the law with comorbidity of personality disorders, addictions, etc., that would combine education, social care, psychological and psychiatric help, and safety for young people at risk of self-harm or harming others does not exist.

Courts use juvenile imprisonment as a measure of last resort.

Data related to physical and mental health, mental development, and emotional and behavioural issues

The analysis shows significant proportions of various issues in the sample of youth offenders. 18% of young people in the judicial sample (where data was available) suffered from physical health issues, 16% from mental health issues, 17% from mental development issues, 5% had personality disorders, 44% experienced emotional and behavioural difficulties, and 28% had other identified problems.

The relationship between youth offending and physical and mental health issues, mental development issues, personality disorders, emotional and behavioural difficulties, and other issues is complex. Many different categories of problems often interplay to push some young people towards offending pathways. It is difficult to determine the precise mechanisms at work or evidence causality.

The court assessed the young person's mental health in 14% of cases and engaged in other assessments of the child's issues in 10%. The court or other institutions adopted special safeguards to protect the child with mental health, mental development, and emotional and behavioural issues in 7% of cases. In 7% of cases, they adopted measures to recover and reintegrate young people suffering from mental health, mental development, and emotional and behavioural issues. There were not as many assessments, safeguards, and recovery measures as there were identified issues.

Evaluating young people's problems is unsatisfactory and often comes too late in the child's life. When employed, it does not necessarily lead to meaningful and individualised support. The child's physical or mental health issues, mental development problems, personality disorders, emotional and behavioural issues, and other issues might escalate and contribute to their criminal behaviour.

Data on recidivism

At the prosecutorial and judicial levels, 29% and 40% of young people were repeat offenders, having committed and received an educational measure or sanction for at least one prior criminal offence.

The children in the prosecutorial and judicial samples committed an average of 3,4 and 4,6 offences. Most of them committed property crimes.

Prior sanctions against young people with previous criminal involvement were known in 76% of the prosecutorial and 94% of judicial case files. The courts changed these sanctions in 15% and 19% of cases. The changes mainly were from supervision of social services to committal to an educational institution or from committal to an educational institution to committal to the correctional home.

2. Introduction

2.1 Aims of research and research questions

The overarching aim of Lot 2 was to conduct a case law analysis of juvenile criminal law cases to detect and explore existing problems in juvenile justice in Slovenia and make recommendations for further research and action. The data-collection phase lasted two months (July 2022-August 2022). The data on the legal (substantive and procedural) and practical difficulties in administering juvenile criminal law cases at the prosecution and court levels were subsequently analysed. Lot 2 involved the following task and research questions.

Task: Understanding juvenile criminal law cases and interventions by the state prosecutor/sanctions by the court.

Research Questions:

General:
Drawing on international and national legal standards on the rights of the child[1], juvenile justice[2] and child-friendly justice[3], the analysis focused on how the state prosecutor and the courts process juvenile criminal law cases. The legal and practical difficulties of processing juvenile criminal law cases and how they are resolved were also considered interesting aspects.

Specific:
(1.) The specific needs identified by the Slovenian Ministry of Justice (MoJ) in their starting points constituted the basis of this work. Special attention was paid to case law references to children with mental health issues, mental development issues, and/or children who are suffering simultaneously from mental health, cognitive development issues, and/or emotional and behavioural difficulties, including references to:

- Mental health assessments of juvenile offenders,
- Involvement of mental health professionals in juvenile criminal cases handled by the state prosecutor and by the courts,
- Special safeguards to protect children with mental health issues, cognitive development issues, and/or emotional and behavioural issues,
- Measures or sanctions specifically aimed at supporting the recovery and reintegration of juvenile offenders with mental health issues, cognitive development issues, and/or emotional and behavioural issues.

(2.) International legal standards on the rights of the child, juvenile justice, and child-friendly justice, which maintain that the main objective of judicial measures against children should be their recovery and reintegration into society (Article 40(1) CRC), and the MoJ's starting points were considered. A specific focus was placed on any references in the case law concerning the prevention of further offending and the child's re-socialisation and reintegration, including:

[1] In particular, the UN Convention on the Rights of the Child (UNCRC).
[2] Such as the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), the UN Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules), the Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines), UN Committee on the Rights of the Child General Comment No. 10 on children's rights in juvenile justice, and at EU level the Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.
[3] In particular, the Council of Europe Guidelines on child-friendly justice.

- Judicial reasoning around imposed measures or sanctions relating to the child's well-being and protection,
- Explicit goals of re-socialisation or reintegration,
- Risks stemming from imposing certain sanctions,
- Considerations regarding a juvenile offender's potential or recognised recidivism.

3) Lastly, in line with international legal standards on the rights of the child, juvenile justice, and child-friendly justice, special attention was granted to the general cross-cutting principles, as established by the United Nations Convention on the Rights of the Child[4]:

- The best interest of the child (Article 3 UNCRC)
- The child's right to be heard (Article 12 UNCRC)
- Deprivation of liberty/detention (including pre-trial detention) as a measure of last resort (Article 37(b) UNCRC)
- Promoting diversion or other alternatives to the criminal justice system (Article 40(3) UNCRC).

2.2 Research methods

A sample of juvenile criminal law case files was gathered from the District Prosecutors' Offices and Criminal Law Departments of District courts in areas under the jurisdiction of four High Courts (Ljubljana, Maribor, Koper, and Celje) across five years; 2019 and four years prior.

170 case files from District Courts (approximately 40 per District Court) and 149 from District Prosecutors' Offices (approximately 35 per District Prosecutor's Office) were inspected.[5] The tables below indicate how many cases were inspected in each institution.

	State prosecutor's office				
	Location	Number	Percentage	Valid	Cumulative
	1 (Celje)	40	27%	27%	27%
	2 (Koper)	43	29%	29%	56%
	3 (Ljubljana)	35	23%	23%	79%
	4 (Maribor)	31	21%	21%	100%
	Sum	149	99%	100%	

Table 1: Number of inspected case files per state prosecutor's office

	District court				
	Location	Number	Percentage	Valid	Cumulative
	1 (Celje)	43	25%	25%	25%

[4] Hereinafter: 'UNCRC'

[5] Ideally, case files from all the District Prosecutors' Offices and Criminal Law Departments of District Courts in Slovenia would have been collected, but the sample of cases was limited to approximately 300 case files from the departments in Ljubljana, Maribor, Koper, and Celje for the last five years due to the time constraints of the project.

	2 (Koper)	38	22%	22%	47%
	3 (Ljubljana)	45	26%	26%	74%
	4 (Maribor)	45	26%	26%	100%
	Sum	171	99%	100%	

Table 2: Number of inspected case files per district court

Prosecution
The 149 case files obtained from the District Prosecutors' Offices consisted of cases in which the state prosecutor intervened without instituting a criminal procedure. That number was further disaggregated according to the four legal grounds on which the state prosecutor can dismiss a juvenile justice case:

(1.) The expediency principle (21 cases),
(2.) Minor significance of the offence (38 cases),
(3.) Alternative diversionary procedures – mediation (23 cases) and deferred prosecution (39 cases).
In addition, cases were inspected where the state prosecutor has intervened without instituting a criminal procedure due to:
(4.) A sentence or educational measure in progress (28 cases).

Courts
170 case files were obtained from District courts. The MoJ's starting points helped design the sample of cases and identify the following specific issues:

(1.) Cases where the juvenile judge dismissed the case using the expediency principle, due to the minor significance of the offence, or a sentence or educational measure in progress (54 cases),
(2.) Cases where the juvenile judge referred the case to a panel for juvenile offenders which decided to impose a sanction, more specifically:
    (a) An institutional/residential educational measure (37 cases),
    (b) A non-institutional/non-residential educational measure (76 cases),
(3.) Cases where the juvenile was a repeat offender, defined by committing at least two criminal offences.
In addition, and as suggested by the MoJ's starting points, all cases were analysed where the court imposed:
(4.) Juvenile imprisonment (2 cases),
(5.) Compulsory psychiatric treatment and confinement in a mental health institution/at liberty (1 case),
(6.) Committal to an institution for physically or mentally disabled youth,
(7.) Pre-trial detention.

The cases where the juvenile was a repeat offender and where the court imposed pre-trial detention were already included in the categories where the court imposed an institutional/residential or non-institutional/non-residential educational measure. The exact number of cases from these two categories will be stated and analysed in relevant parts of this report. In the sample, only two cases were encountered where the court imposed juvenile imprisonment, one safety measure of compulsory psychiatric treatment at liberty, and no cases of committal to an institution for physically or mentally disabled youth.

2.3 The rationale for the sample

The time frame for the activity
The research activity lasted nine months (April – December 2022), during which access to case files was negotiated, and the files were collected between April and June 2022. The data collection phase occurred between July and August 2022, and such data were analysed from September to December 2022. A total of 319 cases was considered the maximum number of cases that could be analysed qualitatively and satisfactorily for this research activity. Any increase in the total number of cases would negatively impact the analysis and the quality of the research outcome.

Geographical scope
Four cities were selected for the analysis. Ljubljana (capital, centre of country) and Maribor (2nd largest city, north-east) represent more urban settings. Koper (southwest) and Celje (centre-east) represent more rural areas. The choice of cities provided a broad geographical representation. It allowed relevant comparisons between different geographic regions of the country and between larger versus smaller towns.

Moreover, the four cities fall within the jurisdiction of the four higher courts in Slovenia, further offering a diversified look into possible differences between them. The analysed cases comprise a representative sample of possible different practices. Given the project's time constraints, a further dispersion of jurisdictions would not benefit the project's outcomes.

Temporal scope
The cases were selected according to a particular timeframe, from 2019 and five years back, to enable an analysis of imposed measures and sanctions in relatively recent cases and respecting the time constraints of the research activity. Analysing older cases would have not reflected the current professional practices as they may have changed from the moment in which the court processed such cases. An analysis of pre-COVID-19 cases seemed more indicative of the issues typically found in the system than the cases processed during and post-epidemic. These were undoubtedly subject to different dynamics and issues, which would be interesting to examine but would fall beyond the scope of this study.

Type of Research
Limited quantitative assessments were made, but the research activity was mainly an in-depth qualitative analysis of the research questions mentioned above. Such a study is deemed crucial to understand the gaps and difficulties in the Slovenian juvenile justice system. Therefore, it was decided to use a manageable sample of 319 cases to gain a better insight into specific juvenile justice issues rather than getting an overall quantitative picture.

This type of analysis offered better insights into the issues of individual cases and how they manifest themselves. It allowed for in-depth research into each case, thus providing the opportunity to uncover deeper dynamics. A qualitative approach was not only more feasible but also a better one.

Based on analysing a sample of six case files obtained from the District Prosecutor's Office in Ljubljana and nine from the District Court in Ljubljana in March 2022, a draft research tool in the form of a data collection grid was developed. The 319 case files identified above were arranged and analysed by virtue of a grid. The '1.KA' online application, developed by the University of Ljubljana and fully compliant with data protection laws, was used to enable the development, design, and technical creation of an online data collection grid, its implementation, and data analysis.

In the data collection grid, the data was divided into seven clusters:

(1.) Data on the offence,
(2.) Data on the final decision,
(3.) Demographic data on the offender,
(4.) Data on the procedure,
(5.) Data on physical and mental health, cognitive development, etc.,
(6.) Data on recidivism,
(7.) Other data – specificities of the cases and general comments.

Drawbacks of Research: The gathered case files were enough to conduct a qualitative study showing judicial and prosecutorial trends. Yet, the sample was too small to provide a basis for conclusive findings on juvenile criminal law in Slovenia. The case files analysed belonged to four districts rather than all courts and state prosecutor's offices in Slovenia. This way, the analysis might have missed specific practices of individual prosecutor's offices and courts. Data were missing in some case files or case files from some courts and prosecutor's offices, and nine people were involved in gathering the data. Incomplete case files and data collection might have led to inconsistent inputs into the data collection grid, sometimes reflected in different numbers of cases inspected in tables and graphs throughout this report. These inconsistencies might have impacted the results to some extent but have not influenced the analysis of trends in practice.

3. Background

3.1 The current legal framework of the juvenile justice system in Slovenia

3.1.1 Police and prosecutorial discretion

In Slovenia, the police must report all criminal complaints against juveniles to the state prosecutor. Diversion at the police level is not possible. Based on the principle of legality of criminal prosecution, the state prosecutor must institute a criminal proceeding if there is evidence that a young person committed a criminal offence. There are four exceptions to this rule where the state prosecutor can intervene without instituting a criminal procedure:

(1.) The expediency principle (unconditional dismissal). In cases of less severe offences (i.e., offences for which the law prescribes imprisonment of up to three years or a fine), the state prosecutor can decide not to bring the case to court. The prosecutor can do that if they estimate the juvenile offender does not require formal action from the judicial authority (Article 466/I of the Criminal Procedure Act (ZKP)).

(2.) Minor significance of the criminal offence (unconditional dismissal). The state prosecutor dismisses a criminal complaint if there is disproportionality between the minor significance of the criminal offence and the potential adverse effects of criminal prosecution (Articles 161 and 451/I of the ZKP). The offence is of minor significance if its nature or gravity points to low risk, it has little harmful consequences, it has caused no harm or the circumstances in which the young person committed the criminal offence warrant such a decision. At the same time, the degree of the youth's culpability is low or other circumstances justify such a prosecutorial decision.

(3.) Alternative diversionary procedures. In criminal offences punishable by imprisonment of up to five years, the state prosecutor may decide not to bring the case to court but instead proceed with the case in alternative ways:

(a) Mediation/settlement. The state prosecutor may refer the criminal complaint to mediation and drop the potential charges if mediation is successful,
(b) Deferred prosecution (conditional dismissal). The state prosecutor may defer the prosecution of a criminal offence if the juvenile performs actions to mitigate the harmful consequences of the criminal offence:
(i) Elimination or compensation of damages,
(ii) Payment to a public institution or charity,
(iii) Community work (Article 466/II and articles 161a and 162 of the ZKP).

(4.) *A sentence or educational measure in progress*. Where a sentence or educational measure is already in progress, the state prosecutor may decide not to initiate a criminal proceeding against a minor for another criminal offence. The prosecutor may do so after they have established that – based on the relative gravity of that offence and the sentence or educational measure in progress - the proceedings and the imposition of a criminal sanction would not have a significant effect (Article 466/III of the ZKP).

If the state prosecutor does not dismiss the charge against the juvenile under the expediency principle, due to the minor significance of the offence, a sentence or educational measure in progress, or alternative diversionary procedures - as well as if these are unsuccessful - they will institute a criminal procedure.

3.1.2. Court level

There are no specialised youth courts or family courts[6] in Slovenia that would deal with juvenile criminal law cases only. District courts have jurisdiction to perform preliminary proceedings and adjudicate at first instance on criminal offences committed by minors.

In *preliminary proceedings*, a juvenile judge deals with juvenile criminal law cases. This phase aims to establish the facts of the criminal offence and evaluate the young offender's maturity, personality, needs, and family and living circumstances. As part of the preliminary proceedings, the judge must meet the juvenile offender's parents, guardians, and other people who could provide valuable information about the juvenile. The judge must also request a social services report about the young person's circumstances.

In the preliminary phase, the judge can nominate an expert to examine the young person, send the child to a diagnostic centre, and/or place them under the supervision of social services or another family. In exceptional cases, the judge may order pre-trial detention against a juvenile because of the possibility of escape, danger of collusion, or the risk that the child might repeat the criminal offence, complete an attempted criminal offence, or commit a criminal threat.

Once the judge has examined all the circumstances of the criminal offence and the juvenile's life, they send the files to the state prosecutor. The prosecutor may suggest the court dismisses the case or files charges against the child. The juvenile judge may:

(1.) *Dismiss the case using the expediency principle, due to the minor significance of the offence, or a sentence or educational measure in progress*,
(2.) *Refer the case to a panel for juvenile offenders which decides on the imposition of a sanction* (Articles 468 to 477 of the ZKP).

A professional judge and two lay judges elected among professors, teachers, educators, and/or other youth workers comprise the panel for juvenile offenders (Article 462 of the ZKP). The panel decides whether a minor has committed a criminal offence and, if so, imposes a sanction:

(1.) Educational measure:

(a) Reprimand,
(b) Instructions and prohibitions (11 different possibilities[7]),

[6] Criminal Law Divisions of District courts do, however, allocate some judges to work on juvenile criminal law cases in addition to working on a limited number of adult criminal law cases (mainly domestic and sexual violence cases). District courts also have Family Law Divisions that deal primarily with civil law matters such as divorce, child maintenance allowance, the parent's contact with the child and *vice versa*, paternity rights, and deprivation of parental rights. Family Law Divisions do not deal with juvenile criminal law cases.

[7] Article 77/II of the Criminal Code (KZ): 'The following instructions and prohibitions may be issued by the court to a juvenile offender: (1.) To personally apologise to the victim; (2.) To reach a settlement with the victim by means of payment, work, or otherwise in order to recover the damages caused by committing the offence; (3.) Regular school attendance; (4.) To take up vocational education or employment suitable according to the offender's knowledge, skills, and inclinations; (5.) To live with a specified family or in a certain institution; (6.) To perform community service or work for humanitarian organisations; (7.) To engage in treatment in an appropriate health institution; (8.) To attend educational, vocational, psychological, or other consultation; (9.) To attend a social training course; (10.) To pass an examination for obtaining a driving license; (11.) Prohibition of driving a motor vehicle (under conditions applying to adult offenders).'

(c) Supervision by social services,
(d) Committal to an educational institution,
(e) Committal to a correctional home,
(f) Committal to an institution for physically or mentally disabled youth, or

(2.) *Sentence*:

(a) Fine,
(b) Juvenile imprisonment
as the *principal sentences*,
(c) The prohibition of driving a motor vehicle,
(d) Expulsion of a foreigner from the country
as *accessory sentences*.

The panel decides at an 'in camera' session or at the main hearing, whereby it can impose a fine, imprisonment, or institutional/residential educational measure only at the main hearing. For juvenile offenders and under certain conditions, the court can also impose s*afety measures*:

(1.) Compulsory psychiatric treatment and confinement in a mental health institution,
(2.) Compulsory psychiatric treatment at liberty,
(3.) Revocation of the driving licence,
(4.) Confiscation of items (Articles 70 to 94 of the Criminal Code (KZ) 1995).

The offender's age is fundamental in determining whether the court will impose an educational measure or a sentence. The court may impose a sentence only on older juveniles (aged 16-17) and in exceptional cases (serious criminal offence; high degree of criminal liability). The seriousness/nature of the criminal offence is only one of the selection criteria for an educational measure. It becomes more critical when the court deliberates whether the juvenile offender must be committed to a correctional home (Article 72 of the KZ 1995). The juvenile offender can stay in an institution for up to three years, whether an educational institution or a correctional home (Articles 79/II, 80/III, and 81/III of the KZ). It is primarily the young person's personality, maturity, and needs, not the seriousness of the committed criminal offence, that will guide a judge in their decision about the appropriate sanction, especially in educational measures (Articles 73 in 75 of the KZ 1995).

Once the court imposes a sanction, social services, educational institutions, and the correctional home must send a report about the progress in the treatment of the juvenile offender to the juvenile judge every six months. Juvenile judges may stop the execution of or modify an educational measure in case of positive treatment outcomes or when circumstances come to light which did not exist or were not known at the time when the court reached their decision, but which would influence the decision had they been known. The findings about the success or failure in implementing the educational measure make it necessary to modify the decision to achieve its purpose better (Article 83 of the KZ 1995).

3.2 The ethos of the juvenile justice system in Slovenia

The foundations for the Slovenian juvenile justice system's welfare-oriented and needs-focused ethos were predominantly established in the 1950s by the then-progressive Yugoslav criminal law. Namely, the Yugoslav Criminal Code of 1951 divided juveniles into two age categories: younger (14-16) and older juvenile offenders (17-18), and, importantly, established that the criminal

procedure is focused on the young person's personality and needs, as well as getting to know their personal and familial circumstances. According to the 1959 amendments to the Yugoslav Criminal Code, the court could impose only educational measures for younger offenders (between 14 and 16) and primarily for older offenders (between 16 and 18). The court could impose juvenile imprisonment for older offenders only if educational measures were inappropriate (Filipčič 2013: 507-509).

In 1991, Slovenia became independent and enacted a new KZ and ZKP in 1994, with both coming into force on 1st January 1995. According to the KZ 1995, part of which is still used for juvenile offenders today, the age limit for criminal liability is 14. Moreover, there are three groups of young people and offenders:

(1.) Children under the age of 14 who are not treated by courts but by social services,
(2.) Younger minors aged 14-15, against whom the court can only impose educational measures,
(3.) Older minors aged 16-17 to whom, as a rule, the court imposes educational measures, only exceptionally sentences (fine or juvenile imprisonment).

Young adults are people who committed a criminal offence as adults, aged 18 or more, but have not yet reached the age of 21 at the time of the trial. Primarily, these offenders are criminally liable and sentenced as adults. In case a court evaluates – based on the personality of a young adult and the circumstances in which they committed the criminal offence – that imposing an educational measure would be more appropriate than a prison sentence, the court may impose upon the young adult certain educational measures. In practice, courts rarely use this normative option.

According to Article 73 of the KZ 1995, the purpose of educational measures and penalties for juveniles is to ensure the upbringing, re-education, and proper development of juvenile offenders by protecting and assisting them, supervising them, providing them with professional training, and developing their responsibility.

Article 453/II of the ZKP states that in procedural acts where a minor is present, particularly during their questioning, all parties/bodies participating in the proceedings shall be considerate and respect the minor's mental development, sensitivity, and personal characteristics. This way, they can ensure the criminal proceedings do not harm the young person's development. In cases involving minors, social services also have the right to be acquainted with the course of proceedings, make motions during the proceedings, and call attention to facts and evidence significant for a correct adjudication. If the state prosecutor instigates a criminal proceeding against a minor, they must always notify social services (Article 458/I and II of the ZKP). According to Article 461 of the ZKP, the bodies participating in proceedings against the young person and other institutions whose advice, reports, or opinions the court requested must act quickly to complete the proceedings as soon as possible.

Slovenia has never enacted a code dealing only with juvenile offenders, although it attempted to create a Criminal Code specifically for them. This attempt ended with a draft proposal of the Liability of Minors for Criminal Offences Act (ZOMSKD).[8] According to the European Commission and Council of Europe's recent Inception Report (2021), Slovenia never adopted the ZOMSKD due to certain challenges that could not be adequately addressed in the legislative process.

[8] Zakon o obravnavanju mladoletnih storilcev kaznivih dejanj (ZOMSKD).

This report, developed in the framework of Output 2 of the European Union-Council of Europe project on "Improving the juvenile justice system" in Slovenia (Component I), aims to analyse relevant case law and explore the legal – both substantive and procedural – and practical challenges in the current administration of juvenile criminal law cases at the level of the prosecution and courts. Its purpose is to provide the MoJ with a research-informed basis for reviewing the existing draft ZOMSKD or drafting a new code for dealing with juvenile offenders, bearing in mind issues related to the treatment of juvenile offenders affected by mental health, emotional, behavioural and developmental issues.

This report adopts a holistic approach and considers the interconnectedness of all institutions working with young people in conflict with the law. To understand the effects of institutional contact, it is fundamental to consider all agencies working with children in conflict with the law – education, social services, child and adolescent mental health, law enforcement, etc. – as interdependent. Relying on the police, prosecution, and juvenile courts to address children's emotional and behavioural difficulties should continue to serve as the last resort (*ultima ratio*). At the same time, recommendations to create new agencies and/or measures to deal with young people in conflict with the law (e.g., calls for forensic psychiatric departments for minors, etc.) should draw on further in-depth research on the current aetiology of juvenile delinquency and the needs of young people today. Namely, any contact with the system – either within the judiciary or as part of a diversion scheme dealing with youth in early intervention and/or mental health – can have labelling/stigmatising effects and might further harm young people rather than prevent their offending behaviour. Even a welfare-oriented juvenile justice system should thus be implemented with caution. Any reform should avoid propelling young people into the system based not only on the seriousness of their offences but on prior agency contact *per se* and conditions that young people cannot control, including their family reputation and social disadvantage (McAra and McVie 2005, 2007, 2012).

4. Data on the offence and youth offending

This part of the report includes an introduction of the data gathered on the offence and youth offending. The types of offences committed by youth used in the sample were gathered across four districts. This data was then considered in the context of national-level statistics (police-recorded crime). Trends in violent and drug-related offences and local specificities in youth offending and policing practices were analysed. Finally, a comparison between the offences where the prosecution diverted the cases and those in which a young person was charged and processed in court was carried out.

4.1 Types of offences and trends in youth crime

In *cases diverted at the level of prosecution*, 56% of young people committed property crimes, followed by 13% involved in violent crimes – criminal offences against life and limb (12%) and sexual integrity (1%). Drug-related offences presented 4% of the sample at the level of prosecution. As reflected in *Figure 1* below, young people diverted at the prosecutorial level committed offences against public order in 10% and offences against human rights and freedoms in 9% of the cases. 7% of cases comprised the category of 'other', with more than one-third of domestic violence included by the KZ in criminal offences against marriage, family, and youth. The category of 'other' at the level of prosecution also included criminal offences against the general safety of people and property, the economy, and legal transactions. Traffic offences comprised 3% of the sample.

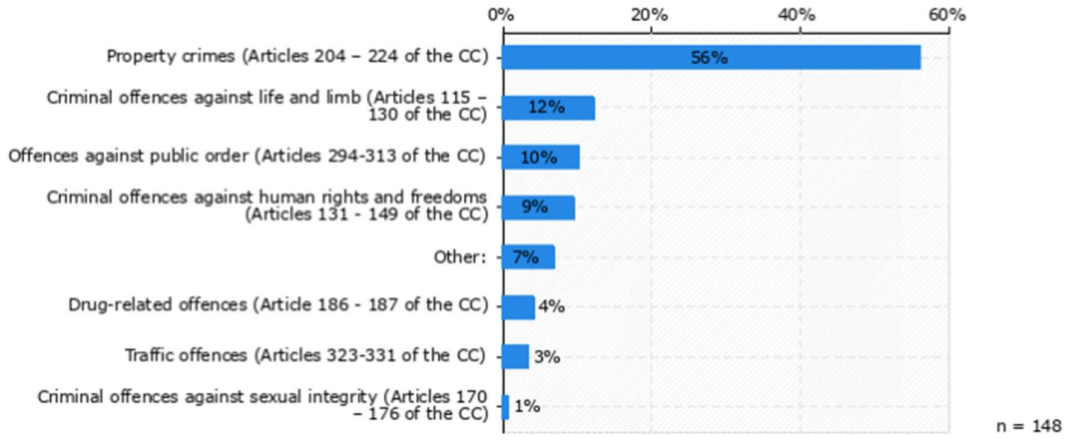

Figure 1: Types of offences committed by young people in the sample (prosecutorial level)

In 58% of *court cases,* young people committed property crimes, and 13% were involved in violent crimes – criminal offences against life and limb (7%) and sexual integrity (6%). At the court level, drug-related offences presented 12% of the sample. As reflected in *Table 3* and *Figure 2* below, young people involved in criminal proceedings at the court level committed offences against public order in 12% of cases and offences against human rights and freedoms in 9%. Like in cases diverted at the prosecutorial level, 7% of court cases comprised the category of 'other', in which a bit less than half was domestic violence. In court files, the category of 'other' also included criminal offences against justice, legal transactions, the economy, and the general safety of people and property. Traffic offences comprised 1% of the sample.

	Type(s) of criminal offence(s)							
		Enote					Mentions	
		Frequency	Valid	% - Valid	Adequate	% - Adequate	Frequency	%
	Criminal offences against life and limb (Articles 115 – 130 of the KZ)	12	171	7%	172	7%	12	6%
	Criminal offences against human rights and freedoms (Articles 131 - 149 of the KZ)	15	171	9%	172	9%	15	8%
	Criminal offences against sexual integrity (Articles 170 – 176 of the KZ)	10	171	6%	172	6%	10	5%
	Drug-related offences (Article 186 - 187 of the KZ)	21	171	12%	172	12%	21	11%

	Property crimes (Articles 204 – 224 of the KZ)	99	171	58%	172	58%	99	52%
	Offences against public order (Articles 294-313 of the KZ)	21	171	12%	172	12%	21	11%
	Traffic offences (Articles 323-331 of the KZ)	2	171	1%	172	1%	2	1%
	Other - specify:	12	171	7%	172	7%	12	6%
	SUM		171		172		192	100%

Table 3: Types of offences committed by young people in the sample (court level)

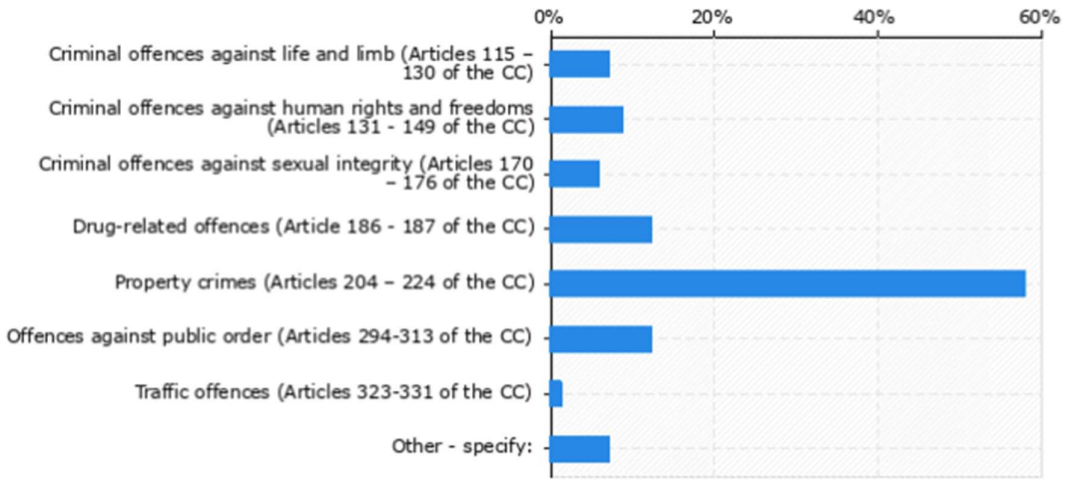

Figure 2: Types of offences committed by young people in the sample (court level)

The types of offences committed by young people in the sample generally reflect the offences committed by young people in Slovenia between 2015 and 2019, however, with some deviations.

In Slovenia, most crimes that young people commit are property crimes. Between 2015 and 2019[9], property crimes amounted to 62,2%, 61,9%, 60,2%, 60,2%, and 54,6% of all offences committed by youth in Slovenia. This is comparable to the data extracted from the sample of cases collected, where property crimes comprised 56% (prosecutorial level) and 58% (court level) of all cases.

[9] This report draws on national-level police-recorded crime between 2015 and 2019 to fit the analysis in the Final Draft Research and Gap Analysis (Lot 1) Report. Besides not fitting the time frame of the study, 2020 would not be the most representative year in relation to youth crime rates due to several lockdowns during the COVID-19 pandemic. The statistics in 2021 might paint a different picture of youth offending, although the discrepancies are not anticipated to impact the analysis substantially. In Slovenia, the types of offences committed by young people change slightly from one year to the other, but the main categories remain relatively stable.

At the national level, violent offences[10] represented 3,8%, 3,8%, 4,5%, 5,5%, and 7% of all juvenile crimes between 2015 and 2019. The samples in this study included more violent offences, namely 13% at both the prosecutorial and court level, 1% of which were crimes against sexual integrity at the level of prosecution and 6% in court files. As stated at the beginning of this report (*Rationale for the sample*), the sample gathered is too small to conclude that there was, between 2015 and 2019, an increase in violent youth crime in Slovenia, followed by a drop. Generally, the absolute number and proportion of violent crimes committed by young people dropped in the early 2000s and reached a minimum of 1,5% in 2013. After 2013 it began to rise again and amounted to 8.2% in 2020 (Balažic et al. 2022). The sample's percentage of violent crimes is in line with this trend.

Between 2015 and 2019, 7,9%, 6,1%, 11,3%, 8,8%, and 8,9% of youth crimes in Slovenia were drug-related[11]. In the sample of cases diverted by the prosecution, 4% were drug-related offences, while the percentage of drug crimes rose to 12% in juvenile court cases. In Slovenia, possessing drugs for personal use is not a crime; it is a misdemeanour dealt with by the court separately from criminal proceedings. Misdemeanours are petty offences, such as traffic offences or graffiti, usually penalised with a fine under the Code of Misdemeanours (ZP-1). Understandably, courts deal with drug-related crimes more often than the prosecution decides to divert them. The percentage of drug offences is thus higher in the court sample than reflected in national-level police-recorded data. When a juvenile in Slovenia commits unlawful manufacture and trade of narcotic drugs according to Article 196 of the KZ or renders an opportunity for consumption of drugs under Article 197 of the KZ, these crimes will usually be severe, and diversion will be less likely.

It is also deemed important to interpret any rise in violent crime or drug-related offences committed by young people in Slovenia and elsewhere with caution. Simplistic conclusions should be avoided, in particular refraining from stating that the last generation of young people is worse than any generation before, that the causes of their violent behaviour or drug use are random or futile, that violence or drugs are signs of societal moral decline, or that young people should be punished with more severe sanctions. Instead of focusing on the individual responsibility of children or their families, explaining and responding to youth crime should consider the structural determinants of violent and drug-related offending (Billingham and Irwin-Rogers 2022; see also Firmin 2020 and Arnež 2022).

The possible rise in youth violent crime and drug-related offences in Slovenia should be placed in the broader socio-economic context of social harm that some young people might be experiencing, which we further examine in section 6 of this report. Increased crime rates can also result from changed sensitivity towards certain types of offences or shifts in policing practices concerning all crimes or specific types of offending. In recent years, zero-tolerance approaches toward physical, sexual, psychological, etc., violence have permeated all segments of social life. Consequently, more people may report violence, resulting in higher violent offences rates. Similarly, increased police presence and changed police tactics can result in higher rates of drug-related offences in national-level statistics or the samples in this study.

In the case files under consideration, one of the districts[12] displayed higher rates of drug-related offences, namely 28% at the court level against the 12% average across other district courts. Upon

[10] According to the Final Draft Research and Gap Analysis (Lot 1) Report, violent offences include homicide, bodily harm, rape, and other forms of sexual violence.

[11]According to the Final Draft Research and Gap Analysis (Lot 1) Report, drug-related crimes include unlawful manufacture and trade of narcotic drugs (Article 196 of the KZ) and rendering opportunity for consumption of drugs (Article 197 of the KZ).

[12] As Slovenia is a relatively small country, we have – to retain the anonymity of the police involved – decided to not nominate the particular district, rather than revealing it.

close inspection of the court case files, the analysis revealed that all drug-related offences in that district resulted from specific police action in front of a particular nightclub where youth gather in the weekends. An increase in drug-related offences in that district between 2015 and 2019 probably reflects changes in policing (or the over-policing of a particular group of children) rather than necessarily reflecting a concerning upward trend of drug dealing and drug use. Most of the descriptions of drug-related crimes we gathered from that district read as follows and might not have been dealt with so harshly in other districts or in the same district in another time frame:

> *The police caught the juvenile offender carrying a plastic bag with 0,13 grams of cannabis. The police estimated he was carrying cannabis to sell as the juvenile offender also had an empty plastic zip-lock bag and was standing in front of a bar/nightclub where young people gather.*
>
> *The juvenile offender sold 0,52 grams of cannabis in front of a bar/nightclub.*

Similarly, it is important to be cautious when interpreting youth offending as group-based behaviour. In the sample of prosecutorial files, 62% of young people committed the crime alone, while 38% had accomplices. The accomplices were a child under the age of 14 in 11%, a younger juvenile (14-15 years) in 28%, an older juvenile (16-17 years) in 44%, an adult in 35%, and of unknown age in 7% of cases. In the court files, the percentages regarding accomplices were the same; 62% of juvenile offenders committed the crime alone, while 38% had accomplices. In court files, the accomplices were a child under the age of 14 in 2%, a younger juvenile (14-15 years) in 29%, an older juvenile (16-17 years) in 45%, an adult in 52%, and a person of unknown age in 8% of cases.[13]

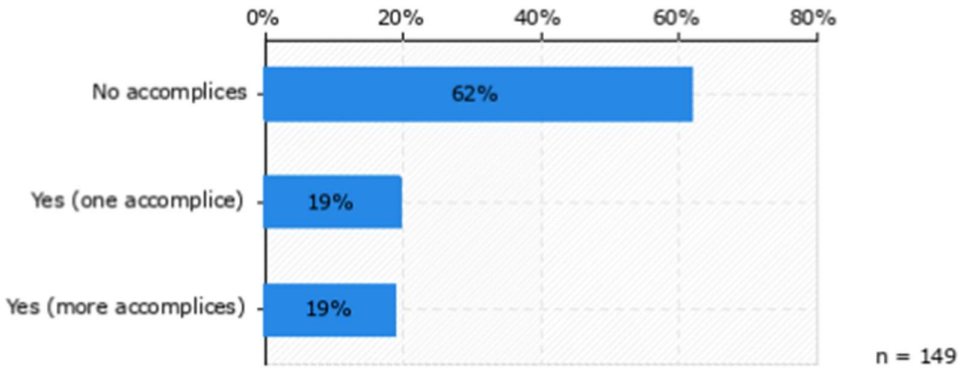

Figure 3: Accomplices at the prosecutorial level

[13] In data about the age of accomplices, the sum of percentages amounts to more than 100% as some young people had more than one accomplice. In the 38% of prosecutorial case files where the juvenile offender had accomplices, the juvenile had one accomplice in 19% of cases and more than one accomplice in 19%. In court files, these percentages were 22% (one accomplice) and 16% (more than one accomplice).

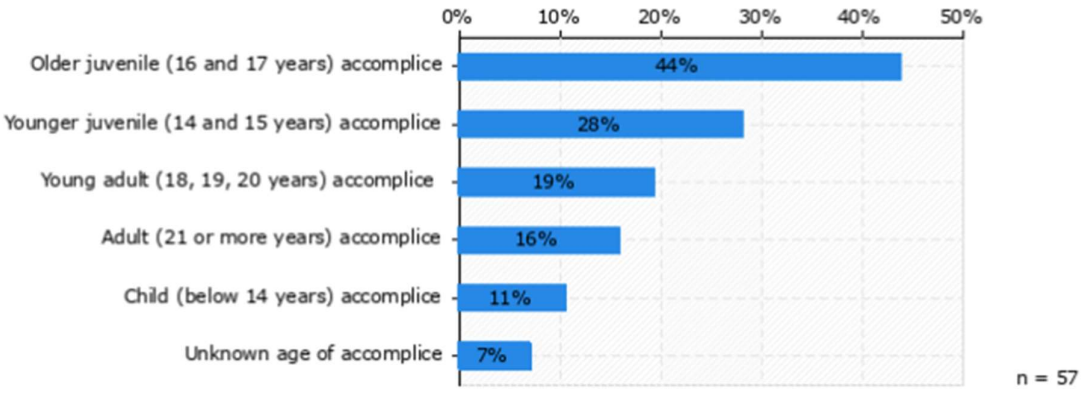

Figure 4: Age of accomplices at the prosecutorial level

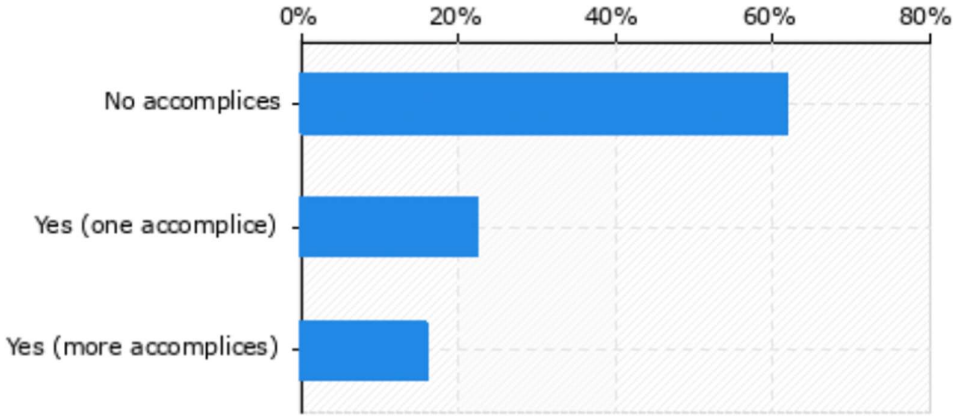

Figure 5: Accomplices at the court level

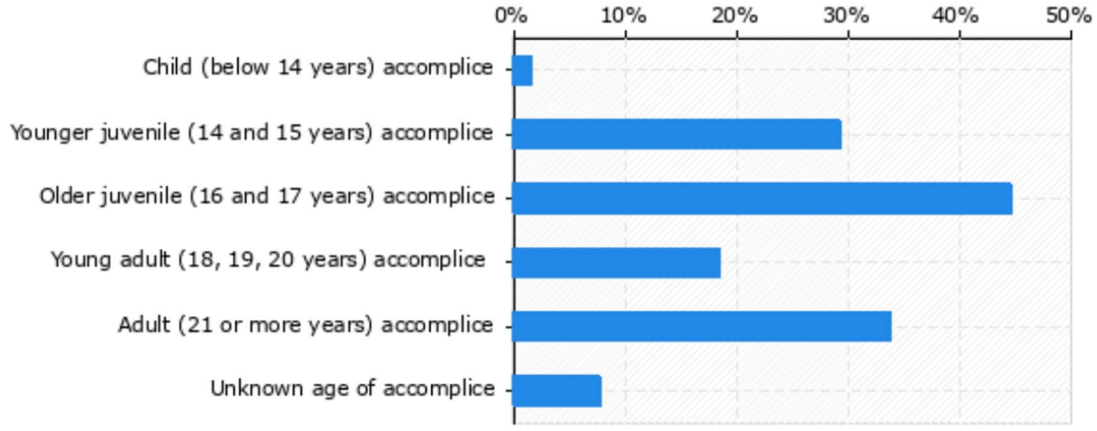

Figure 6: Age of accomplices at the court level

Explanations of youth offending as bringing together similar risk-taking adolescents or constituting gangs often suffer from cultural or biological assumptions about youth. They create adult-child and victim-offender binaries, sidelining social and structural aspects of delinquency (see the critique of such approaches in Billingham and Irwin-Rogers (2022: 8)). The data on the ages of accomplices presented above suggests that group membership is complex and might be stretching beyond the clear legal categories of juvenile offenders according to the Slovenian KZ. Peer groups often include children under the age of criminal liability and, at high rates, adults. Also, members of such groups are often offenders and victims simultaneously, subject to criminal exploitation and criminally exploiting others, which generally reflects their marginality (Firmin 2020). To avoid sensationalising youth offending behaviour and gang involvement, understanding young people's lives should be contextual and consider that vulnerable youth often turn to equally vulnerable peers as unique sources of support and respect (Cohen 1955; Briggs 2010; Filipčič 2013: 499-500; Wroe 2021).

4.2 Types of offences and trends in diversion and prosecution

In the previous section of this report, the types of offences where the prosecution diverted the cases were compared to those in which it instigated a criminal procedure against the young person. Little difference was found between the offences based on which the prosecutor dismisses the criminal complaint and those that lead to the instigation of a criminal proceeding.

The prosecution uses diversion and prosecutes young people for similar *types* of offences. However, analysing the descriptions of crimes at the level of prosecution and the court level in the sample revealed that the prosecution usually diverts young people for *less serious* offences, regardless of the type of offence. The following descriptions of property offences, violent offences, and drug-related offences at the prosecutorial versus court level, collected from the case files as examples, reflect this finding:

<u>Property offences</u>

- Prosecutorial level

The juvenile took the registration plates off a parked car.

The juvenile took a cheese loaf from the store shelves, ate it while walking around the store, and left it without paying for the loaf, worth 0.49 EUR.

- Court level

The juvenile offender and his juvenile accomplice stole the victim's motorbike, worth 900,00 EUR.

The juvenile offender and two accomplices of unknown age robbed a department store with a gun and took 645,00 EUR. The juvenile threatened one of the salespeople that he would shoot them.

<u>Violent crimes</u>

- Prosecutorial level

The juvenile 'jokingly' boxed and pushed a classmate and kicked her in the buttocks. She defended herself by trying to deflect the kick with her hand, which caused a minor injury.

The juvenile, his young adult accomplice [cousin], and his adult accomplice [uncle] came up to the victim at the construction site where he worked [together with the juvenile's uncle] and hit him against the head and body.

- Court level

The juvenile offender caused the victim light bodily harm by cutting the skin on the victim's neck in the area under the chin with a folding knife in the parking lot of a bar, then kicked the victim several times in different parts of the body.

The juvenile offender came up to the juvenile victim and began to run after him, then put his hands around the victim's neck and walked by his side towards a location close by. The juvenile offender shoved the victim and hit him in the face several times so that the victim fell on his knees, after which the juvenile offender pushed the victim in the bush and kicked his head. The victim fell, the offender kicked him again, then flew the crime scene. The victim suffered several physical injuries. The juvenile offender also threatened his stepfather that he would kill him, picked up a chair and attacked him with the chair, then threw gardening scissors towards his stepfather through the window, but the scissors did not hit him.

Drug-related offences

- Prosecutorial level

In a particular part of research city 1[14]*, police officers spotted the juvenile and two friends smoking a hand-rolled cigarette containing cannabis.*

The juvenile purchased cannabis, brought it to the garage, rolled it into a joint in front of three classmates, lit it, and offered it to them. As a result, one of the classmates felt sick.

- Court level

The police searched the juvenile offender and found 4,32 grams of cannabis in a plastic bag. As the juvenile offender was also in possession of two plastic zip-lock bags and a cannabis grinder with traces of cannabis and was standing in front of a famous bar/nightclub, the police concluded the juvenile meant to sell cannabis.

The juvenile offender carried 35,00 grams of cannabis, an electronic scale, a metal grinder and 45 zip-lock bags.

The case file analysis revealed that the prosecution diverts less serious cases while instigating a criminal procedure for more serious crimes. Nevertheless, it is sometimes not clear from the prosecutorial case files what the criteria for prosecution/initiating a criminal proceeding was in court cases that seemed less serious (from the description of the offences) and could be diverted.

Property offences

The juvenile offender entered a clothes shop in a shopping mall, took a pair of shoes, and then left the shop without paying. The shoes were worth 45,99 EUR.

[14] In the remaining parts of this report and to ensure the research participants' and districts' anonymity, the cities mentioned in the case files will be referred to as 'research city', followed by a number.

Violent offences

On the elementary school playground, the juvenile offender threatened a younger schoolmate that he would hit him, take his phone, and not let him go home if he did not pick up and bring him ripe fruit from a nearby bush.

Drug-related offences

The juvenile offender gave three other young people a cigarette filled with cannabis to consume, so they all took turns smoking it together.

On the other hand, the prosecution sometimes used diversion in cases where the offences seemed just as serious as the ones where the prosecution instigated a criminal proceeding. In these cases (and diverted cases more generally), it was not always clear from the prosecutorial files or the reasoning in the prosecutor's final decision why – apart from the lesser seriousness of the offence, as prescribed by law – the cases were selected for diversion while some others were not. The inspected prosecutorial files offered little insight into the personal and familial circumstances of the juvenile. Namely, the prosecution had not obtained a social services report in 93% of the diverted cases. Article 466 of the ZKP and Article 58 of the ZOMSKD state that the prosecution can divert the case in criminal offences punishable by imprisonment of up to five years (mediation or deferred prosecution) or three years (expediency principle). In addition, diversion must be in the child's best interests and development based on what the prosecution knows about their personal and familial circumstances.

As part of this project, we addressed this issue at the roundtable that was held with the prosecutors on 8 December 2022. At the roundtable, the prosecutors explained that they divert cases primarily based on the information they obtain from the police. We presented the finding that the police did not send a social services report to the prosecution in 97% of the inspected diverted cases. The prosecutors explained that if a particular juvenile is behaviourally problematic or suffers from personal or familial adversities, the police notify them, impacting their decision not to divert the case. Suggesting social services send a report for every young person dealt with by the police would be welcome but seems utopian due to organisational struggles. More specifically, the exchanges with prosecutors revealed that social services are understaffed, and their work has been excessively bureaucratised. Therefore, expecting social services to provide a report for every young person that commits a petty offence could result in a further backlog of serious cases.

4.3 Data on the offence and youth offending: Summary of findings and recommendations

Summary of findings:

- The types of offences committed by young people in the sample generally reflect youth offending in Slovenia between 2015 and 2019. Most offences committed by young people are property offences. **Juvenile delinquency in Slovenia is relatively stable** concerning the number and types of offences.
- The sample was too small to conclude there has – between 2015 and 2019 – been a rise in violent and drug-related offences. Increased crime rates should always be interpreted with caution, considering changed socio-economic circumstances, societal sensitivity towards certain types of behaviour, and national or local policing practices, to name a few. **Policing tactics in some parts of the country should be further analysed and thought through, preferably substituting surveillance of some groups of young people with a public health approach to violence or drug-related offences.** Public health

approaches to violence or drug use prevention seek to improve the health and safety of young people by addressing underlying risk factors that increase the likelihood that they will become victims or perpetrators of violence or drug dealing.

- The juvenile offenders in the sample had accomplices in 38% of cases. In Slovenia and elsewhere, youth offending as group-based behaviour should be contextualised. Group membership is complex and might stretch beyond the clear legal categories of juvenile offenders. Peer groups include children under the age of criminal liability and, at high rates, adults, often providing their members with rare sources of respect. **Young people of marginalised backgrounds should be better integrated in school and across other institutions to provide them with socially acceptable sources of recognition, dignity, and respect.**
- In the inspected sample of cases, the prosecution used diversion and prosecuted young people for similar *offence types* that were, according to the descriptions in case files, *less serious* than the ones dealt with by the court. **Diversion is generally in line with the current ZKP and the ZOMSKD.**
- There might be some inconsistencies in the prosecution's diversion (not all similarly serious offences are prosecuted or similarly petty offences diverted). The prosecution's reasoning behind the diversion is sometimes not adequately explained in the final decision. Most importantly, it is often unclear how the prosecution tests diversion is in the child's best interest based on their personal and family circumstances. In 93% of prosecutorial files, the prosecution had not obtained a social services report. **Prosecutors could explain their choice to divert the case more thoroughly in their final decision.** Social services are experiencing organisational and staffing problems. **Further research on the functioning of social services in Slovenia is needed to propose ways in which they would be able to collaborate viably with prosecutors and courts and provide them with information about the child's personal and family circumstances.**

Recommendations:

- **Policing tactics**

  It is recommended that policing tactics in some parts of the country be further analysed and thought through, preferably substituting surveillance of some groups of young people with a public health approach to violence or drug-related offences.

- **Integration**

  It is recommended that more consideration be given to better integrating young people of marginalised backgrounds in schools and other institutions to provide them with socially acceptable sources of recognition, dignity, and respect to prevent youth offending from becoming a peer acceptance activity.

- **Social services engagement and individualised assessments**

  It is recommended to develop new and more effective ways in which social services can collaborate viably with prosecutors and courts and provide them with information about the child's personal and family circumstances to strengthen the individualisation of measures and sanctions.

5. Data related to the final decision

This report section introduces information about the prosecution and judiciary's final decisions. Based on data from the Supreme State Prosecutor's Office of Slovenia, it first presents how many cases the prosecution diverted in the districts of Celje, Koper, Ljubljana, and Maribor between 2015 and 2019 and the reasons for diversion: the expediency principle, the minor significance of the offence, mediation, deferred prosecution, and an educational measure in place. Aspects related to how many young people the prosecution charged, how many cases the court dismissed, and how many educational measures and punishments the court imposed are shown.[15] Moreover, factors that might impact the prosecution and courts' final decisions are identified, with a focus on the reasoning behind the prosecution and courts' decision-making. In this task, attention was paid to references in the final decisions to the advantages of diversion, prevention of further offending, the child's resocialisation and reintegration, and core principles of international law and children's rights.

5.1 Type of final decision

5.1.1 Prosecution

In this research, the selection of cases to explore diversion between 2015 and 2019 was not random, but rather carefully chosen among a pre-determined number of cases from each diversion category in Celje, Koper, Ljubljana, and Maribor, based on relevance. To examine the trends in diversion versus prosecution across the four districts, which types of diversion dominate, and why, statistical data on the prosecution's final decisions in juvenile criminal cases in Celje, Koper, Ljubljana, and Maribor between 2015 and 2019 from the Supreme State Prosecutor's Office of Slovenia was obtained.

Year and district	Diversion – Expediency principle	Diversion – Minor significance of the offence	Diversion – Mediation	Diversion – Deferred prosecution	Diversion – Educational measure in place	Court – Dismissal of cases after preliminary proceeding based on the prosecution's suggestion	Court – Refers the case to a panel for juvenile offenders to impose a sanction
2015	**83**	**261**	**12**	**130**	**58**	**191**	**572**
CE	3	33	1	21	6	18	21
KP	2	9	1	15	16	14	33
LJ	65	194	4	53	35	126	405
MB	13	25	6	41	1	33	113
2016	**38**	**236**	**11**	**91**	**21**	**170**	**550**
CE	5	36	3	22	0	21	43
KP	2	9	0	5	1	6	32

[15] As part of the present research, data about how many juvenile criminal cases the District Courts in Celje, Koper, Ljubljana, and Maribor dismissed between 2015 and 2019 and in how many they imposed sanctions was requested from the Supreme Court of the Republic of Slovenia. Although the Supreme Court granted the request, the data was not received by the time this section of the report was written. To analyse the types of final decisions at the court level, this section thus drew on publicly accessible data provided by the Statistical Office of the Republic of Slovenia, also used to prepare the Final Draft Research and Gap Analysis (Lot 1) Report. There might be slight discrepancies between the data gathered from the Supreme State Prosecutors Office, presented in *Table 4*, and the data provided by the Statistical Office of the Republic of Slovenia and used in section 5.2.1. of this report. The differences are insignificant for the findings about the trends in juvenile criminal cases.

LJ	26	162	7	42	11	99	360
MB	5	29	1	22	9	44	115
2017	**32**	**209**	**19**	**123**	**17**	**108**	**472**
CE	2	18	0	30	1	13	39
KP	2	9	0	17	1	6	31
LJ	24	159	18	48	7	68	314
MB	4	23	1	28	8	21	88
2018	**40**	**230**	**13**	**93**	**17**	**97**	**487**
CE	1	19	2	21	1	16	50
KP	7	15	0	16	2	1	31
LJ	27	169	10	15	8	58	318
MB	5	27	1	41	6	22	88
2019	**44**	**243**	**23**	**122**	**37**	**174**	**562**
CE	9	22	2	32	0	28	44
KP	10	10	6	24	1	8	28
LJ	22	179	13	40	33	114	388
MB	3	32	2	26	3	24	102
SUM	**237**	**1179**	**78**	**559**	**150**	**740**	**2643**

Table 4: Diversion at the prosecutorial level (2015-2019)

Between 2015 and 2019, the prosecution processed 5586 juvenile criminal cases in Celje, Koper, Ljubljana, and Maribor. It diverted 2203, or 40% of cases, instigating criminal proceedings in 3383, or 60% of cases. In 13% of criminal proceedings, the court dismissed the case after the preliminary phase and referred it to the panel for juvenile offenders in 47%.

In the next section of this report, court dismissals are analysed in more detail. The data in *Table 4* implies that at least 53% of juvenile criminal law cases in the inspected four-year period were diverted at the prosecutorial level or dismissed by the court. Since the court can also dismiss the case based on the expediency principle, the minor significance of the offence, or an educational measure in place after the 'in camera' session or main hearing, the percentage of dismissals is even higher than recorded by prosecutorial statistics.

The presented data shows that the prosecution often diverts juvenile offenders in Slovenia, so many young people who commit an offence do not enter the juvenile justice system. However, the number of young people diverted at the prosecutorial level who might later enter the juvenile justice system due to persistent offending is unknown. Data on recidivism was unavailable to us in this study, and no institution in Slovenia records recidivism systematically at the national level.

The statistical data on different types of diversion at the prosecutorial level presented in *Table 4* reveal that mediation/settlement is rarely employed; specifically, cases were dismissed after successful mediation in only 3% of cases in Celje, Koper, Ljubljana, and Maribor between 2015 and 2019. The prosecution diverted 54% of cases due to the minor significance of the offence, 25% after successfully deferred prosecution, 11% based on the expediency principle, and 7% due to an educational measure already in place.

At the roundtable held with prosecutors on 8 December 2022, the prosecutors argued that most districts have problems with mediation as there are few mediators specialising only in juvenile criminal cases. Unspecialised mediators do not realise the purpose of juvenile criminal proceedings and usually impose that the young person should apologise to the victim. The prosecutors do not deem apologies sufficiently individualised and favour deferred prosecution, where the child must carry out a more substantial task. Also, it was argued that being a mediator is not a profession *per se,* and it is not profitable, rarely attracting sufficiently qualified people. Cases of mediation in the sample reveal that the mediator imposed an apology in 65 %, followed by compensation of

damages in 13 %, restitution in 4 %, community service in 4 %, and other tasks (essay on being a victim, prohibition to contact the victim, apology and compensation of damages) in 13 % of cases.

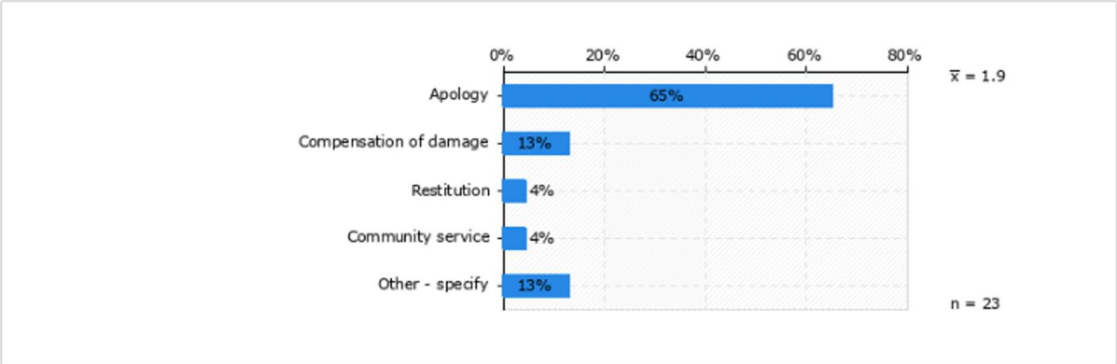

Figure 7: Content of agreement – mediation

Deferred prosecution is employed more often than mediation but also depends on the availability and engagement of supporting organisations (social services, NGOs, providers of voluntary work, etc.) from one district to another. Where such organisations exist and cooperate reasonably with prosecutors, the prosecution uses deferred prosecution more frequently. In the sample under consideration, social services were the cooperating institution in 76 %, followed by other institutions (probation, retirement home, builder supervising the young person's manual work, walking club, sports and youth centre) in 17 %, private businesses in 14 %, NGOs in 10%, and public institutions in 7 % of cases.

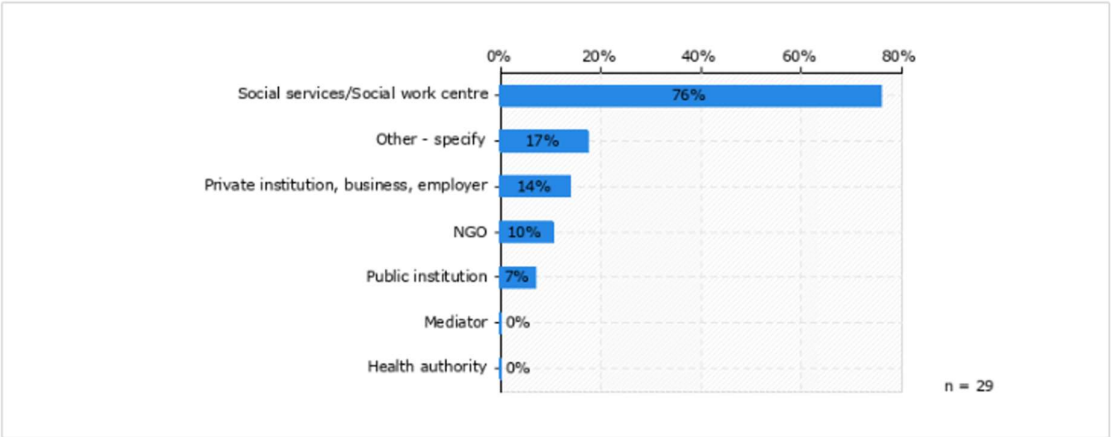

Figure 8: Bodies involved in completion of instruction/task – deferred prosecution

In cases of deferred prosecution in the sample, community service presented 59 %, the elimination and compensation of damages 18 %, the payment of a contribution to a public institution or charity 10 %, other tasks (compensation of damages and community work/service, apology) 10 %, and attending psychological or other forms of counselling 3 % of all measures imposed.

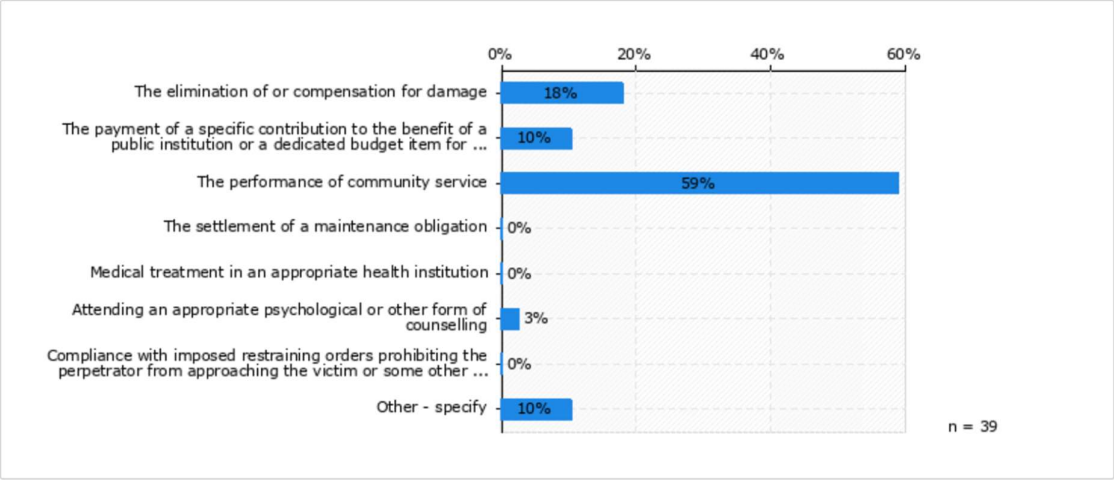

Figure 9: Instructions/tasks imposed – deferred prosecution

In cases of deferred prosecution, unequal practices in imposing community service were observed. More specifically, prosecutors set different work hours and durations of the measure in similar cases. Also, in one of the cases, the juvenile had to complete 120 hours of community service in six months. The child completed the 120 hours in nine months and fifteen days and started with the work 21 days after he was supposed to meet it. Social services took six months and ten days to find an appropriate institution for the juvenile to exercise community work. At the roundtable in December 2022, prosecutors suggested the deadline for the young person to carry out their task as part of deferred prosecution should be extended in the ZKP or new law – and not only in the *Instructions of the Supreme State Prosecutor's Office,* – as social services are overburdened and should have enough time to organise their work. This suggestion seems reasonable, considering the timelines in *Figures 10, 11,* and *12*. However, more research is needed to determine the exact reasons for delays and how to prevent them.

When the task set by the prosecutor in the sample was the elimination or compensation of damages to the victim, and the juvenile did not have income, the juvenile's parents paid damages. The educational value of such a measure is questionable, and there is a risk of unequal treatment of juvenile offenders of different socioeconomic backgrounds. The prosecutors at the roundtable clarified that they only impose repayment of damages if the juvenile has their own income or scholarship. Article 60/III (2) of the draft ZOMSKD stated that the prosecution could only impose contributing to the benefit of a public institution or another dedicated budget if the juvenile has income. It might be worth considering if the same applies to damages, even if the nature of their repayment differs from voluntary payment and a monetary sanction.

Different rates of specific types of diversion reflected in *Table 4* do not necessarily reflect the willingness or unwillingness of district prosecutor's offices or prosecutors to use diversion. Usually, diversion depends on the availability of diversionary infrastructure that makes alternative proceedings possible or impossible. There is also generally more diversion in bigger cities (Ljubljana, Maribor) where more people live; hence, more young people offend, and the prosecution diverts more from the criminal justice system.

As noted at the Roundtable in December 2022, across districts, advisors to the prosecutor usually carry out diversionary procedures (sending out letters, holding meetings with the young person

and victim, writing the first draft of the final decision, etc.).[16] The prosecutors supervise the advisors. Still, they do not often interact with the young person as part of the diversion.

In some case files in the sample, transcripts from hearings as part of deferred prosecution were missing. The absence of transcripts might have been a coincidence attributed solely to the inspected sample. Still, it is important to clarify that transcripts are essential for the transparency of prosecutorial decision-making.

Lastly, the prosecutors at the roundtable welcomed extending the possibility of mediation, deferred prosecution, and the expediency principle in exceptional circumstances to some criminal offences, for which the KZ prescribes the sentence of at least five years of imprisonment, as was suggested in the draft ZOMSKD. Prosecutors also thought social services should supervise more diligently the execution of the juvenile's tasks. As mentioned, the prosecutors believed the new law should extend the deadline for the young person to fulfil the obligation as part of deferred prosecution, which seems a sensitive suggestion. Still, more research is needed to examine the reasons for delays and determine how to overcome them. It was found that – in deferred prosecution – a lot of time passes between the prosecutor defining the task and the young person completing it and between the child completing the assignment and the prosecutor dismissing the case (*Figures 10, 11,* and *12).*

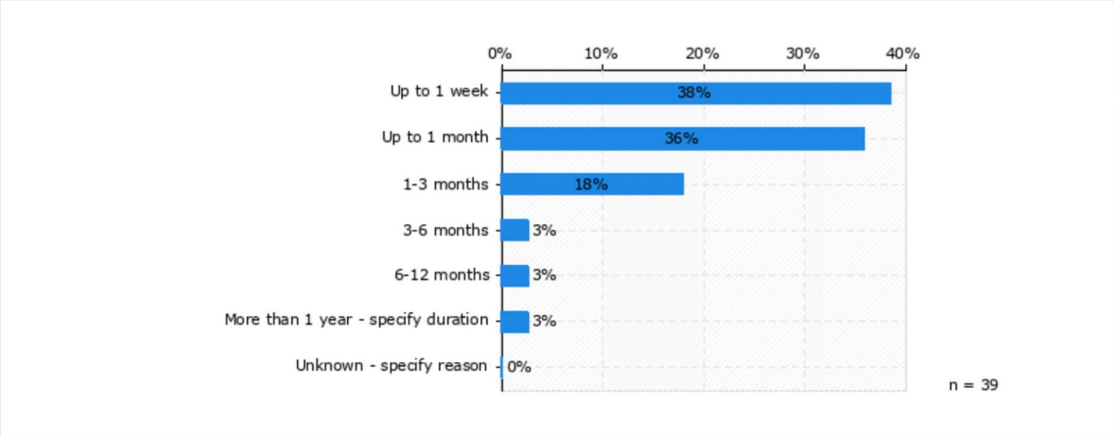

Figure 10: Time (not instigating a criminal proceeding vs identification of task) – deferred prosecution

[16] According to Article 137 of the Public Prosecutor's Office Act- 1 (ZDT-1), assistant prosecutors draft prosecutors' briefs, conduct proceedings of deferred prosecution under the direction of the public prosecutor, and carry out other professional work as ordered by the public prosecutor.

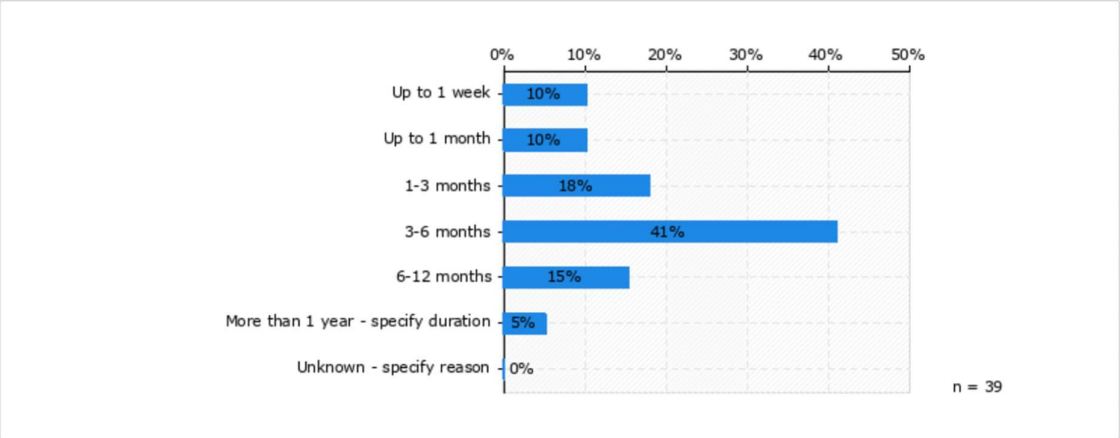

Figure 11: Time (identification of task vs completion of task) – deferred prosecution

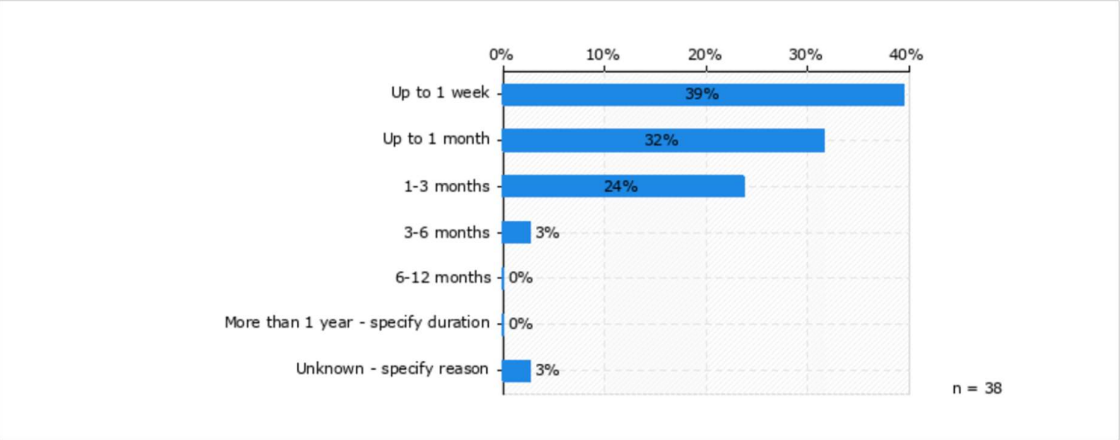

Figure 12: Time (completion of task vs dismissal of case) – deferred prosecution

5.1.2 Court

This study examines a fixed number of cases from each category of dismissals and sanctions, as described in section 2.2. of this report, to explore the kind of educational measures and other sanctions imposed by district courts in Celje, Koper, Ljubljana and Maribor between 2015 and 2019. Judicial decision-making and the individualisation of sanctions in these case files were analysed, and the findings are presented in the subsequent sections of this report. To explore which types of educational measures and punishments dominated between 2015 and 2019, statistical data on the judiciary's final decisions in juvenile criminal cases from the Statistical Office of the Republic of Slovenia was obtained.

The summarised statistical data in *Tables 5* and *6* show that between 2015 and 2019, courts imposed non-residential educational measures in 92 % of cases, residential educational measures in 7,5 % of cases, and a juvenile prison in 0,5 % of cases. The courts did not impose a statistically significant number of safety measures against juvenile offenders in the inspected time frame, which matches the sample data, as presented in section 2.2. of this report.

Year	Total sanctions imposed	Residential educational measures %				Punishments	
		Committal to an **educational institution** %	Committal to a **juvenile detention centre** %	Committal to an **institution for physically or mentally disabled youth %**	**Total residential educational measures %**	**Juvenile prison %**	**Fine %**
2015	**315**	4.1	3.2	0.3	**7.6**	**0.6**	**0.0**
2016	**319**	4.1	4.1	0.0	**8.2**	**0.6**	**0.0**
2017	**269**	4.9	3.7	0.0	**8.6**	**1.1**	**0.0**
2018	**226**	6.2	1.3	0.0	**7.5**	**0.4**	**0.0**
2019	**220**	4.5	0.9	0.0	**5.5**	**0.0**	**0.0**
SUM	**1349**	4.8	2.6	0.06	**7.5**	**0.5**	**0.0**

Table 5: Types of sanctions imposed against juvenile offenders (2015-2019)

Year	Total sanctions imposed	Non-residential educational measures %			
		Reprimand	Instructions and prohibitions	Supervision by social services	**Total non-residential educational measures %**
2015	**315**	11.4	9.5	70.8	**91.7**
2016	**319**	10.3	21.9	58.9	**91.1**
2017	**269**	11.5	28.3	50.6	**90.4**
2018	**226**	14.2	27.0	50.4	**91.6**
2019	**220**	12.3	22.7	59.5	**94.5**
SUM	**1349**	11.9	21.9	58.0	**92.0**

Table 6: Types of non-residential educational measures imposed against juvenile offenders (2015-2019)

Table 7, published by the Statistical Office of the Republic of Slovenia, shows that courts in Slovenia dismissed 1349 juvenile criminal cases after the 'in camera' session or main hearing between 2015 and 2019. Combined with data from the Supreme State Prosecutor's Office, presented in *Table 4*, and data from the Statistical Office of the Republic of Slovenia, shown in *Tables 5* and *6*, this reveals that courts dismissed approximately half the cases that were referred to the panels for juvenile offenders to impose sanctions.

	2015	2016	2017	2018	2019	SUM
Number of court dismissals	315	319	269	226	220	**1.349**

Table 7: Dismissals after the 'in camera' session/main hearing at the court level

Court statistics in Slovenia do not differentiate between stages (after the preliminary proceedings or the 'in-camera' session/main hearing) and types (based on the expediency principle, the minor significance of the offence, or an educational measure already in place) of dismissals. To accurately establish the stages and reasons courts predominantly dismissed cases between 2015 and 2019, all

court dismissals in that time frame would have to be manually inspected, which was beyond the scope of this research. In the 54 cases of court dismissal that were examined, however, 64 % were after the 'in camera' session or main hearing and 36 % after the preliminary procedure, as suggested by the prosecutor.

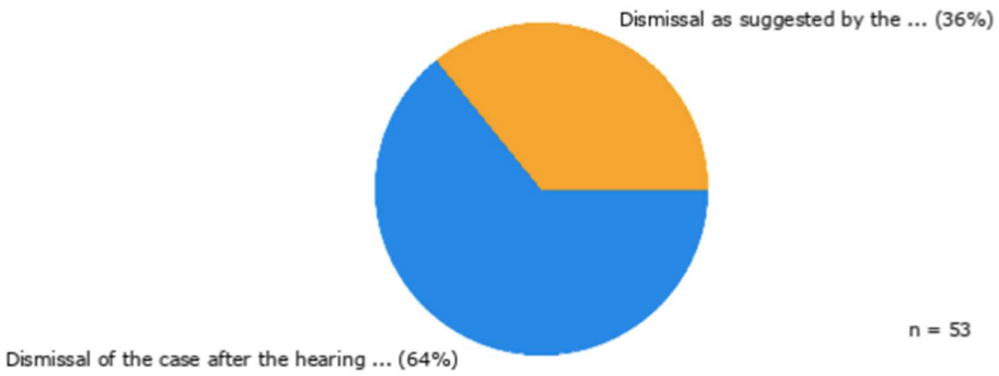

Figure 13: Dismissals at the court level (stage of court dismissal)

Examining reasons for court dismissals in the sample, it was found that, after the preliminary proceedings, 68 % of cases were dismissed based on the expediency principle and 32 % because the court had already imposed an educational measure or sanction upon the juvenile offender in a previous criminal proceeding. After the 'in camera' session or main hearing, 93 % of cases were dismissed based on the expediency principle and 3 % due to the minor significance of the offence. cases where the court dismissed a case due to establishing that the juvenile had not committed the offence were not inspected.

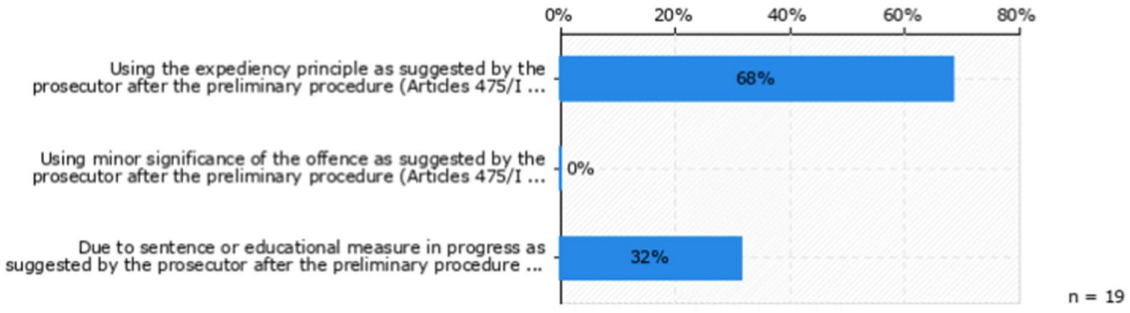

Figure 14: Dismissals after the preliminary court proceeding – Reasons for dismissal

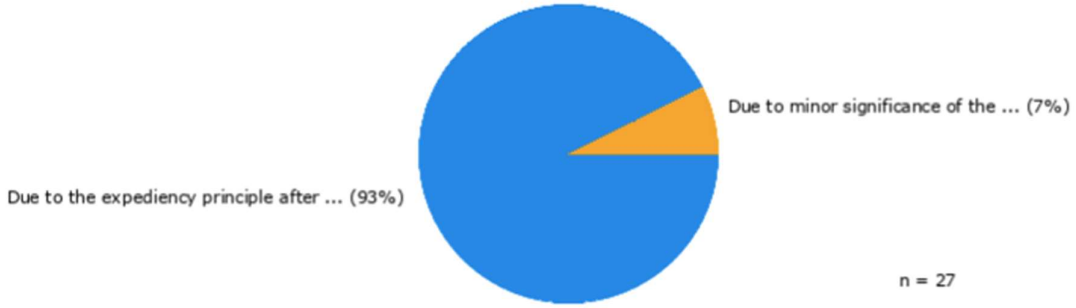

Figure 15: Dismissals after the 'in camera' session/main hearing – Reasons for dismissal

It was also deemed essential to understand the precise reasons why courts dismiss cases after the preliminary proceedings, the 'in-camera' session, or the main hearing based on the expediency principle. In the sample of court files inspected, the courts dismissed some cases based on the expediency principle as they estimated that the crime was less severe and the young person's circumstances were stable. The prosecution should divert such cases.

In other files, the courts dismissed cases based on the expediency principle because proceedings against the young person, in sum, lasted too long. The youth had since reached eighteen or older, so the courts established they no longer required formal action from the judicial authority. While the courts reach such decisions after thorough deliberation in each case and dismissals based on the expediency principle avoid criminalising young people, they also signal that some youth who commit an offence serious enough to be charged might never get support through educational measures. This might perpetuate the difficulties triggering their offending behaviour and hinder desistance from crime.

While inspecting the reasons for court dismissals, it was also noticed that courts partly conflate categories of dismissals. In their final decisions to dismiss the case, courts do not always differentiate adequately between dismissals based on the expediency principle (Article 466/I of the ZKP) and dismissals due to an educational measure already in place (Article 466/III of the ZKP). Courts usually refer to both as dismissals based on the expediency principle (Article 466/I of the ZKP and 62/I vs III of the ZOMSKD). In the collected data, court dismissals are categorised according to the description of the reasons for dismissal, not the article of the ZKP stated in the final decision.

In analysing educational measures and other sanctions imposed by the courts, the focus was primarily on how viable and well-individualised they were. These findings are more thoroughly presented in section 8 of this report. Here, it is possible to establish that juvenile criminal courts in Slovenia are lenient, given that 92 % of all sanctions imposed are non-residential educational measures. In 92 % of cases, courts in Slovenia estimate that the optimal way for the juvenile offender to progress from offending behaviour and desist from crime is if they remain in their home environment and are included in social networks, broadly defined.

Section 8 of the report will explore how individualised non-residential and residential educational measures in Slovenia are and what problems emerge with their execution in practice. This section presents what types of educational measures and other sanctions against juveniles comprise the sample. 54 % of non-residential educational measures in the sample were supervisions by social services, followed by 26 % of instructions and prohibitions, and 20 % of reprimands.

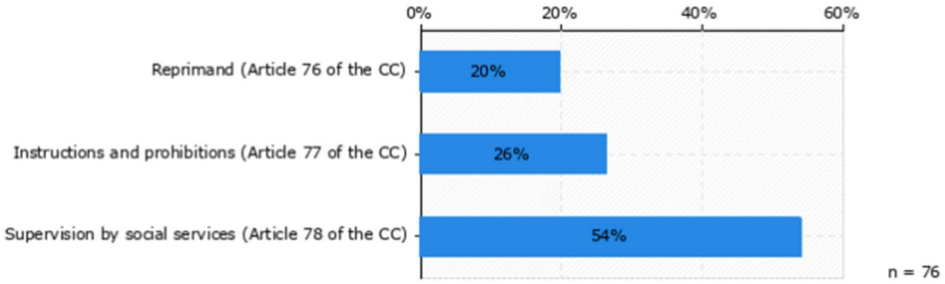

Figure 16: Types of non-residential educational measures in the sample

In court-imposed instructions and prohibitions (*Figure 17*), 45 % of juveniles had to attend a social training course, and 40 % had to apologise to the victim. The latter is surprising given that prosecutors deemed apologies as part of mediation not individualised enough. It seems that the courts' view is different or the additional information they obtain on the young person's personal and family circumstances warrants such a decision. Other imposed instructions and prohibitions in the sample were performing community service or work for humanitarian organisations (20%), regular school attendance (15 %), settlement with the victim (10 %), and attending educational, vocational, psychological, or other consultations (10 %).[17]

If courts imposed instructions and prohibitions as part of supervision by social services (*Figure 18)*, they usually wanted the young person to: regularly attend school (24 %), participate in educational, vocational, psychological, or other consultations (24 %), perform community service or work for humanitarian organisations (14 %), apologise to the victim (14 %), attend a social training course (11 %), settle with the victim (8 %), take up vocational education or employment (5 %), or engage in treatment in a health institution (3 %).

Courts in the sample did not impose instructions to live with a specified family, pass an examination to obtain a driving license, or prohibited driving a motor vehicle.

[17] In data about instructions and prohibitions, illustrated in *Figures 17* and *18*, the sum of percentages amounts to more than 100% as courts can impose one or more instructions and prohibitions.

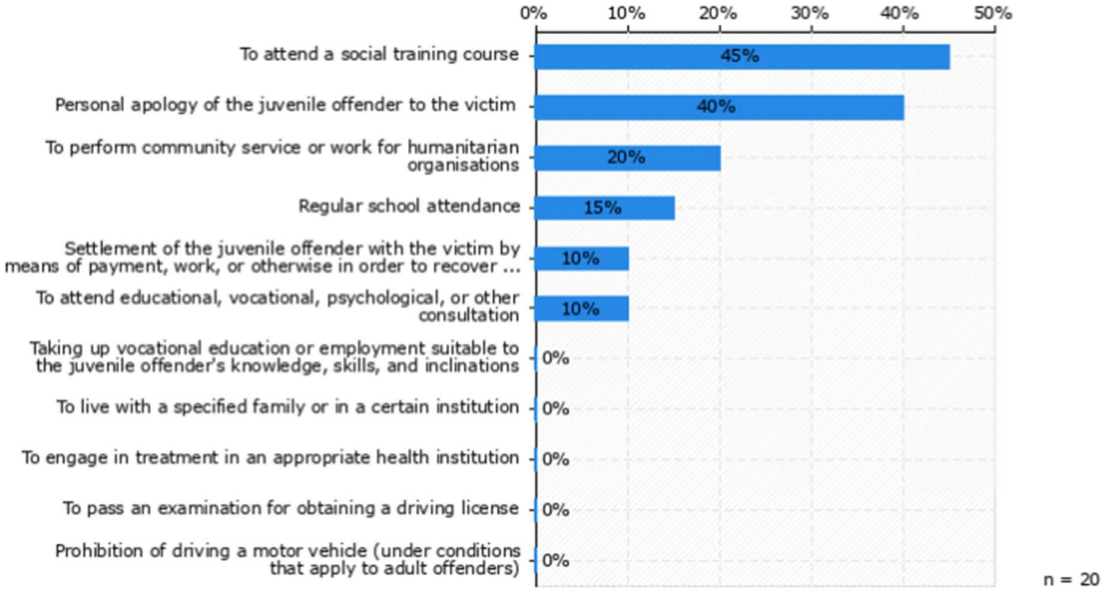

Figure 17: Types of instructions and prohibitions in the sample

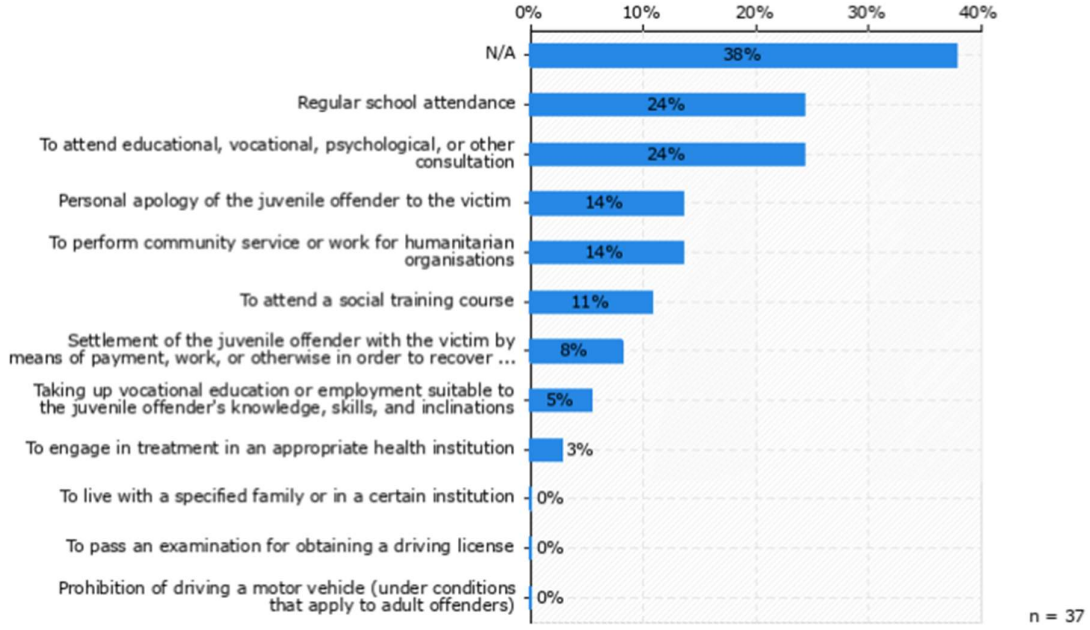

Figure 18: Types of instructions and prohibitions in addition to supervision by social services in the sample

Article 16 of the draft ZOMSKD states that the court can only impose a settlement of the juvenile offender with the victim through payment if the juvenile has income. The ZOMSKD adds to Article 77 of the current KZ new and/or more specified instructions and prohibitions: treatment of the minor for substance abuse without their consent; a more extensive list of the types of institutions where the youth can engage in educational, vocational, or psychological consultation; restraining orders against the child, preventing them from contacting a particular person or group of peers or coming close to a specific place. Prosecutors and judges welcomed such changes at the roundtables on 8 December 2022.

In 7,5 % of sanctions imposed against juveniles between 2015 and 2019, courts estimated that juvenile offenders must be excluded from their home environment and receive more intensive treatment as part of a residential educational measure. In the sample, the aim was to analyse an equal number of committals to an educational institution and correctional home. Ultimately, 54 % of residential educational measures in the sample were committals to an educational institution, and 46 % were committals to a correctional home (*Figure 19*).

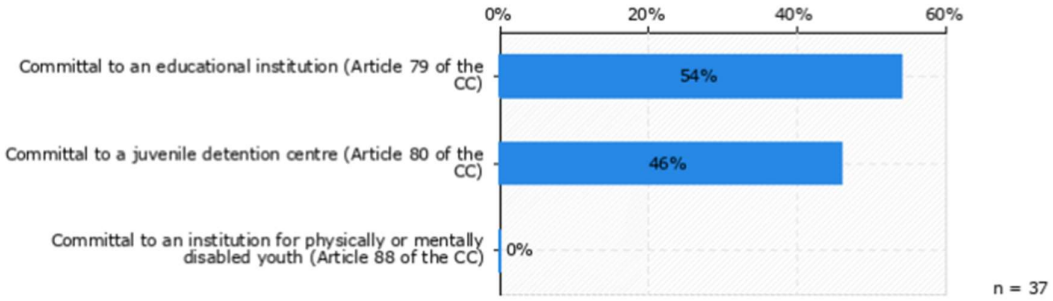

Figure 19: Types of residential educational measures in the sample

Access to all committals to an institution for physically and mentally disabled youth, juvenile imprisonments, and safety measures of compulsory psychiatric treatment and confinement in a mental health institution/at liberty between 2015 and 2019 was pursued. However, it was found that courts in Celje, Koper, Ljubljana, and Maribor only imposed two juvenile prison sentences and one safety measure of compulsory psychiatric treatment at liberty in that time frame. The individualisation of educational measures and sanctions – or the lack thereof – is analysed in more detail in section 8 of this report.

5.2 Reasoning in the final decision

5.2.1 Prosecution

As illustrated in *Figure 20*, 34%[18] of the analysed prosecutorial final decisions lacked references to reasons for selecting the case for diversion or dismissal beyond the wording of Articles 466/I and 466/III of the ZKP (e.g., that the criminal offence was punishable by up to three years imprisonment or a fine and was thus less serious). In 32% of the inspected prosecutorial files, the final decision referred to the young person's circumstances and personality traits as the reasons for diversion; in 23%, the type of offence; in 22%, an educational measure already in place; in 19%, the circumstances in which the child committed the offence; prior convictions in 10%; level of culpability in 1%; and other reasons in 13%.

[18] The data about reasons for selecting the case for diversion, illustrated in *Figure 20*, shows that the sum of percentages amounts to more than 100%. Some final decisions entailed references to several reasons the prosecutor decided to divert the case. The same applies to *Figures 21* and *22*.

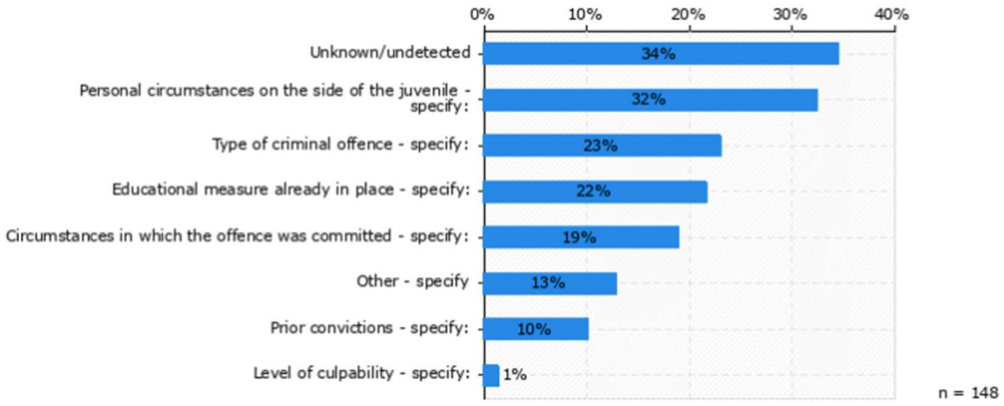

Figure 20: References to reasons for diversion/dismissal in final prosecutorial decisions

Article 466 of the ZKP states that the prosecutor may request information from the young person's parents, guardians, other people, or institutions to verify the young person's personality traits or personal and familial circumstances. They can also invite these people and the child to the prosecutor's office for a meeting if necessary. The prosecutor may request a social services report to establish the appropriateness of diversionary proceedings against the juvenile.

According to the analysis, there was no indication in the case files that the prosecutor had requested information about the young person from their parents or invited the family and the social workers to a meeting. As stated in section 4.2. of this report, the prosecution had also not obtained a social services report in 93% of the diverted cases.

At the roundtable held on 8 December 2022, the prosecutors explained – as already summarised in section 4.2. of the report – that they usually rely on the information about the minor provided by the police along with their charge. When the police does not warn the prosecution about the family's difficulties and the minor's offence is not severe, they will dismiss the case based on the expediency principle or decide to instigate mediation or defer prosecution. The prosecutors added that the *Instructions of the Supreme State Prosecutor's Office* also guide them in their decisions, establishing the criteria prosecutors should consider before diversion: the young person's prior criminal involvement, repayment of damages, damages caused by the victim to the young person, the young person's behaviour after they committed the offence, whether the victim provoked their offending behaviour, and the anticipated sanction imposed by the court should the prosecution instigate a criminal proceeding.

However, the Supreme State Prosecutor's instructions are not statutory. Most of the final decisions examined in this study did not explain how prosecutors relied on these instructions. Moreover, the reasons for diversion, stated in *Figure 20*, were often conflated in the prosecution's reasoning as recorded in their final decisions. For example, when explaining why they selected the case for diversion, prosecutors referred to personal and family circumstances but explained this with the juvenile having no prior convictions.

As visible from *Figure 21*, 70% of final decisions in the diverted cases did not contain references to the aims of diversion. In 26% of the diverted cases, the final decision stated that the criminal proceeding would be more harmful than a diversion. Yet, the prosecutor rarely individualised the latter with concrete references to the young person's life.

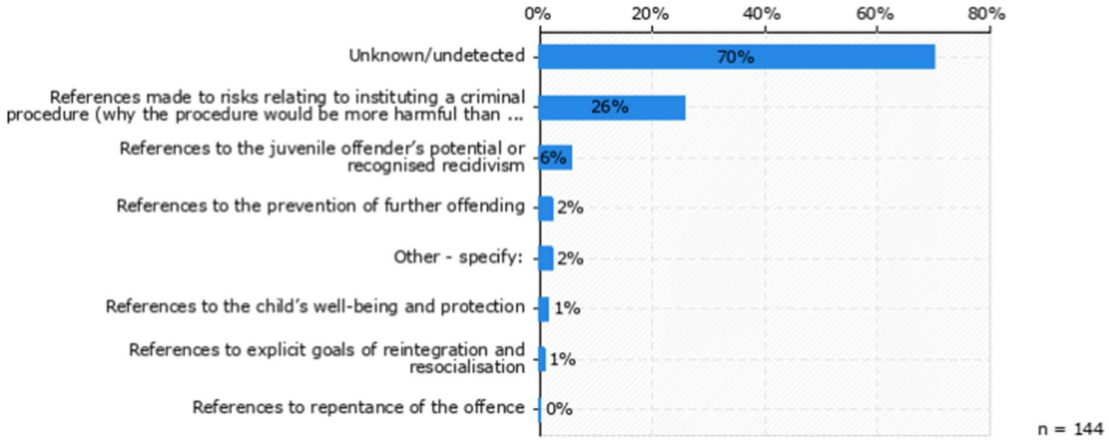

Figure 21: References to aims of diversion/dismissal in prosecutorial files.

One of the aims of this study was to analyse whether the dismissals at the level of prosecution were effective and diverted children that do not need to receive an educational measure for their emotional and/or behavioural difficulties. It was not always possible to analyse the latter due to a lack of data on the young person's prior and/or subsequent criminal involvement. In addition, information about the reasons behind the prosecution's choice of a specific case for diversion was often missing in the final decision beyond references to legal reasons as entailed in the wording of the Articles of the ZKP.

The prosecutors explained at the roundtable their thought process behind diversion and that the police notify them if a young person is especially behaviourally challenging. However, the lack of concrete argumentation in their final decisions about why diversion and not a criminal proceeding is in the child's best interest is unsatisfactory, especially considering the proposed Articles 8, 9, and 58 of the ZOMSKD.

Article 8 of the draft ZOMSKD establishes diversion as the primary course of action, while criminal proceedings against the minor are subsidiary. Therefore, the prosecution should consider diversion before instituting criminal proceedings against a child. Article 9, like the current ZKP, states that the child's best interests should be the key guiding principle in criminal proceedings against minors. Explaining why diversion is in the child's best interests is thus pivotal. Article 58 of the ZOMSKD also explicitly mentions that when deciding whether to divert the case, the prosecutor should – in addition to considering the conditions laid down by the law governing criminal procedure – explore whether diversion is going to contribute to the child's optimal development.

Lastly, and as can be inferred from *Figure 22*, 71% of the inspected prosecutorial cases did not refer to principles of international law on child-friendly justice. There were some references to promoting diversion and recognising that it could be more beneficial than instigating a criminal proceeding in 27% of cases, followed by referring to the best interests of the child in 6% of cases, the child's right to be heard in 3% of cases, and other principles in 3% of cases. In the category of 'other', the final decision to divert the case referred to the principle of proportionality and economic reasons. Specifically, the final decisions stated that initiating the criminal proceedings would be disproportionately costly considering the minor seriousness of the committed offence and the damages caused by the crime. Where the final prosecutorial decision referred to

international principles of child-friendly justice, the references were implicit in 98% of the inspected cases, as shown in *Figure 23* below.

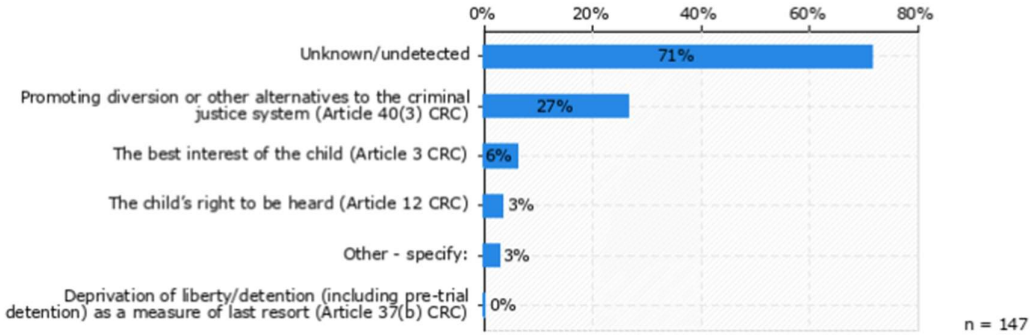

Figure 22: References to international principles of child-friendly justice – final prosecutorial decisions

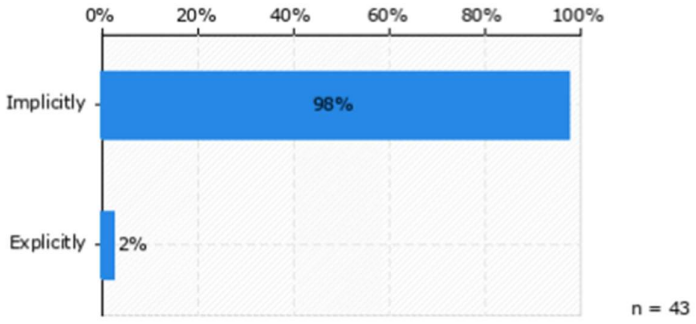

Figure 23: International principles of child-friendly justice – Implicit and explicit references

5.2.2 Courts

As illustrated in *Figure 24*, 71%[19] of the inspected judicial dismissals referred to the young person's circumstances and personality traits, 33% to an educational measure in place, 23% to the circumstances in which the young person committed the offence, 21% to prior imposition of criminal sanctions against the young person, 21% to the juvenile offender's level of culpability, and 17% to the type of criminal offence.

References to the young person's personal and familial circumstances seem more reasonable in judicial than final prosecutorial decisions. At least in the sample, the court had obtained information about the young person through contacting social services in 97% of cases. Social services prepared reports based on interviews with the juvenile in 77%, meetings with the parents in 84%, and home visits in 11% of cases. In 91% of cases, the court's social workers met with at least one of the child's parents. Courts questioned the juvenile – part of which is also a discussion about their personal and family circumstances – in 92 % of cases. They rarely obtained information

[19] In data about reasons for court dismissal in *Figure 24*, the sum of percentages amounts to more than 100%. Some final decisions entailed references to several reasons the court dismissed the case. The same applies to *Figures 25, 26* and *27*.

from other sources: 22% from educational institutions, 9% from schools, and 3% from other institutions or professionals, mainly psychologists and psychiatrists.

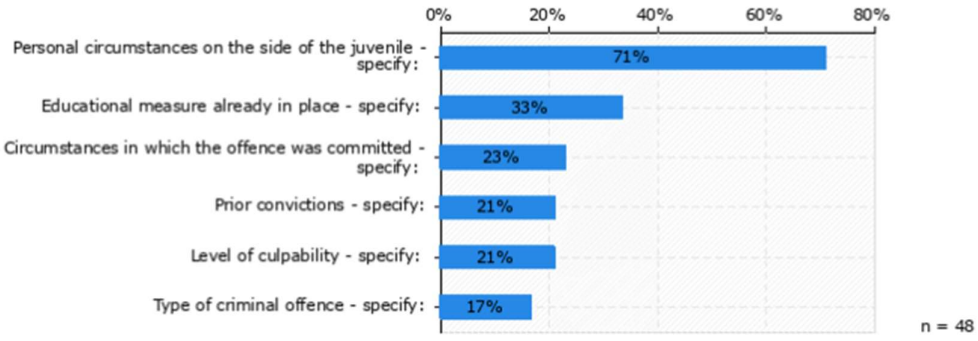

Figure 24: References to reasons for judicial dismissals

As the courts gathered information about the young person's circumstances and personality traits, they also referred to these in 70 % of the final decisions with which they imposed an educational measure or other sanction. Courts referred to other reasons indicated in *Figure 25* (need for guidance, nature of the offence, ensuring upbringing in the young person's environment, etc.) primarily based on the conditions the KZ states for imposing particular types of educational measures (non-residential vs residential; educational measure vs punishment, etc.).

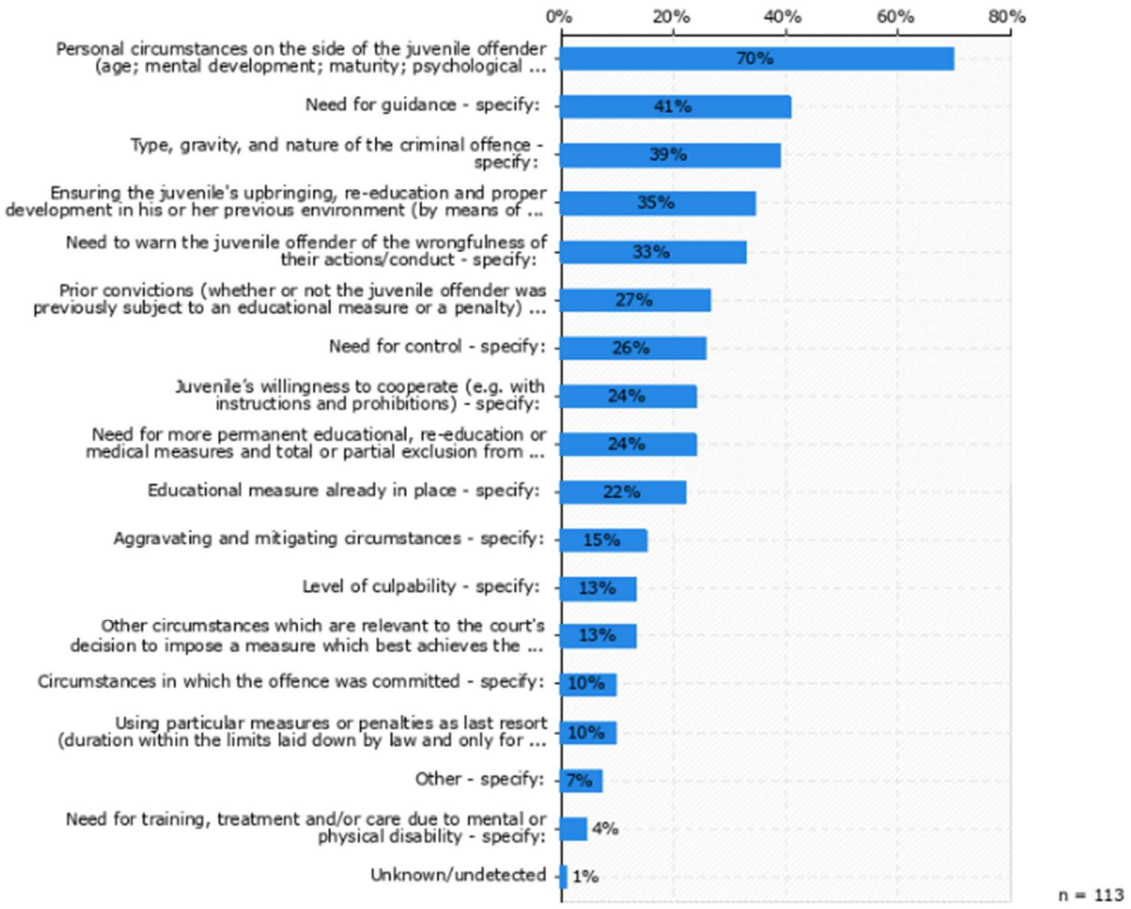

Figure 25: References to reasons for imposing educational measures or other sanctions

While such argumentation of final court decisions is satisfactory on a normative level, it was found that courts sometimes provide generic references to the aims of educational measures, as stated in the KZ. They do not always individualise the final decision by referring to concrete circumstances in a young person's life. However, this finding does not necessarily imply that such legal syllogism is absent from judicial decision-making but that courts do not always describe it in their final decisions.

According to the findings of the analysis, the courts' main reasoning and arguments focus on the different types of purposes that an educational measure or another sanction would serve, *Figure 26* indicates that courts most often referred to the prevention of further offending (56%), explicit goals of reintegration and resocialisation (46%), the child's well-being and protection (38%), the young person's repentance of the offence (20%), and their potential or identified recidivism (17%). The courts referred to the risk of instituting a criminal proceeding when they dismissed the charges against the juvenile (3%). The risk of initiating a criminal proceeding was also the reason most often stated as part of the category of 'other' (10%).

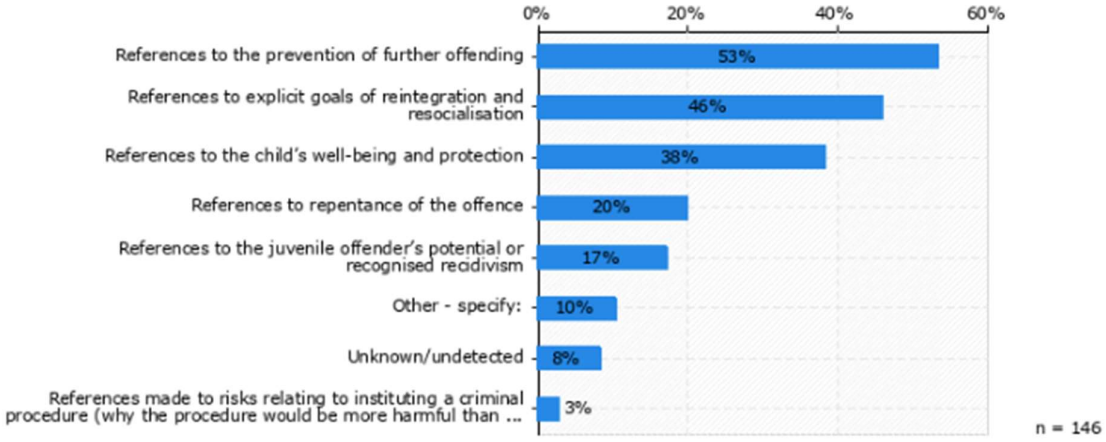

Figure 26: References to aims of educational measures or other sanctions in final decision

In 86% of judicial cases, the court's final decision referred to principles of international law on child-friendly justice, whereby all references were implicit. As indicated in *Figure 27*, 77% of cases referred to the child's right to be heard, 41% to the best interest of the child, 11% to deprivation of liberty used as a last resort, and 3% to promoting diversion and other alternatives to the criminal justice system. 13% of the final decisions referred to 'other'. In the present analysis, this category was used to gather examples where the final decisions did not refer to any international principles of child-friendly justice.

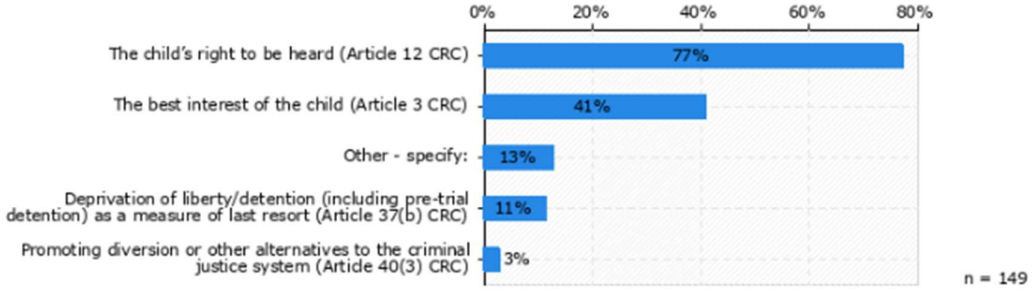

Figure 27: References to international principles of child-friendly justice – final judicial decisions

When analysing final judicial decisions, the courts' tendency to follow social services in their suggestions regarding the most appropriate educational measure for a young person (*Figure 28*) was also explored. What emerged is that social services expressed their opinion on the sanction against the child in 88% of cases. In 65% of those cases, the court followed their recommendation. When the court imposed a different sanction, it was usually due to the following reasons: they thought the young person should receive more intensive supervision and thus a more severe sanction or *vice versa*; the young person was a recidivist, and previous sanctions were insufficient in helping them desist from crime; they agreed with the victim and prosecutor's suggestion rather than social services; the young person has since matured, and their family circumstances have stabilised; the court decided to dismiss the case.

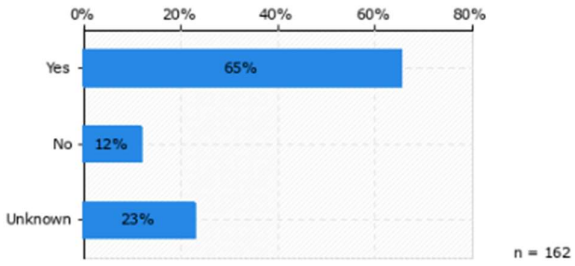

Figure 28: Court follows the suggestion of social services in the choice of educational measure/ sanction

At the roundtable held on 8 December 2022, judges expressed they preferred receiving concrete social services suggestions regarding the educational measure or sanction they believe might benefit the young person's development. Judges felt they were poorly equipped to decide on the most appropriate measure for the child without such a recommendation. They deemed determining a sanction in juvenile criminal cases is different than sanctioning an adult offender, and non-legal knowledge about the young person's life provided by social workers is essential.

5.3 Data on the final decision: Summary of findings and recommendations

Summary of findings:

- **In Slovenia, the prosecution often diverts juvenile offenders from the criminal justice system.** Diversion should be further encouraged and prioritised. At the same time, **data on recidivism should be systematically recorded** to enable research on the effectiveness of diversionary proceedings.
- Due to practical difficulties, **mediation is unequally carried out across different districts**. Such practices are unsatisfactory as they could lead to unequal treatment of children based on their origins. **Mediators working in juvenile criminal cases should be specialised and understand the purpose of criminal proceedings against children. The voluntary and non-professional nature of being a mediator should be thought through.**
- **In imposing community work as part of deferred prosecution, emphasis should be given to the equality of practices concerning the length of work and the number of work hours**.
- In imposing tasks as part of deferred prosecution, **young people should be given enough time to carry out the task**. Extending the deadlines in the law will also help the overburdened social services to organise their work.
- In payment of damages and contributing to the benefit of public institutions or another dedicated budget as part of the diversion, **more attention should be given to the young person's income or scholarship and the child's socio-economic background**.
- **Mediation, deferred prosecution, and dismissal based on the expediency principle should be – in exceptional circumstances – extended** to some criminal offences, for which the KZ proscribes the sentence of at least five years of imprisonment.
- **More research is needed on the relationship between diversion at the prosecutorial level and court dismissals based on the expediency principle**.
- In their final decisions, **prosecutors and judges should distinguish between dismissals based on the expediency principle and dismissals due to an educational measure already in place** for legal, transparency, and statistical reasons.

- **State prosecutor's offices and district courts should gather data on the different categories of dismissals. This data should also be collected at the national level.**
- **The sanctioning policy of Slovenian district courts is appropriate.** 92% of juveniles charged receive non-residential and 7,5% residential educational measures. Juvenile imprisonment is used as a measure of last resort. Committal to an institution for physically or mentally disabled youth should be thought through as it is rarely imposed and suffers from several conceptual and practical difficulties (see section 8.2.6. of this report). Safety measures of compulsory psychiatric treatment at liberty/in an institution are rare and suffer from practical problems (see section 8.2.6. of this report).
- Courts support new and/or more specified instructions and prohibitions. **Extending instructions and prohibitions could enable better individualisation of sanctions against young people.**
- **The prosecution's reasoning behind the diversion is sometimes not adequately explained in the final decision.** Further research on the organisation of prosecution in juvenile criminal cases and the functioning of social services in Slovenia is needed to propose ways prosecutors can request information about the young person from their parents or social services or invite the family and the social workers to a meeting. It is unclear whether legal requirements placed on the prosecution regarding the procedure before they decide to dismiss a case (e.g., a mandatory report from social services, a 'hearing' to which the prosecutor would invite the child, their parents, social workers, and other important people in the child's life, where the case would be discussed before being dismissed) would be beneficial.
- **Prosecutorial final decisions in diversion cases could be more thorough in references to the aims of diversion as compared to criminal proceedings, the best interest of the child, and other principles of international law on child-friendly justice.**
- **Judicial argumentation of final decisions is satisfactory on a normative level.** Final court decisions entail references to the aims of educational measures as stated in the KZ. **Still, they are not always individualised enough based on concrete circumstances in a young person's life.** Courts adequately explain the aims of imposed educational measures or sanctions and refer to the principles of international law on child-friendly justice, albeit implicitly.
- **The role of social services in advising the judiciary about the most appropriate educational measure for a particular young person should be thought through** in light of the organisational difficulties social services in Slovenia are currently facing.

Recommendations:

- **Diversion**

  It is recommended to further encourage and prioritise diversion at the prosecution level. At the same time, it is recommended to systematically record data on recidivism to enable research on and evaluation of the effectiveness of diversion measures.

- **Mediation**

  It is recommended that mediators working on juvenile criminal cases should be specialised and understand the purpose of criminal proceedings against children, and that the voluntary and non-professional nature of being a mediator should be reconsidered.

- **Deferred prosecution**

It is recommended that, in imposing **community work** as part of deferred prosecution, emphasis should be given to the equality of practices concerning the length of the period of community work and the number of work hours.

It is recommended that, in imposing specific **tasks** as part of deferred prosecution, deadlines should be extended both in the law and in practice to give young people enough time to carry out the task and to allow the social services to organise their work properly.

It is recommended to select **measures** which are most likely to enable the young person's re-education and resocialisation, bearing in mind the young person's specific individual circumstances and needs.

It is recommended that, in imposing **monetary tasks**, such as payment of damages and contributing to the benefit of public institutions or another dedicated budget as part of a diversion measure, more attention should be given to the young person's income or scholarship and the child's socio-economic background.

- **Justifying measures and sanctions and enhancing individualised decisions**

It is recommended that all decisions and measures imposed on juveniles should be adequately justified and that the relevant reasons for a certain decision be recorded in all juvenile justice cases. Notably, in their final decisions, it is recommended that prosecutors and judges distinguish between dismissals based on the expediency principle and dismissals due to an educational measure already in place.

It is recommended, in cases where it is considered to be the most conducive path towards a juvenile's re-education and resocialisation, to extend measures such as mediation, deferred prosecution, and dismissal based on the expediency principle to certain criminal offences for which the KZ proscribes the sentence of at least five years of imprisonment.

It is also recommended to extend the existing measures of instructions and prohibitions and to make them more specific, in order to enable a better individualisation of sanctions against young people and adequately consider the best interest of the child.

- **Role of social services**

It is recommended that the role of social services in advising the judiciary about the most appropriate educational measure for a particular young person should be thoroughly thought through in light of the organisational difficulties that social services in Slovenia are currently facing, and that adequate resources should be allocated in order for social services to specialise and carry out a meaningful advisory role in juvenile justice cases.

- **Data collection for transparency, monitoring and evaluation**

It is recommended that state prosecutor's offices and district courts should gather data on the different categories of dismissals. This data should also be collected at the national level.

6 Data related to the offender

This section of the report focuses on the data gathered about the young people in the sample. The first sub-section presents demographic data related to the offenders (age, gender, citizenship, nationality, family structure, and socioeconomic status). The section presents the juvenile offenders' education and difficulties related to school absenteeism, including the relationship between some young people's characteristics, absence from school, and youth offending. Children's leisure activities are also considered. In the last part of this section, the report presents the data on the young person and the family's prior institutional involvement with social services, the police, prosecution, and the judiciary. The young person's recidivism in a broad sense of the term is also discussed, i.e., any indication that the young person had previously committed a crime, regardless of a final court decision.

For clarity, the data gathered relates only to the first juvenile offender listed in every case file, even if they had accomplices.

6.1 Demographic data

6.1.1 Age

As part of data collection, information about how old the juvenile offender was, when they committed the offence and when the prosecution or court reached their final decision was gathered. It was found that the ages at which the young people in the sample committed the offences approximately match the average age of juvenile offenders in Slovenia between 2015 and 2019[20], according to police data.

According to police recorded data (*Table 8*), 42,9 % of juvenile offenders were younger juveniles (14-15 years), and 64,3% were older juveniles (16-17 years). In the sample, 36 % of children processed by the prosecution were younger juveniles (14 or 15 years) when they committed the offence, 63 % were older juveniles (16-17 years), and 2 % were 18 or older (*Figure 29*). In the inspected court files, 41 % of children were younger juveniles, 58 % were older juveniles, and 2 % were above 18 years old (*Figure 30*).[21]

	14-year-olds		**15-year-olds**		**16-year-olds**		**17-year-olds**		Total
	Number	%	number	%	number	%	Number	%	
2015	128	**14,3%**	219	**24,6%**	284	**31,8%**	330	**37,0%**	892
2016	135	**16,3%**	211	**25,5%**	282	**34,1%**	261	**31,5%**	828
2017	159	**17,7%**	236	**26,2%**	287	**31,9%**	281	**31,2%**	900
2018	181	**19,4%**	237	**25,4%**	275	**29,5%**	306	**32,8%**	932
2019	178	**19,7%**	230	**25,4%**	292	**32,3%**	266	**29,4%**	905
SUM	781	**17,5%**	1133	**25,4%**	1420	**31,9%**	1444	**32,4%**	4457

Table 8: Age structure of juvenile offenders in Slovenia (2015-2019), Police data

[20] In this part, the report draws on national-level police-recorded crime between 2015 and 2019 to fit the analysis in the Final Draft Research and Gap Analysis (Lot 1) Report. There might be slight discrepancies in the data gathered by the police, visible in that the sum of percentages sometimes amounts to more than 100 %. The shortcomings are, however, insignificant to the findings about the trends in juvenile criminal cases.

[21] It is anticipated that the data gathered from the prosecutorial and judicial samples includes young people aged 18 and above at the time the offence was committed due to mistakes made while inputting data or because young adults were processed as juveniles.

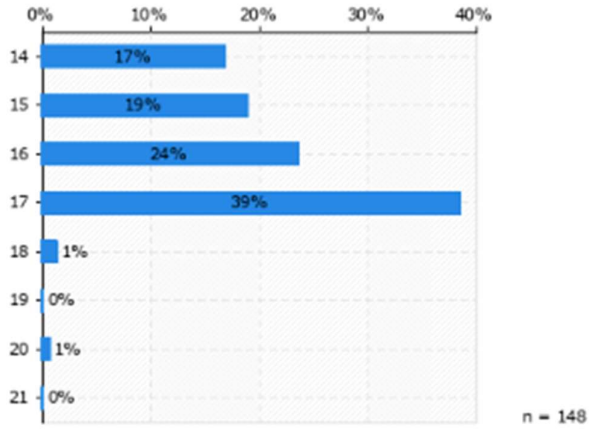

Figure 29: Age structure of juvenile offenders in the sample at the time when they committed the offence – prosecutorial files

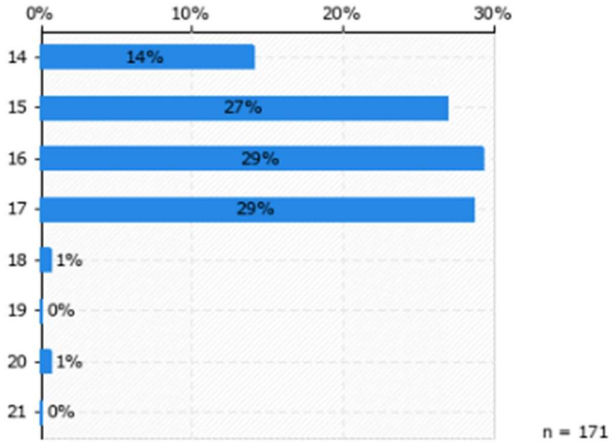

Figure 30: Age structure of juvenile offenders in the sample at the time when they committed the offence – court files

Nevertheless, the data gathered on the age of juvenile offenders when the prosecution or court reached their final decision revealed that juveniles were much older once the proceedings against them ended. Namely, only 20 % of children processed by the prosecution were younger juveniles (14 or 15 years) when the prosecution dismissed the cases, 48 % were older juveniles (16-17 years), and 8 % were 18 or older (*Figure 31*). When the court reached its final decision, 10 % of the children were younger juveniles, 46 % were older juveniles, and 43 % were above 18 years old (*Figure 32*). The discrepancies in the age categories of juvenile offenders when they commit the offence and when the prosecution or court reaches their final decision largely stem from the long duration of prosecutorial and judicial proceedings. Such delays are unsatisfactory since juvenile justice decision-making should be swift to contribute to the young person's development and desistance from crime as soon as possible.

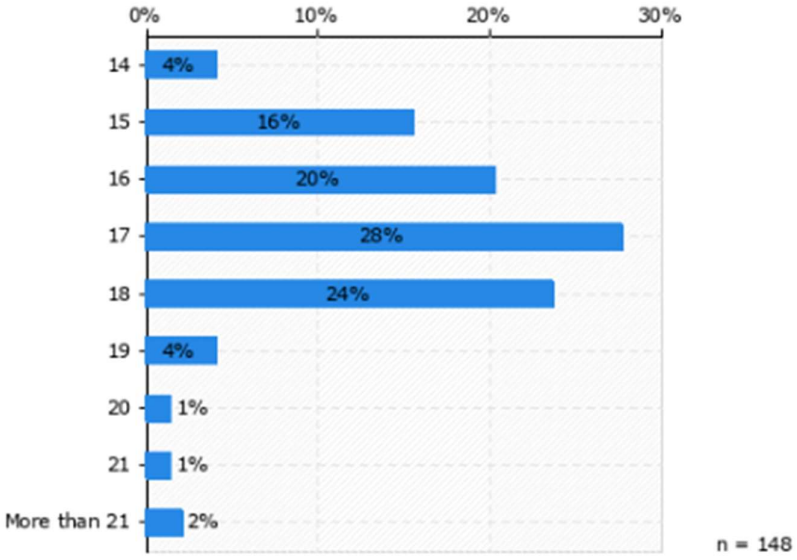

Figure 31: Age structure of juvenile offenders in the sample at the time of the final decisions – prosecutorial files

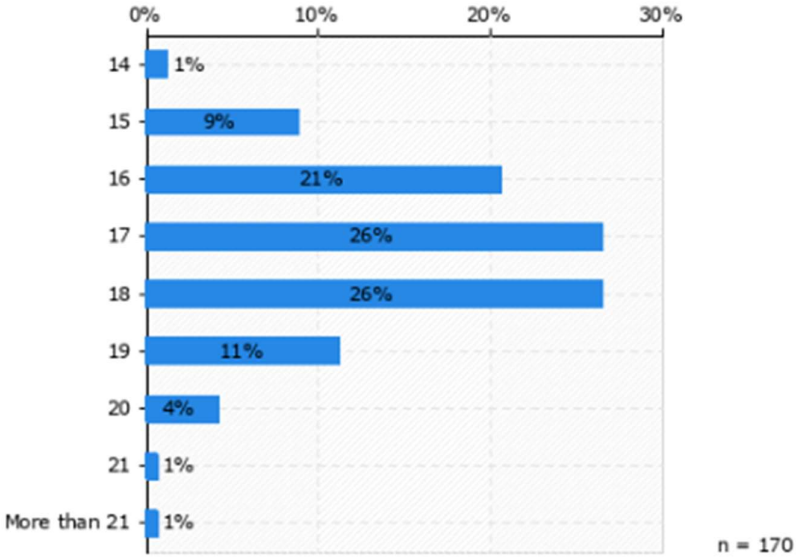

Figure 32: Age structure of juvenile offenders in the sample at the time of the final decisions – court files

6.1.2 Gender

The gender of the children and young people in the sample approximately matched the gender in police data between 2015 and 2019. In police data, 78,26% of juvenile offenders between 2015 and 2019 were male, and 21,7% were female. In the sample of cases inspected at the prosecutorial level, 82% of juvenile offenders were male, and 18% were female (*Figure 33*). The juvenile offenders at the court level were male at 87%, female at 12%, and transgender at 1% (*Figure 34*).

	Male		Female		Total
	Number	%	Number	%	
2015	684	**76,7%**	208	**23,3%**	892
2016	682	**82,4%**	146	**17,6%**	828
2017	690	**76,7%**	210	**23,3%**	900
2018	721	**77,4%**	211	**22,6%**	932
2019	707	**78,1%**	198	**21,9%**	905
SUM	3484	**78,26%**	1045	**21,7%**	4457

Table 9: Gender of juvenile offenders in Slovenia (2015-2019), Police data

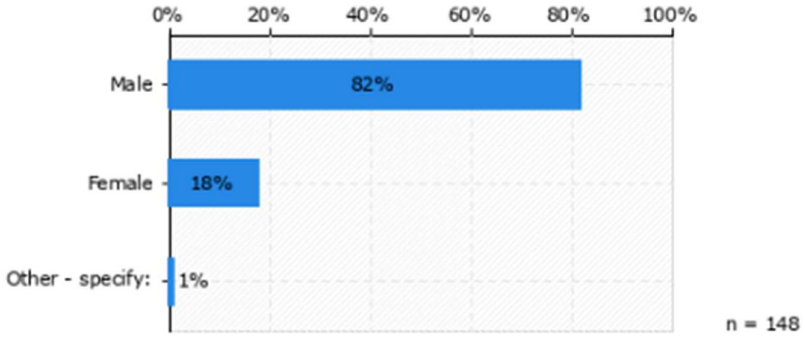

Figure 33: Gender of juvenile offenders in the sample – prosecutorial files

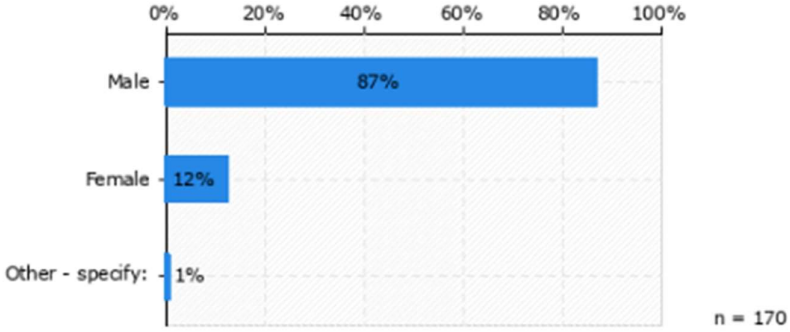

Figure 34: Gender of juvenile offenders in the sample – court files

Like crime in general, juvenile delinquency is traditionally a male phenomenon. Most young people that commit crimes are males. Although the number of female juvenile offenders increased between 2000 and 2010, the proportion of female juvenile offenders has remained relatively stable at around 20% for the last decade. The share of females in the sample was even lower than the Slovenian average. The types of offences that young people in the sample committed were also examined. While male and female offenders commit property crimes, albeit male offenders in a

much larger absolute number, males commit crimes against sexual integrity, drug-related offences, and traffic offences almost exclusively (*Table 10*[22]).

	Type(s) of criminal offence(s)							
Gender	Criminal offences against life and limb (Articles 115 – 130 of the CC)	Criminal offences against human rights and freedoms (Articles 131 - 149 of the CC)	Criminal offences against sexual integrity (Articles 170 – 176 of the CC)	Drug-related offences (Article 186 - 187 of the CC)	Property crimes (Articles 204 – 224 of the CC)	Offences against public order (Articles 294-313 of the CC)	Traffic offences (Articles 323-331 of the CC)	Other - specify:
Male	9	11	10	20	85	18	2	11
	5,42%	6,63%	6,02%	12,05%	51,20%	10,84%	1,20%	6,63%
Female	3	4	0	1	12	3	0	1
	12,50%	16,67%	0,00%	4,17%	50,00%	12,50%	0,00%	4,17%
Other - specify:	0	0	0	0	1	0	0	0
	0,00%	0,00%	0,00%	0,00%	100,00%	0,00%	0,00%	0,00%
SUM	12	15	10	21	98	21	2	12
	6,28%	7,85%	5,24%	10,99%	51,31%	10,99%	1,05%	6,28%

Table 10: Gender of juvenile offender/ type of criminal offence in the sample – court files

6.1.3 Citizenship and nationality

In the sample of inspected cases at the prosecutorial level, 82% of juvenile offenders were Slovenian, followed by 11% of citizens from former Yugoslavia, 3% from the EU (except Slovenia and Croatia), 3% from outside the EU (except non-European countries from former Yugoslavia), and 2% dual citizens (*Figure 35*). For anonymity reasons, these categories have not been broken down further according to specific citizenships (or nationalities in the following parts of this sub-section).

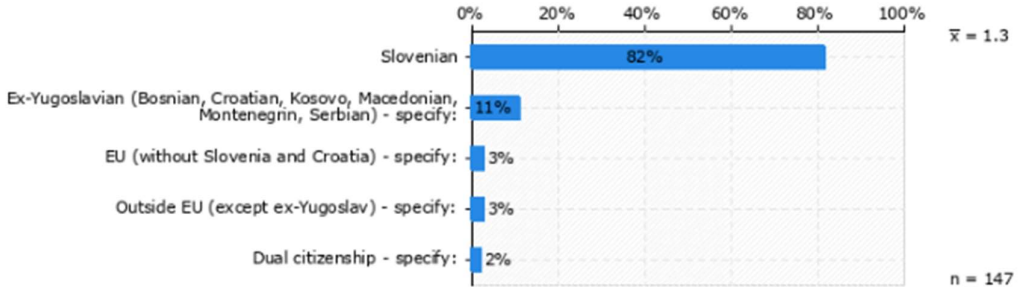

Figure 35: Citizenship of juvenile offenders in the sample – prosecutorial files

In the sample of analysed cases at the court level, 89% of juvenile offenders were Slovenian, followed by 9% of citizens from former Yugoslavia, 1% from outside the EU (except non-European countries from former Yugoslavia), and 1% dual citizens (*Figure 36*).

[22] In *Table 10*, the number of offenders is bigger than the number of case files inspected at the court level as the data collection tool that we used allowed us to input more than one hit under the category 'types of offences'. In some case files, the juvenile offender committed more than one offence.

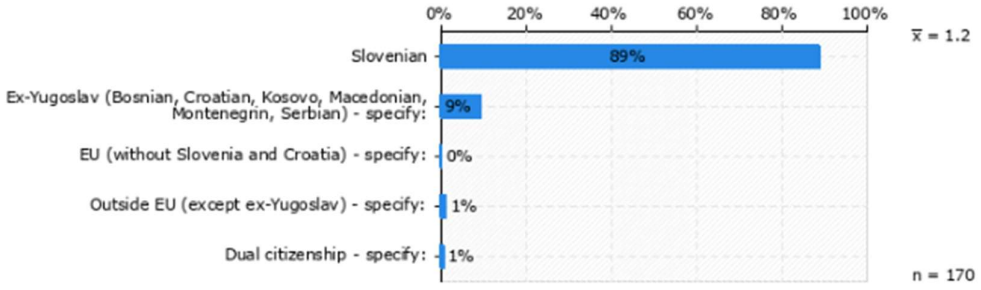

Figure 36: Citizenship of juvenile offenders in the sample – court files

Data on the juvenile offenders' nationality was also gathered as part of the analysis. This data is regularly recorded by Slovenian prosecutors' offices and courts as part of preliminary data on the offenders. In the sample of prosecutorial case files, 61% were Slovenian nationals, 8% of juvenile offenders did not define their nationality, and in 18% of the files, the offenders' nationality remained unknown. The other nationalities and ethnicities were: Roma (1%), Albanian (2%), Bulgarian (1%), Bosnian (1%), Croatian (1%), Macedonian (3%), Muslim (1%), Romanian (1%), Russian (1%), Serbian (1%), and other - defined (1%) (*Figure 37*).[23]

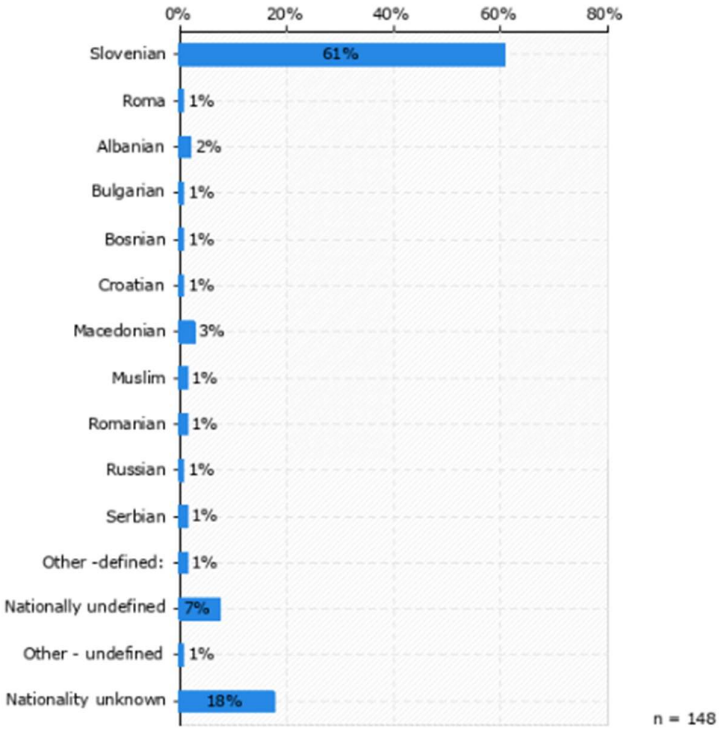

Figure 37: Nationality of juvenile offenders in the sample – prosecutorial files

[23] The term 'Muslims' as an ethnic group is a designation for Serbo-Croatian speaking Muslims, inhabiting the territory of the former Yugoslav republics, thus grouping together distinct South Slavic communities of Islamic ethnocultural tradition. Prior to 1993, most present-day Bosniaks self-identified as ethnic Muslims, along with some smaller groups. The designation 'Muslims' usually does not include Yugoslav non-Slavic Muslims, such as Albanians, Turks, and Roma. Nowadays, however, some Bosniaks self-identify as Bosnian and others as Muslim.

In the sample of court case files, 65% were Slovenian nationals, 9% were Bosnian, 8 % were Roma, 5% were Muslim, 4% were Albanian, and 3% were Serbian. The other nationalities were: Montenegrin (1%), Macedonian (1%), Ukrainian (1%), and other-defined (1%). 3% of juvenile offenders did not specify their nationality, and in 1% of the files, their nationality remained unknown (*Figure 38*).

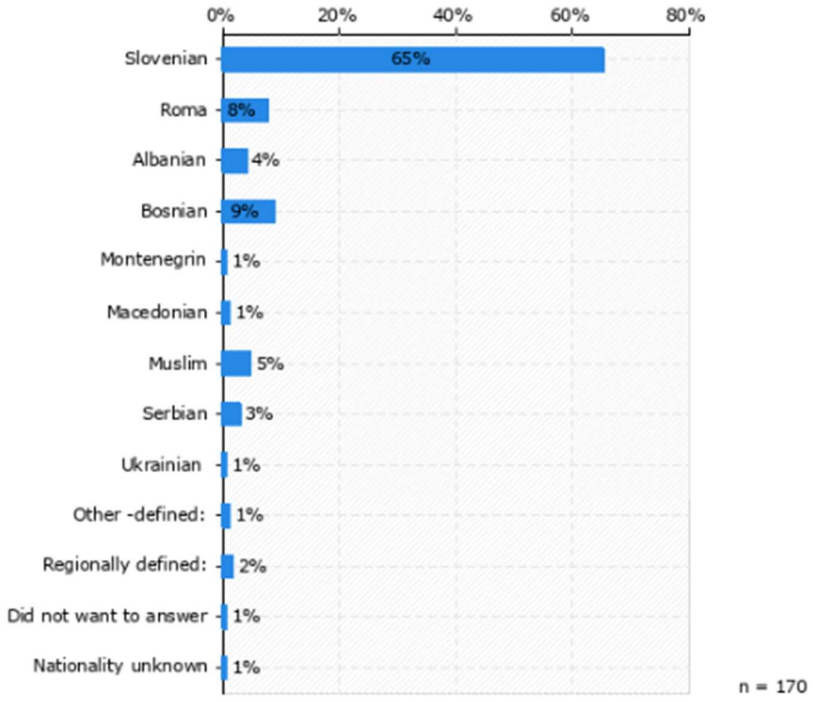

Figure 38: Nationality of juvenile offenders in the sample – court files

According to the data in the sample, some citizens and nationals seem overrepresented as offenders in the youth justice system. More specifically, 65% of all children in the court sample were Slovenian nationals, 8% were Roma, and 5% were Muslim. According to the last official population census from 2002 (the data for a new census was gathered in 2021 but not yet thoroughly analysed and published), Slovenian nationals comprised 83,1% of the population in Slovenia, with 0,17% self-identifying as Roma, and 0,5% as Muslim (Šircelj 2003). There is reason to believe the overrepresentation is even more significant than indicated by the data. To avoid stigma, people from former Yugoslavia and the Roma community sometimes self-report as Slovenian or other nationals (Skalar 2020).

6.1.4 Family structure and socioeconomic status

In prosecutorial case files, data on the personal and family circumstances of the juvenile offender and their family was regularly missing. More specifically, the prosecution had not obtained a social services report in 93% of cases, as indicated in sections 4.2. and 5.2.1. of this report. Thus, only the young person's family structure and socioeconomic status, as reflected in the inspected court files, are presented.

In 46% of the analysed court files, the young person's parents were married, and in 38%, they were divorced. In 16% of cases, the child lived either with one of the parents or with both unmarried

parents (*Figure 39*). Apart from married couples comprising 44-46% of the court sample, 32% were single parents (25% single mothers and 7% single fathers), 7% of families were unmarried couples with children, and 8% lived in another type of family structure: divorced parents/one of the parents deceased and the child living with one of the parents and their step-parent; married parents, but the child living only with one of the parents to not disturb the rest of the family with their behavioural issues; the child residing with their partner; divorced parents and the child living with both parents in a shared house; the child living alone in a rented room. In 7% of cases, the child lived in institutional placement based on a final decision by social services, the family court, or the juvenile criminal court. In 1% of the cases, the juvenile lived with their grandparent, and the family structure was unknown in 2% (*Figure 40*).

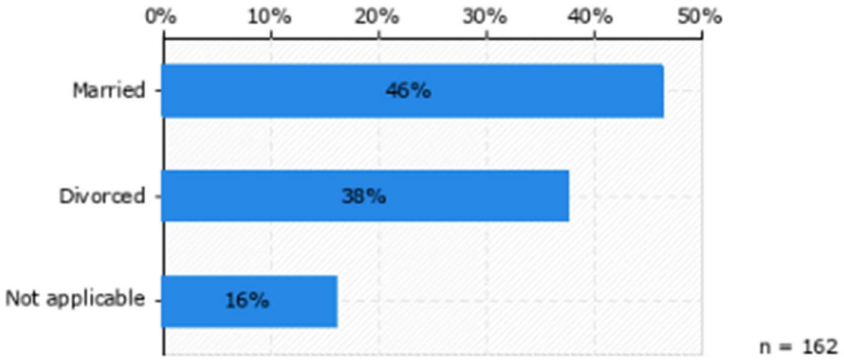

Figure 39: Marital status of parents – court files

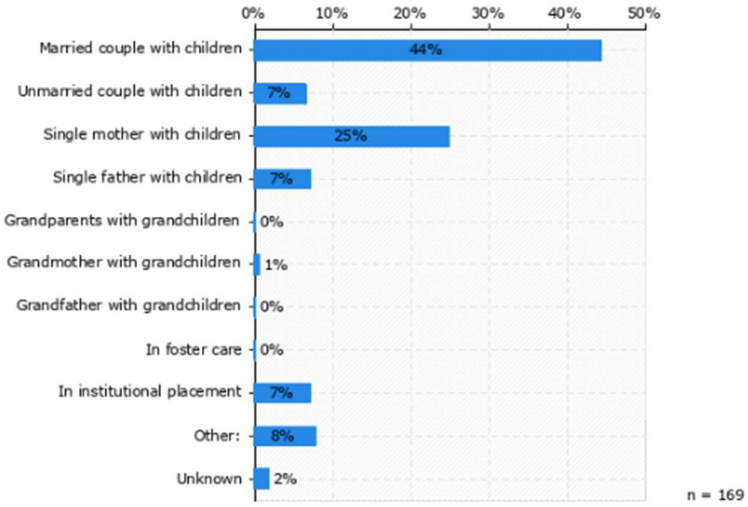

Figure 40: Family structure – court files

In the sample, the juvenile offender was an only child in 12% of cases. 43% of family structures in the sample had two children, followed by three children in 23%, and more than three in 21% of cases. The number of children in the family was unknown in 1% of cases (*Figure 41*). Where the juvenile offender had siblings, siblings engaged in criminal activity in 9% and did not in at least 58% of cases. In 23% of cases, the criminal activity of siblings was unknown. In approximately 10%, sibling criminal activity was not applicable as the offender was an only child (*Figure 42*).

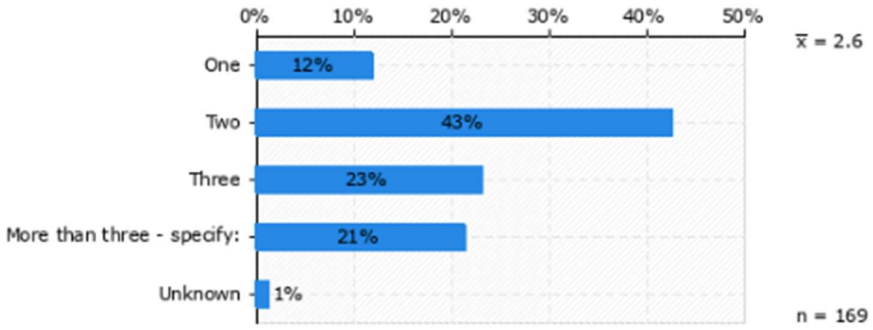

Figure 41: Number of children in the family – court files

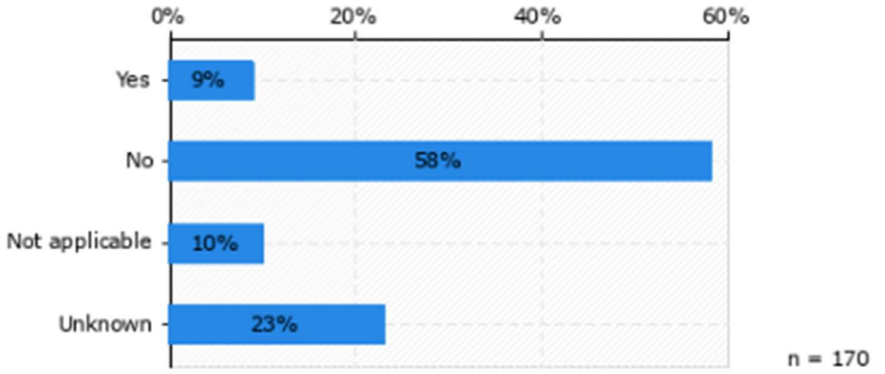

Figure 42: Sibling involvement in criminal activity – court files

63% of juvenile offenders' parents 1[24] were employed or self-employed, and 33% were economically inactive: 23% were unemployed, 3% were retired, and 5% were otherwise economically inactive (e.g., disabled and receiving disability insurance). In 6%, the economic activity of parent 1 was unknown. This percentage was higher for parent 2. More specifically, the economic activity of the young person's second parent was unknown in 25% of cases. When the second parent's economic activity could be teased out from the case files, they were employed or self-employed in 44% of cases, unemployed in 21% of cases, 3% were retired, 1% were farmers, and 8% were otherwise economically inactive.

According to the Statistical Office of the Republic of Slovenia, the average unemployment rate in Slovenia between 2015 and 2019 was 6,6%, with a maximum of 9% in 2015 and a minimum of 4,5% in 2019[25]. Broken by profession, 11,42% of people with a primary school education were unemployed in 2015-2019, with a maximum of 14,3% in 2016 and a minimum of 8,4% in 2018. 7,26% with vocational secondary school education (a maximum of 10,5% in 2015 and a minimum of 5,3% in 2018) were unemployed in the same period. 6,8% of people with a professional

[24] In the data collection grid used to input the data gathered from the examined case files, the information about the first parent was mentioned in the case file under 'parent 1' and the second parent under 'parent 2'. If the information about any of the parents was unknown, this was indicated in the 'unknown' category.

[25] Employment rate by education, gender, region in Slovenia (2015-2019): https://pxweb.stat.si/SiStatData/pxweb/sl/Data/-/0762112S.px/table/tableViewLayout2/.

secondary school or general high school were unemployed between 2015 and 2019 (a maximum of 9,5% in 2015 and a minimum of 4,2% in 2019). 4,7% (a maximum of 6,1% in 2016 and a minimum of 3% in 2019) of people with vocational and professional higher level or University-level education were unemployed between 2015 and 2019.

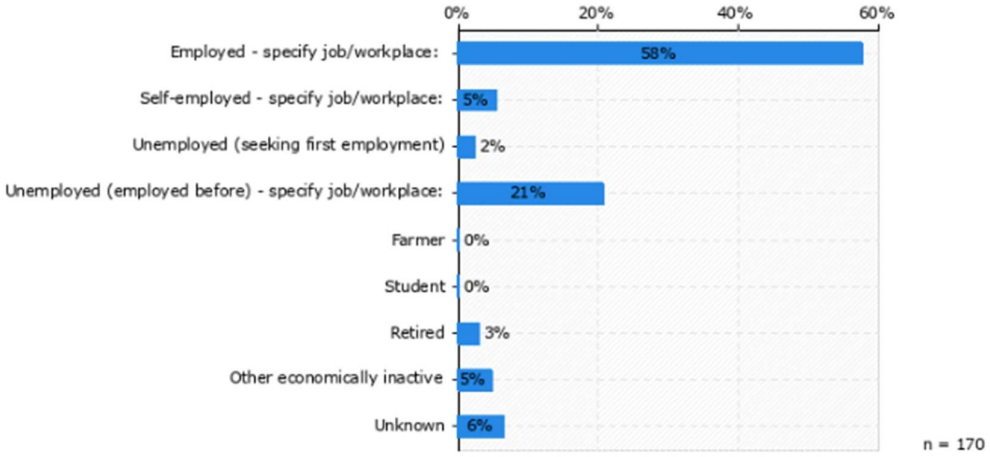

Figure 43: Economic activity of parent 1 – court files

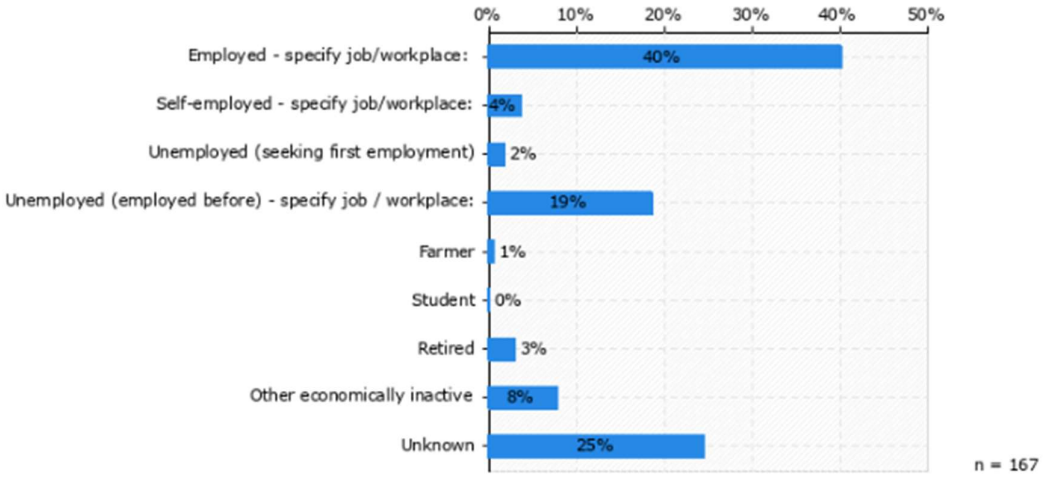

Figure 44: Economic activity of parent 2 – court files

The unemployment rates of juvenile offenders' parents in the sample were 3,5 times higher than the Slovenian average. This overrepresentation indicates that juvenile offenders and their families are a socio-economically vulnerable group. Any policy aimed at diverting young people from crime should thus seek to include children and their parents in meaningful education and employment adapted to the current job market needs.

The data collection also wanted to capture the educational level of both juvenile offenders' parents. However, the case files offered data on the parents' education only in 51% of cases for parent 1 and 33% for parent 2, which is inconclusive. In cases where the information about the parents' educational levels for parent 1 was known, 2% of parents did not have any formal education. 2% were enrolled in primary school but never finished, and 10% finished primary school. 14% of parents finished vocational secondary school, and 11% finished professional secondary school.

1% had a professional higher education degree, 11% had a first-level University degree, and 2% had a Master's degree (*Figure 45*). For parent 2, 1% did not have any formal education, 7% finished primary school, 13% finished vocational secondary school, 5% finished professional secondary school, 1% had a professional higher education, 5% had a first-level University education, and 1% had a Master's degree (*Figure 46*).

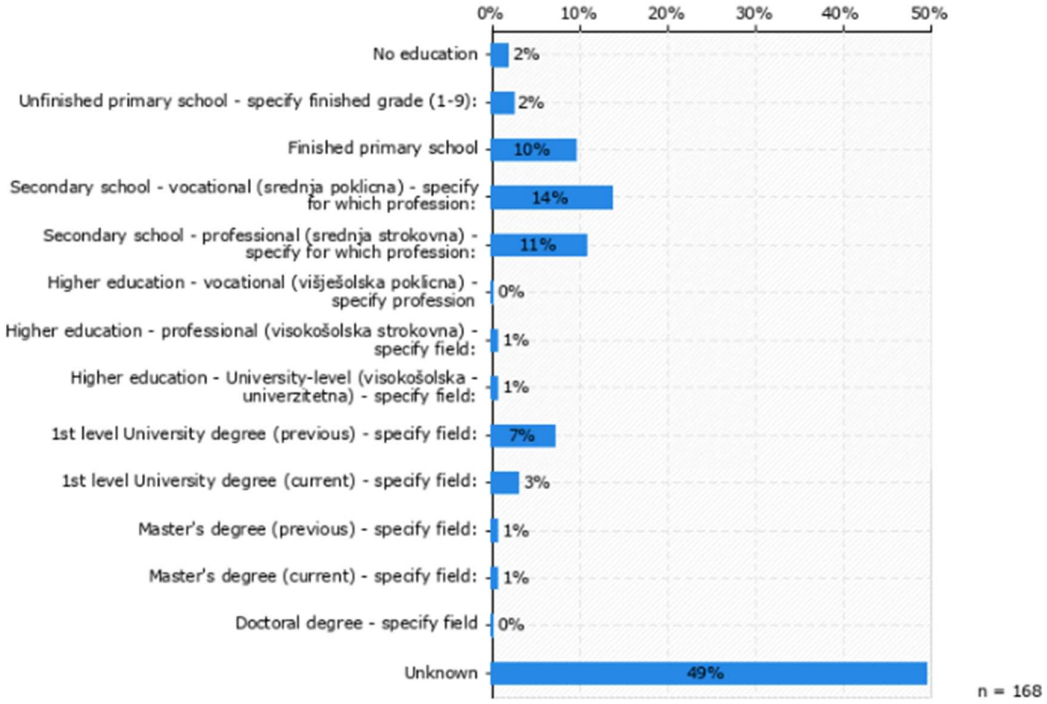

Figure 45: Parent's finished education (parent 1) – court files

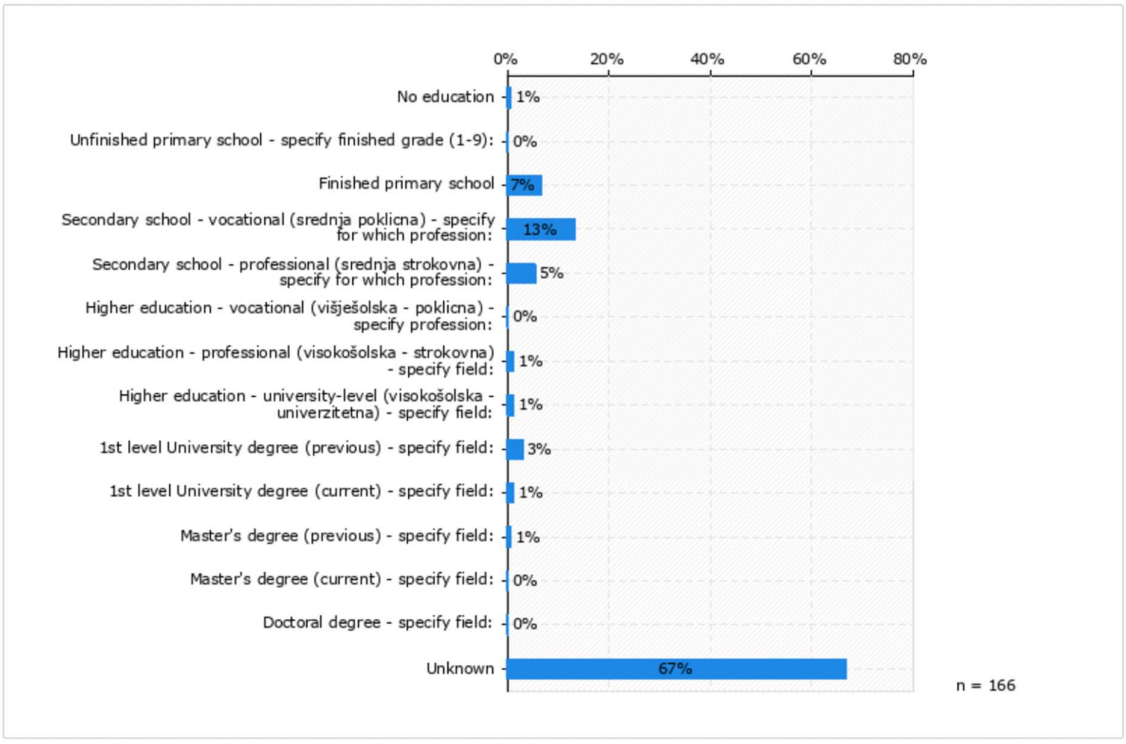

Figure 46: Parent's finished education (parent 2) – court files

It is anticipated, however, that where the information about the parents' education was missing, the parents' educational level was lower, or they did not obtain a formal qualification, so courts did not record this in their case files. In the court sample, 31% of families also received benefits or other forms of social transfers to help them with their economic situation. In 26% of the cases, the families' benefit status was unknown (*Figure 47*). 40% of families owned property, while 29% did not, and the family's property status was unknown in 31% of cases (*Figure 48*).

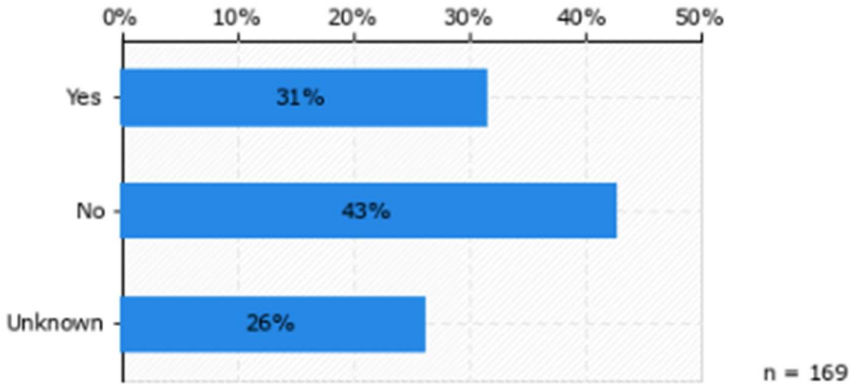

Figure 47: Family recipient of benefits – court files

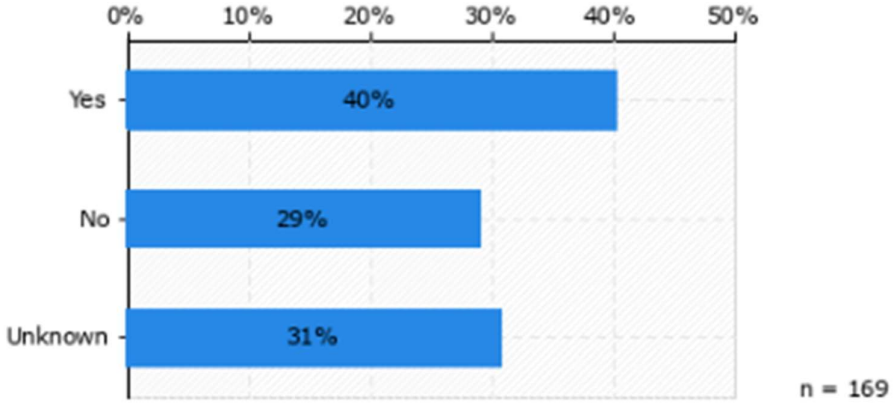

Figure 48: Family owns property – court files

As far as possible, the juvenile offender families' accommodation was also inspected (*Figure 49*). The family accommodation was unknown in 16% of cases. In comparison, 25% of families lived in a house, 21% in apartments of different sizes, and 25% in other types of accommodation, including a room in the grandparents' apartment, a rented single room just for the juvenile offender, a hut with sleeping facilities, a shelter, and a wooden house in a Roma settlement. 11% of juvenile offenders lived in an institution based on a final decision reached by social services, family, or criminal courts.

In Slovenia, many families, especially in the rural areas, live in shared houses or apartments with other family members (grandparents, siblings and their families, etc.), so living in a house or a

bigger apartment is not necessarily a sign of affluence or the lack of financial need. Also, one-fifth of the juvenile offenders in the sample worked (*Figure 50*), which could imply the need to contribute to the family budget at an earlier age than the average teenager. According to the Statistical Office of the Republic of Slovenia, 36,6% of young people (15-24 years) worked between 2015 and 2019.[26] It is anticipated that young adults between 18 and 24 comprise a more significant part of this percentage.

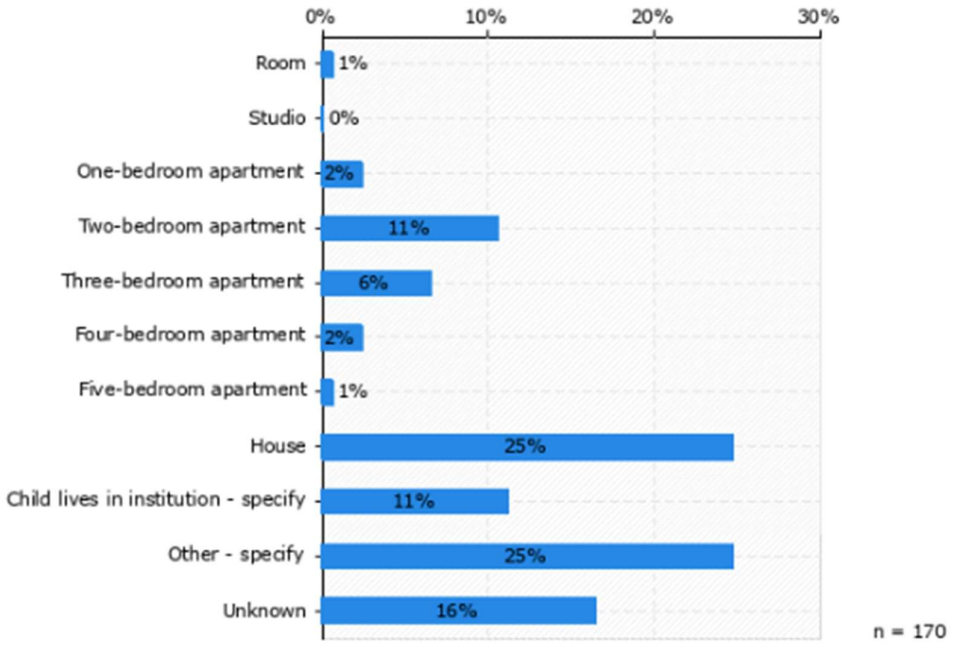

Figure 49: Family accommodation – court files

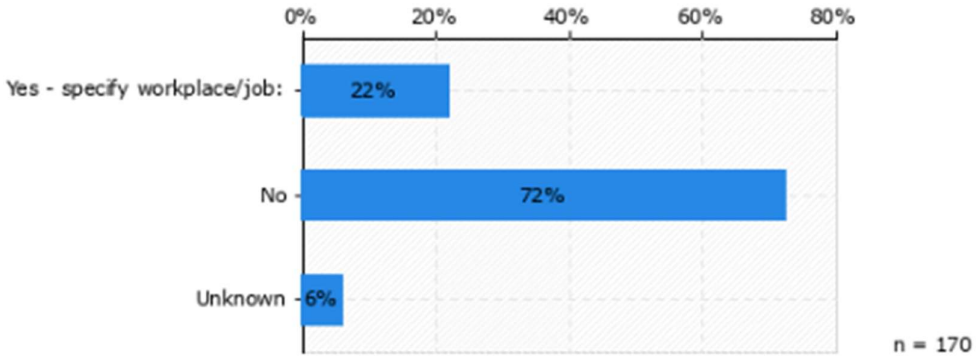

Figure 50: Juvenile offender in work–court files

[26] People aged 15-24 in work in Slovenia (2015-2019): https://pxweb.stat.si/SiStatData/pxweb/sl/Data/-/0762003S.px/table/tableViewLayout2/.

6.2 Education, absence from school, and leisure time activities

Child's current education

This part of the report considers information about the young person's education – in the community, an educational institution, or a correctional home – when the court reached its final decision. Due to the absence of social services reports in most prosecutorial case files, as indicated in sections 4.2. and 5.2.1., this report analysed only the young person's education, absence from school, and leisure time activities at the court level.

As indicated in section 6.1.1. and *Figure* 32 of this report, 1% of the juvenile offenders in the sample were of primary school age, and 9% were 15-year-olds. Yet, 37% of the juvenile offenders were in primary school education (29% in mainstream schools and 8% in special educational needs schools). While 47% of children in the sample were of secondary school age (16 and 17 years old), 59% of the sample went to secondary school; most to vocational or professional secondary school and some to general high school. 43% of the young people in the sample were 18 or older when the court reached its final decision, but only 2% of the sample were in higher education. In 2%, the educational status of the young person could not be teased out from the case file (*Figure 51*).

The discrepancies between the ages and educational levels of the juvenile offenders in the court sample imply that these young people are, to some extent, falling behind or not enrolling in formal education. The gaps become most apparent in the age group of young adults above 18, which comprised 43% of the court sample, yet only 2% of the sample were in higher education. There was some indication in the case files that these young adults engaged in declared or undeclared work or were unemployed. However, the case files often lacked enough information to determine their educational or professional pathways. According to the Statistical Office of the Republic of Slovenia, 91,74% of 18-year-olds in the general population were in formal education in 2018/19.[27]

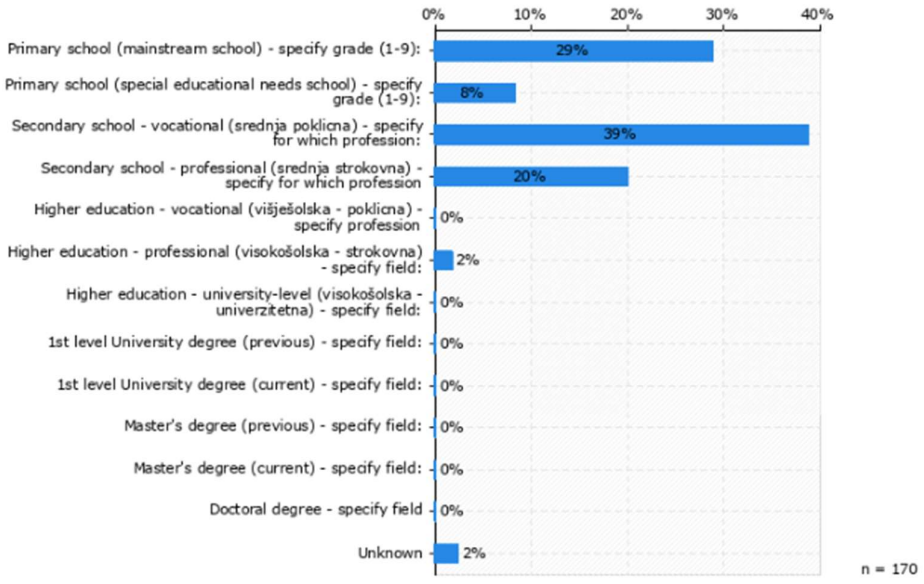

Figure 51: The juvenile offender's education at the time of the final decision – court files

[27] Share of 18-year-olds enrolled in formal education in Slovenia (2018/19): https://pxweb.stat.si/SiStatData/pxweb/sl/Data/-/0951315S.px/table/tableViewLayout2/

As part of the analysis, information about formal school exclusion rates could not be gathered as courts do not systematically record them in their case files. However, data was collected on how many juvenile offenders in the court sample were absent from school due to truancy and/or permanent-, fixed-term-, or unofficial exclusion.

School absenteeism, like school exclusion, has been recognised as a risk factor in the development of youth offending (Arnez and Condry 2021; Halsey and De Vel-Palumbo 2020, Sanders, Liebenberg, and Munford 2020, Wolf and Kupchik 2017, McAra and McVie 2010). The 'school-to-prison pipeline' symbolises a fast-track trajectory driven by punitive responses to some young people's transgressions or ignoring school absenteeism and children's vulnerabilities that trigger it.

In the sample, 60% of young people processed by courts were out of school (*Figure 52*). They were most often absent for the following reasons, illustrated by examples from the case files:

(1) Disruptive behaviour in school (the child is educationally unmanageable, neglects school work, socialises with behaviourally challenging peers; the child has been exhibiting persistent disruptive behaviour after they came from an educational institution; the child has sudden behavioural shifts; the child developed behavioural issues at the end of primary school education, before which they were a very diligent student with high educational attainment; the child is threatening teachers and not taking responsibility for their actions; the child was excluded from primary school for children with special educational needs because they committed the criminal offence there);
(2) Educational difficulties (school is too difficult for the child, so they skip lessons; the child lacks interest and does not want to continue with education; the child is exhibiting emotional and behavioural difficulties that have caused their attainment to drop; the child is unable to fit into the educational process, is being bullied, and has developed medical problems);
(3) Truancy (the child skips school);
(4) Mental health and substance abuse (the child suffers from substance abuse and displays aggressive behaviour; the school recorded the child's unexcused absence when they were in the hospital due to mental health problems; the child has developed physical symptoms (nausea) and then started skipping school and socialising with behaviourally challenging peers)*;*
(5) Socio-familial reasons (the child is living in a complex socio-familial situation; the child changed primary school several times due to their parents' divorce and frequent moves; the child has experienced domestic violence and parents' divorce; the child is running away from home; the child has experienced parental neglect);
(6) Socioeconomic reasons (the child did not have money for a bus to school, and it was too cold to go on foot).

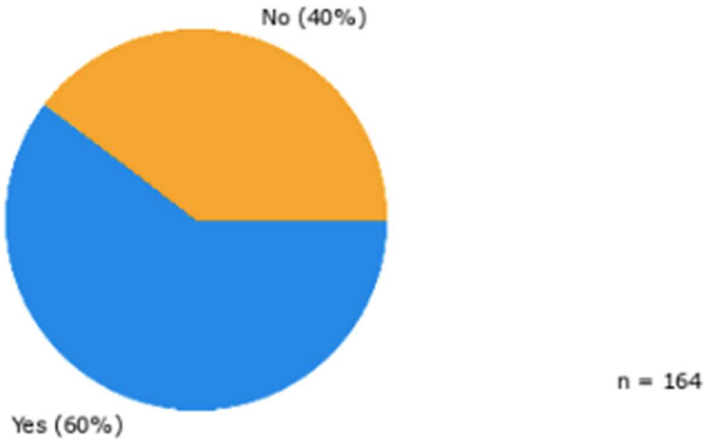

Figure 52: The juvenile offenders' absence from school – court files

The categories of reasons why the young people in the sample were absent from school indicate that the triggers of school absenteeism, truancy, and/or exclusion are complex and intertwined. Schools often cannot recognise the child's needs or vulnerabilities. Consequently, school exclusionary practices and policies have been conceptualised as one of the broader processes of social exclusion for some children and their families (Carlen, Gleeson, and Wardhaugh 1992).

In traditionally more punitive jurisdictions, like the UK and the US, excluded young people and children who enter the criminal justice system are among the most vulnerable, with many experiencing learning disabilities, mental health issues, and addiction problems. Also, young people of Black, Asian, and Minority Ethnic backgrounds and lower socioeconomic backgrounds remain overrepresented in school exclusions and every part of the youth justice system (McCluskey et al. 2019; Meiners 2013).

Although Slovenia has a welfare- and diversion-oriented youth justice system, analysing judicial case files has revealed a need to rethink the meaning and routes of penality considering young people in Slovenia. The identified correlation between children's gender, nationality, disability, and substance abuse on one side, and absence from school, on the other, will be used to show why.

As indicated in section 6.1.2. and *Figure 34* of this report, only 18% of juvenile offenders in the court sample were females. Yet, 71% of females in the sample had been absent from school before or during the criminal proceedings against them (*Figure 53*). There are several possible explanations for the overrepresentation of girls in the sample of school absences, yet the sample was too small to draw definitive conclusions.

Perhaps girls take on more responsibilities in the family, which results in their frequent absences from school. Maybe schools provide less support for female pupils experiencing learning, emotional, or behavioural difficulties (Sanders, Liebenberg, Munford 2018). It could also be that schools more often exclude girls or ignore their absence from school due to the 'double deviance' thesis for females (see, for example, Smart 1977; Heidensohn 1989; Lloyd 1995). Criminality and other behavioural difficulties seem less acceptable if the perpetrators are women and girls. With behavioural transgressions, women and girls break disciplinary rules, the law, and gendered social norms about good behaviour. Such prejudices can result in quicker use of institutional exclusionary practices for females than males.

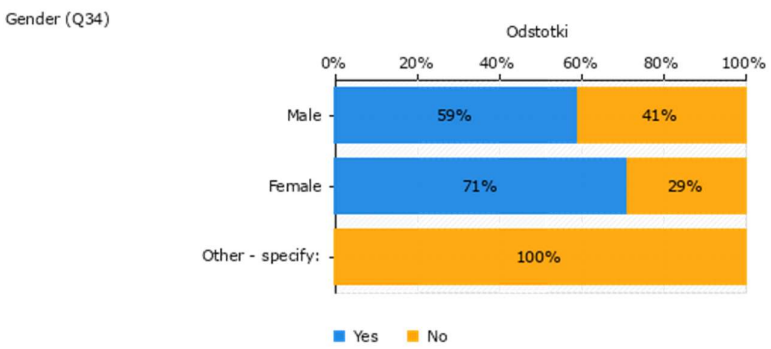

Figure 53: Correlations between the juvenile offenders' gender and absence from school–court files

Further, 57% of children of Slovenian nationality in the sample were absent from school. The number rose to, for example, 73% for Roma pupils, along with all children that identified as Muslim (*Figure 54*), whereby 65% of all children in the sample were Slovenian nationals, 8% were Roma, and only 5% were Muslim, as indicated in section 6.1.3. of this report.

The overrepresentation of children of some nationalities and ethnicities in school absences is worrying. More research is needed to explore how youth of particular national and ethnic backgrounds could be subject to harsher punitive measures, criminalisation, and more subtle forms of discrimination within the educational system. The inspected court files indicated that children coming to Slovenia from abroad – primarily due to the family's economic migration – and Roma children are often not well integrated into the school system. The linguistic and cultural barriers can result in deficit-based disciplinary responses (Wroe 2021). As these children find it hard to follow the school curriculum, they are more likely to be truant from school and find the company of similarly disaffected peers, often becoming their only source of identification and respect (Cohen 1955; Willis 1977, Briggs 2010, Billingham and Irwin-Rogers 2022).

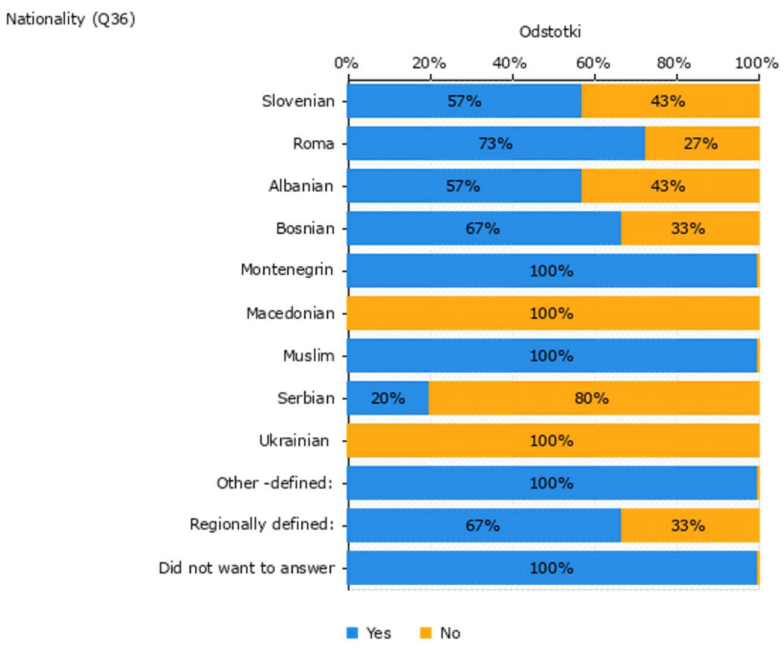

Figure 54: Correlations between the juvenile offenders' nationality and absence from school – court files

Furthermore, young people with disabilities and those suffering from substance abuse are also more likely to be absent from school. 13% of juvenile offenders in the sample had a disability (*Figure 55*), yet 82% of the disabled juvenile offenders were absent from school (Figure 56). During data collection, an expansive definition of disability was adopted, ranging from physical impairment to emotional, behavioural, and mental health difficulties. Some of the disabilities the young people in the sample experienced were: hyperkinetic disorder, speech and language impairment, special educational needs (SEN), chronic digestive problems, dyslexia, attention deficit hyperactivity disorder (ADHD), epilepsy, hearing impairment, anxiety, depression, diagnosed emotional and behavioural difficulties, Asperger's syndrome, and comorbidity of personality disorders. The increased rates of school absences for disabled students are concerning and signal a need for schools to improve the early identification of their pupils' needs and vulnerabilities. Catering to disabilities as soon as possible can help prevent them from escalating and contributing to behavioural difficulties, including youth offending.

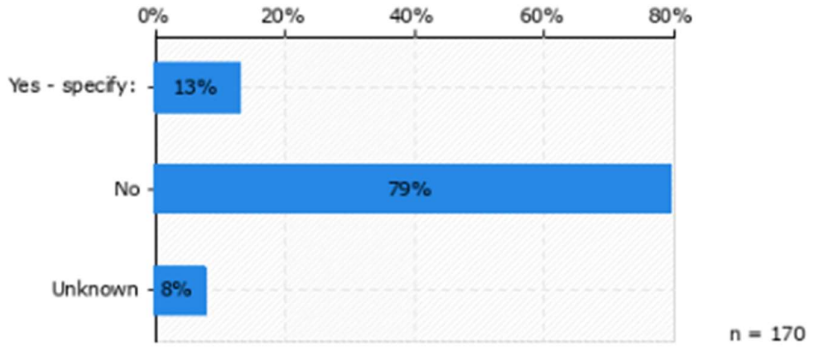

Figure 55: The juvenile offenders' disabilities – court files

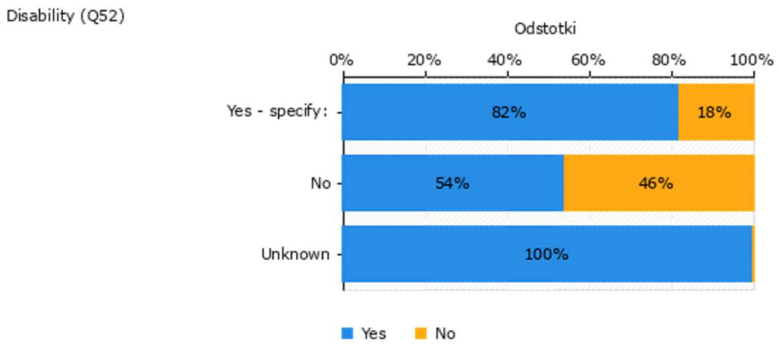

Figure 54: Correlations between the juvenile offenders' disabilities and absence from school – court files

Similar trends were found when inspecting the correlation between the juvenile offenders' alcohol and substance abuse and their absence from school. In the sample, 11% of young people were regular alcohol drinkers (*Figure 55*), and 24% were regular drug users (*Figure 56*). However, 89% of regular drinkers and 85% of regular drug users were absent from school (*Figures 57* and *58*). Alcohol and drug abuse are often symptoms of other difficulties in a young person's life. If substance abuse results in school absences, schools should develop quick safeguarding responses rather than ignoring or disciplining them.

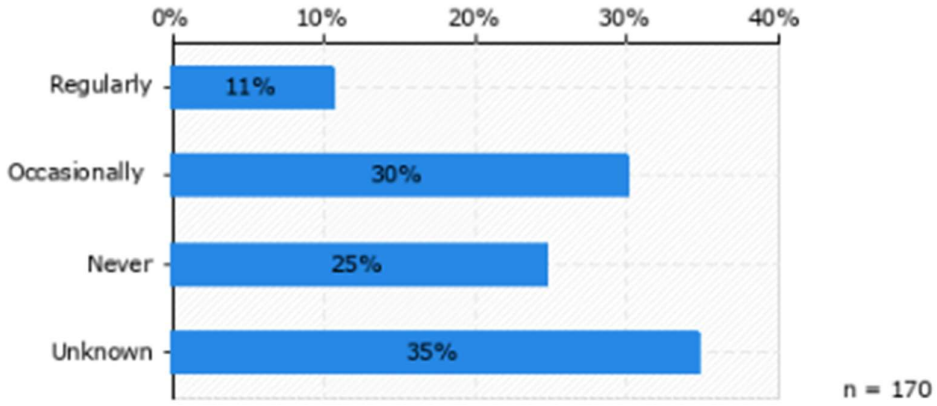

Figure 55: The juvenile offenders' alcohol misuse – court files

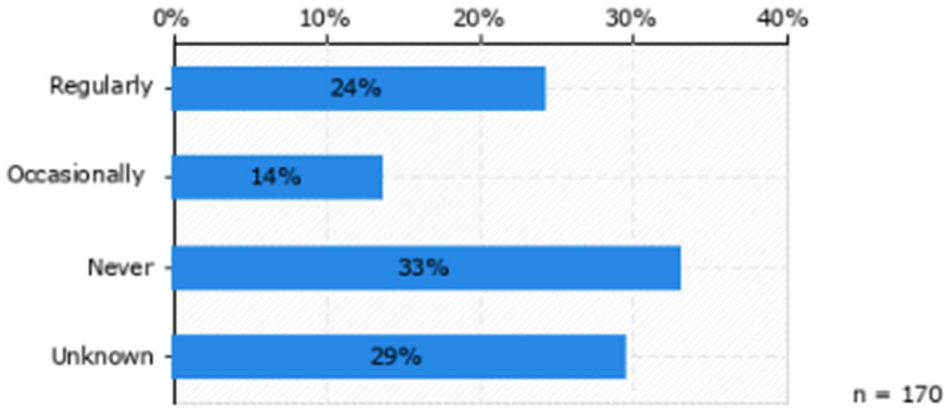

Figure 56: The juvenile offenders' drug misuse – court files

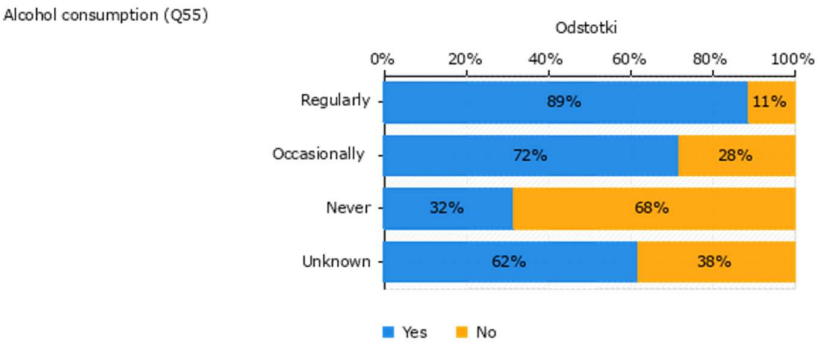

Figure 57: Correlations between the juvenile offenders' alcohol misuse and absence from school – court files

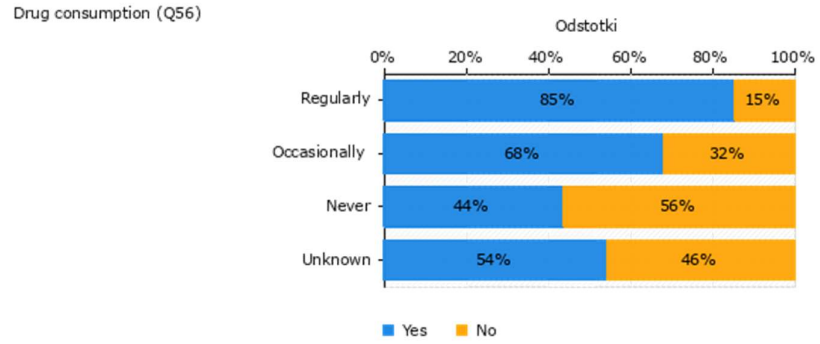

Figure 58: Correlations between the juvenile offenders' drug misuse and absence from school – court files

Nevertheless, the relationship between young people's characteristics, school exclusions and absences, and youth offending is complex, and the factors involved require unpacking. It is difficult to determine the precise mechanisms at work or evidence causality. Further research is needed to understand the relationship in terms of how it intersects with other forms of structural disadvantage and discrimination. Young people's lives, educational experiences, and involvement

in offending must be understood holistically and in the round, taking a contextual approach to addressing their vulnerabilities and problems.

Absence from school often correlates with social and structural factors or vulnerabilities rather than personal or familial circumstances, to which children's misbehaviour, truancy, and delinquency have traditionally been ascribed symbolically (for a critique of such symbolic associations, see Carlen, Gleeson, and Wardhaugh 1992). The figures below show, for example, that children of married and divorced parents have nearly equal – and average according to the entire sample – rates of absence from school (*Figure 59*).

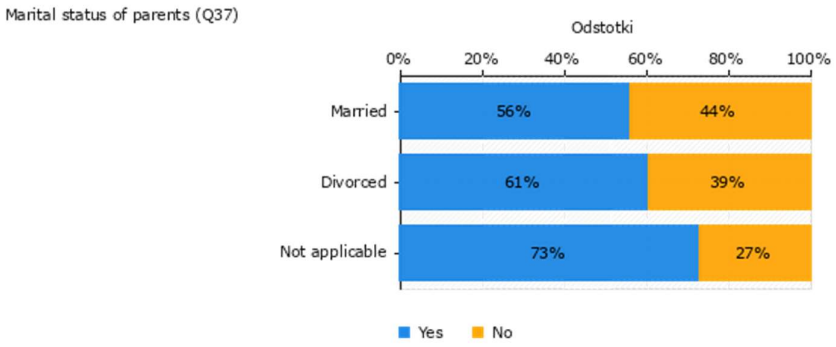

Figure 59: Correlations between the marital status of juvenile offenders' parents and absence from school – court files

When looking at family structure, there are similar and close-to-average school absence rates in two- and one-parent families (*Figure 60*). The only two categories of family structure in which absences from school are significantly above average are the children placed in institutions and 'other' family structures (*Figure 60*). However, complex social issues are likely present in family structures where the child is in institutional care.

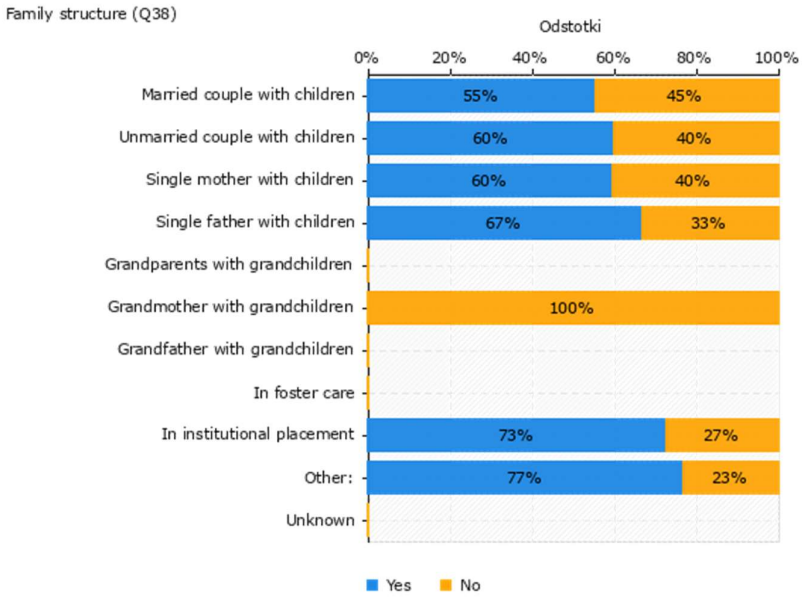

Figure 60: Correlations between family structure and absence from school – court files

Similarly, absence from school correlates with more than three children in the family (*Figure 61*). Still, it is debatable if the number of children is merely a familial or, instead, a social indicator.

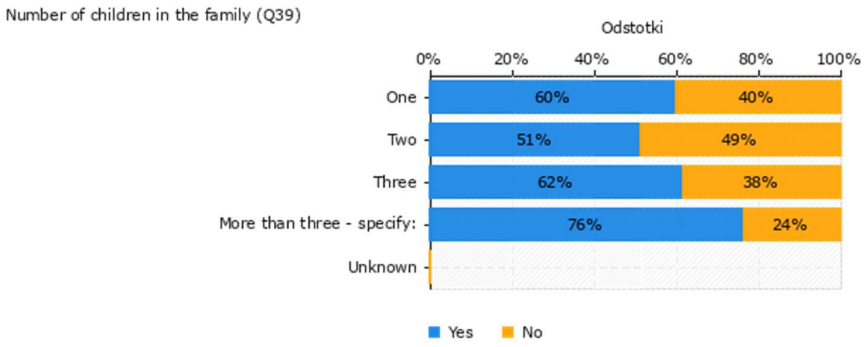

Figure 61: Correlations between the number of children in the family and absence from school – court files

Surprisingly, 74% of juveniles in primary school when the court reached its final decision were absent from school (*Figure 62*). However, primary school attendance is mandatory in Slovenia, and school exclusion at the primary school level is impossible.

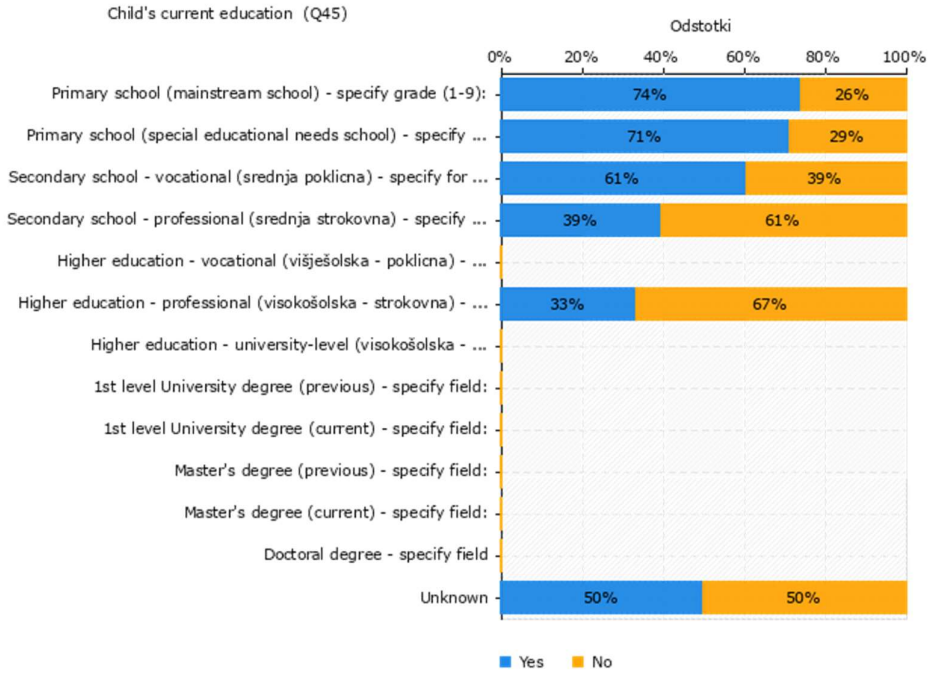

Figure 62: Correlations between the child's current education and absence from school – court files

More research is needed to establish how to rethink educational settings as spaces that disrupt routes of harm for some young people rather than exacerbate them. For young people in educational institutions, Article 5 of the Act on the Intervention for Children and Youth with

Emotional and Behavioural Difficulties in Education (ZOOMTVI)[28] states that expert centres run accredited educational programmes and may also run accredited primary and lower secondary and upper secondary education programmes. If the centres cannot provide a particular academic programme to the young person, they shall enrol them in a school that does. The ZOOMTVI also states that expert centres should provide educational programmes daily and throughout the academic year. According to the ZOOMTVI, no behaviourally challenging child should ever be absent from school, especially since Article 12 states that the expert centre should enrol in education a child they are working with. Understandably, educational institutions or schools in the community cannot prevent all school absences. Still, they should try not to ignore them or avoid ignoring them more quickly for some categories of young people.

Outside education, the young people in the sample engaged in many leisure activities. As shown in *Figure 63*, 78% of young people liked socialising with their peers, 61% engaged in sports, followed by 29% that were involved in other activities they identified as important: hiking, religious education, household chores, helping parents with work around the house, playing with family pets, motorcycle repair, help at the family farm, programming, spending time with their child, fishing, weekly meetings in voluntary drug treatment, computers, going to the cinema, reading, spending time with their girlfriend, playing videogames and chess, poetry, making music and rap videos, volunteering as a firefighter, helping out in an animal shelter, playing board games, cooking, helping grandparents, helping parents with care for grandparents, etc. In 8% of case files, young people engaged with music, 5% with crafts, 4% with other art, 3% with dance, 2% with charity activities, 2% with science, and 1% with foreign languages. 10% of case files did not entail information about the young person's hobbies.

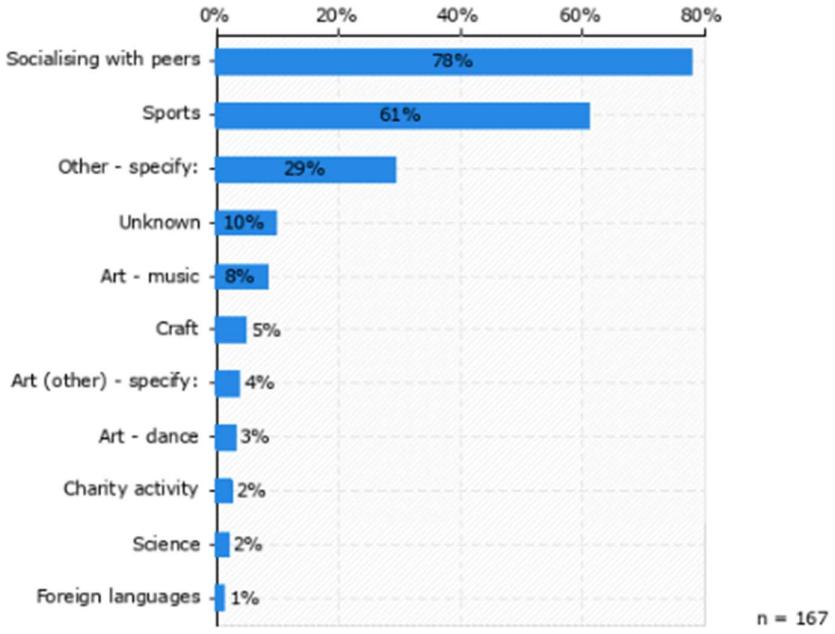

Figure 63: The juvenile offenders' hobbies and leisure activities – court files

[28] Zakon o obravnavi otrok in mladostnikov s čustvenimi in vedenjskimi težavami in motnjami v vzgoji in izobraževanju (ZOOMTVI).

6.3 Prior institutional and criminal involvement

In the court sample under consideration, 140 out of 170 case files indicated that the young person and/or their family were involved with welfare- or justice-related institutions (social services, police, prosecution, court, other) before having contact with these institutions as part of the inspected court proceeding. 75% of those young people and their families were involved with social services, 49% with the police, 47% with courts, 41% with the prosecution, and 18% with other institutions (psychologists, psychiatrists, drug counselling, etc.). In 16% of the court files, the family had no prior institutional involvement, or it was unknown whether they had previously been involved with an agency (*Figure 64*).

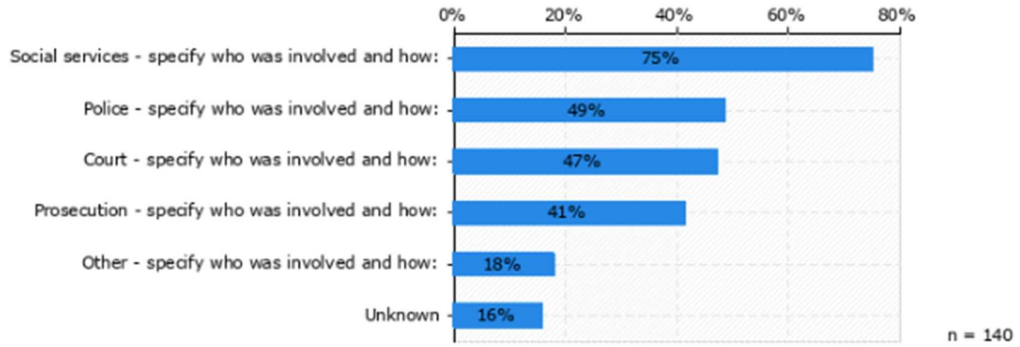

Figure 64: Prior institutional involvement of juvenile offender and/or their family–court sample

These findings are significant as they indicate that future research should examine how well statutory agencies in Slovenia prevent the escalation of social and familial difficulties that could lead to the development of offending behaviour in youth. In the case files with prior institutional involvement, the reasons why social services and other agencies were dealing with the family were mainly: financial need, parenting difficulties, parental offending, parental neglect, domestic violence (the parent's violence against the child and/or the child's violence against the parents or siblings), the child's running away from home, the child's learning and behavioural difficulties in school or special educational needs, truanting, the child's diagnosis (e.g., ADHD), placement of the child in a crisis centre or an educational institution based on the decision of social services or a family court, the child's misdemeanour (mainly traffic offences, possession of drugs, public order offences) or criminal activity before the age of criminal liability, the child's involvement with social services as part of deferred prosecution, etc. In the case files in which the police, prosecution, and/or courts were involved with the young person, this was mainly due to prior criminal proceedings against them.

Under the category of demographic information, data was also gathered about the young person's recidivism in a broad sense of the term, any indication that the young person had prior criminal involvement regardless of a final court decision.[29] In the court files, 49% of the juvenile offenders had no previous criminal involvement, but 45% had previously been involved in crime (23% committed similar offences, 8% different kinds of offences, and 14% committed similar and

[29] In part 9 of this report, data was gathered about the young person's recidivism in a narrow sense of the word; cases where an educational measure or punishment was imposed in a final court decision. Officially, only the narrow definition of recidivism counts as formal prior criminal activity. However, it was important to also analyse qualitatively whether and why young people below the age of criminal liability, those that were diverted from the criminal justice system, or those that already received and educational measure or punishment later, nevertheless, (re)entered the youth justice system due to further engagement in crime. The data on recidivism in the broad sense of the term gives us some indication of these trends.

different types of offences). In 6% of the cases, the prior criminal involvement of the young person was unknown (*Figure 65*). When we inspected the types of prior criminal involvement in the sample, 72% of young people who had previously been involved in crime received an educational measure or punishment based on a final court decision (*Figure 66*).

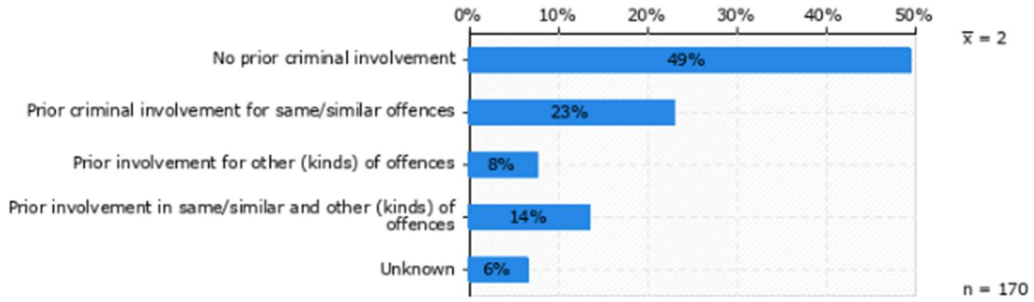

Figure 65: Prior criminal involvement of juvenile offender – court sample

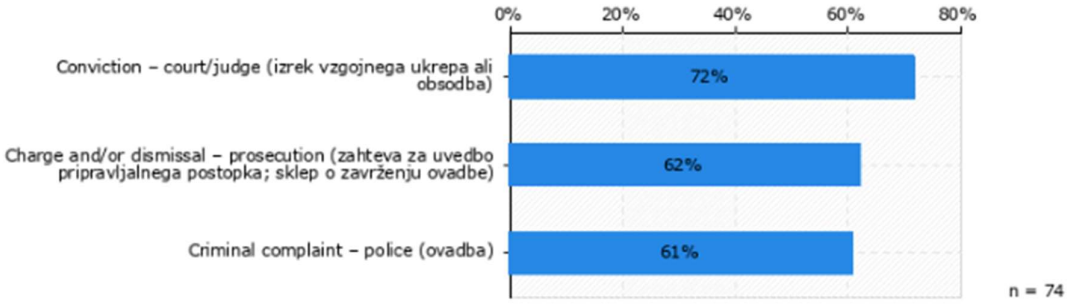

Figure 66: Type of prior criminal involvement of juvenile offender – court sample

In the future, it is crucial to explore recidivism among young offenders in Slovenia to understand better their routes to and away from crime and how other organisations could help prevent their offending behaviour early on. Also, courts and prosecutor's offices should keep more consistent and up-to-date records on the young person's prior offending. In the sample, the information in the case files about recidivism was inconsistent as practices of collecting this data differed between different districts or judges/prosecutors working in the same institution. While some courts obtained a formal confirmation from the Ministry of Justice that a juvenile had previously received an educational measure or punishment and stated all the juvenile's prior 'convictions' in their final decision, others obtained information about the juvenile's ongoing rather than finished, criminal proceedings and took that into account in their decision-making. In other words, where a copy from the register of educational measures and sanctions against juveniles was missing in the case files, it was hard to establish if a child was a recidivist that had received an educational measure or punishment based on the final decision of the court. More often, case files entailed copies of other pending criminal proceedings.

6.4 Data related to the offender: Summary of findings and recommendations

Summary of findings

- There is a **discrepancy in the age categories of juvenile offenders when they commit the offence and when the prosecution or court reaches their final decision**. The difference likely indicates that **prosecutorial and judicial proceedings against young offenders last too long.** A rethink of the organisation of judicial and prosecutorial work with juvenile offenders is needed to increase the efficiency and educational value of criminal proceedings against them.
- **Most juvenile offenders are male.** Male juvenile offenders commit crimes against sexual integrity, drug-related, and traffic offences almost exclusively. Further research is needed to **explore the gendered norms about male and female behaviour and how emotional and behavioural difficulties manifest across gender categories.**
- **Some citizens, nationals, and ethnic minorities are overrepresented among juvenile offenders.** More research is needed to disentangle how often this is because of the number and types of offences they commit and how often the disproportionality reflects discriminatory institutional practices.
- **Juvenile offenders come from diverse family backgrounds and structures and are a socio-economically vulnerable group.** Policies that divert young people from crime should **include children and their parents in meaningful education and employment.**
- There are **discrepancies between the ages and educational levels of juvenile offenders**, which imply that these young people are **falling behind or not enrolling in formal education. 60% of the juvenile offenders in the sample were regularly absent from school**, **disproportionately females, pupils of particular nationalities and ethnicities, young people with disabilities and substance abuse issues, and children of primary school age.** Schools must **disrupt structural routes of harm and improve the early identification of their pupils' needs and vulnerabilities.**
- Juvenile offenders and their parents are often involved with several agencies due to their social and familial difficulties (before the young person's offending.) Many young offenders are involved with social services for offending before reaching the age of criminal liability, diverted at the prosecutorial level, or have received an educational measure or punishment. A rethink of **early intervention, preventing the escalation of social and familial difficulties that could lead to the development of offending behaviour in youth,** is needed. Prosecutors' offices and courts should **keep consistent and up-to-date data about the young person's prior offending behaviour and/or recidivism.**

Recommendations:

- **Early intervention**

  It is recommended to reflect upon and consider ways to strengthen early intervention measures in order to prevent the escalation of social and family difficulties which could lead to the development of offending behaviour in youth.

- **Data on offending and recidivism**

  It is recommended that prosecutors' offices and courts should keep consistent and up-to-date data about the young person's prior offending behaviour and/or recidivism, in a manner consistent with data protection rules.

7 Data on the procedure

This report section explores the procedural aspects of dealing with young people in trouble with the law, as identified in the data analysis. We first examine how in-depth the prosecution and courts get to know the juvenile offender and their family. This section then explores how often they remove the young person from an unfavourable home environment during the proceedings against them, followed by inspecting the use of pre-trial detention and other restrictive measures. We analyse whether the prosecution and courts respect the child's right to legal representation and their right to be heard. In this task, other due process rights and their breaches in prosecutorial diversion, preliminary court proceedings, and the panel session or main hearing are also analysed. Finally, analyses of legal remedies and the duration of criminal proceedings at the prosecutorial and judicial levels are also provided.

7.1 Efforts to get to know the juvenile offender and their family

Article 469 of the ZKP indicates that in the preliminary proceedings against a child, the court should inspect the facts of the offence but also establish the minor's age, mental development, vulnerabilities, educational needs, and other circumstances relating to their personality and living conditions (*the individual assessment*). The court shall inform the child of their right to an individual assessment.

The court can assess the young person and their circumstances through a juvenile judge, another expert employed by the court (e.g., social worker, special educational needs or child development specialist, etc.), or social services. The court should update the child's assessment throughout the proceedings. The court can gather information from the juvenile, their parents, social services, and other individuals or institutions (doctors, psychologists, medical institutions, etc.) to evaluate the young person.

Similarly, the prosecutor may request information from the young person's parents, guardians, other people, or institutions to verify the child's personality traits or personal and familial circumstances. According to Article 466 of the ZKP, the prosecutor can make such requests to establish whether to dismiss the case based on the expediency principle, due to the minor significance of the offence, and successful mediation or deferred prosecution. They can also invite the young person, their parents, and/or experts to the prosecutor's office for a meeting. The prosecutor may request a report from social services to establish the appropriateness of diversionary proceedings against the juvenile.

7.1.1 Prosecutorial level

According to the analysis, there was no indication in the case files that the prosecutor had requested information about the young person from their parents or invited the family, social workers, or other experts to a meeting. Section 4.2. of this report states that the prosecution had not obtained a social services report in 93% of the diverted cases (*Figure 67*). Before charging the juvenile, the police had not obtained a social services report or sent it to the prosecution along with their charge in 97% of cases (*Figure 68*).

Consequently, the analysed prosecutorial case files did not include much information about the child's personal or family circumstances. While some prosecutors were diligent in obtaining reports from social services, most were not.

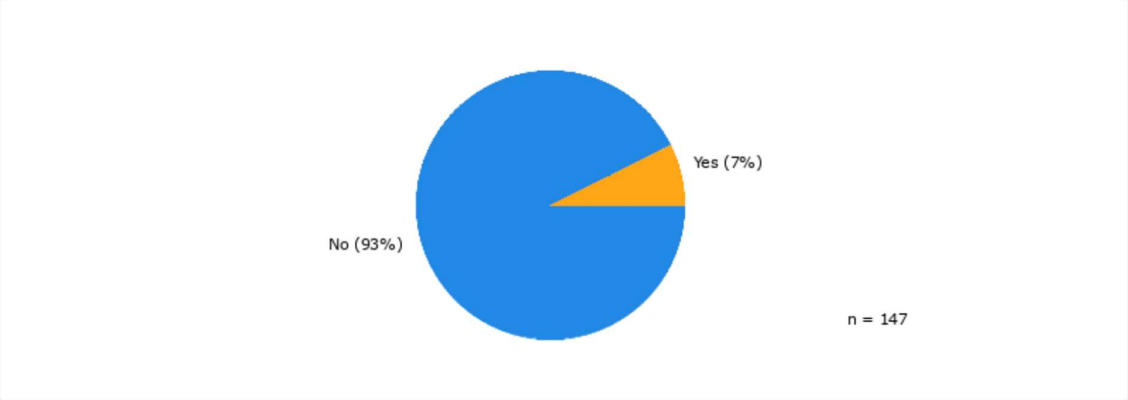

Figure 67: The prosecution obtains information from social services

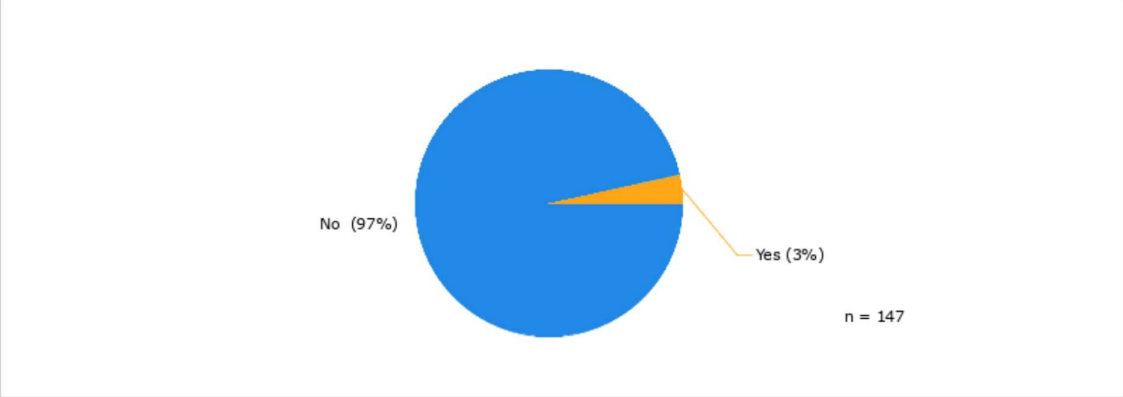

Figure 68: The police obtain information from social services

When the police or prosecution got a report from social services, social services interviewed the juvenile and their parents to get information in 86% of the cases. They conducted a home visit in 14% of cases. Since the absolute number of interviews and home visits in the inspected prosecutorial files was small, it could not be concluded that this was the standard practice of social services when the prosecution requested their assistance.

Following Article 466 of the ZKP, the prosecution could explore the child and their family's circumstances by obtaining a social services report (or instructing the police to submit a social services report with their criminal charge). To write the report, social services would have to interview the child and their parents or conduct a home visit. The prosecution could also hold a meeting with the child, their parents, and other important people in the child's life (teachers, grandparents, siblings, and other practitioners working with the child) to proceed most appropriately (charge, dismissal, diversion).

However, at the roundtable on 8 December 2022, the prosecutors explained that following such a protocol was impossible as social services were overburdened. Also, involving social services to attend to every case – even those fit for diversion – thoroughly could have stigmatising and net-widening effects.

In the future, inspecting the child and their parents' circumstances holistically and in the round might require specialised prosecutors' offices, courts, and social workers. Such specialised institutions, services, and professionals could work exclusively on juvenile criminal cases if provided with enough staff and resources, thus examining every case in detail.

Gaining information on the child, their family, and extra-familial contexts is essential for an informed prosecutorial decision that diversion is in the child's best interest. When the prosecutors in the prosecutorial sample obtained the social services report, the report entailed a wealth of information about the child's circumstances: education, social and family characteristics, sensitivity and personal life, violence in the family, the child's prior criminal involvement, emotional and behavioural issues, special educational needs, parental neglect, other issues (substance misuse, physical disabilities, parental separation, etc.), mental health and mental development problems, addiction in the family, and parents' criminal involvement (*Figure 69*).

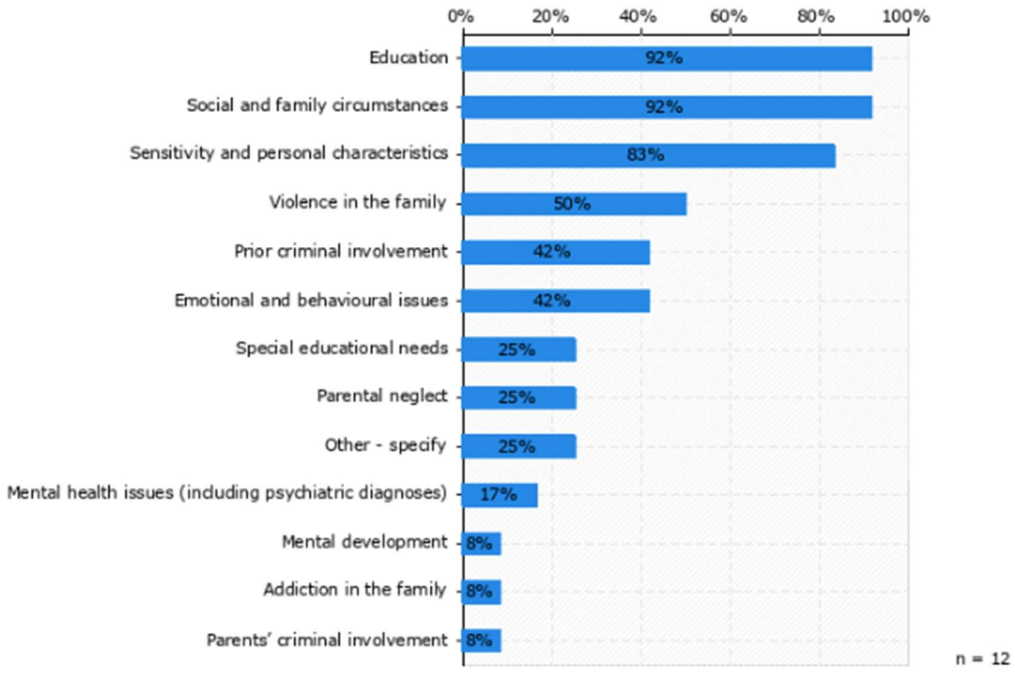

Figure 69: Information about the child and their circumstances – social services report (prosecutorial level)

The prosecution and the police also rarely obtained information from the young person's school or other educational institution where they did not reside; the prosecution in 1% (*Figure 70*) and the police in 7% (*Figure 71*) of the dismissed cases. While percentages are small, they do, however, indicate that the prosecution avoids criminalising in the educational environment the young people that it decides to divert. If school staff are not properly trained about the development of and the possible consequences of formal reactions to youth offending, police or prosecutorial queries could result in stigma and changed school staff perceptions about the young person.

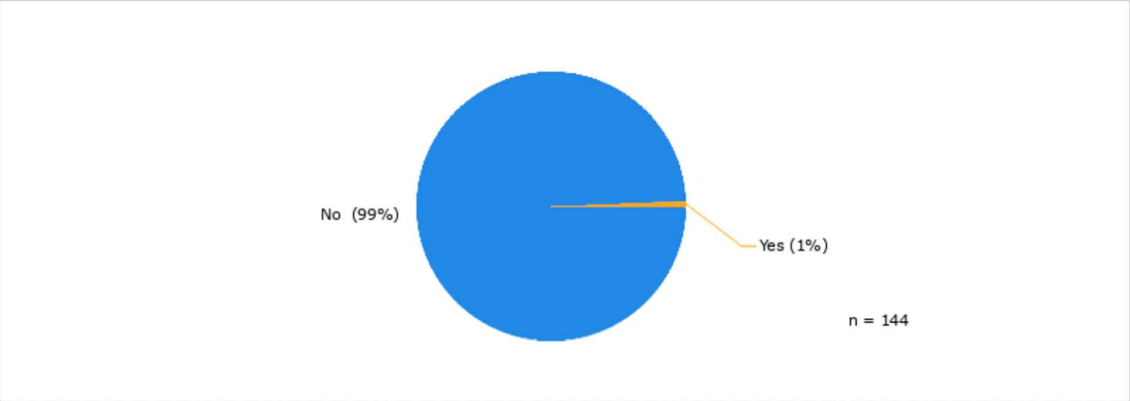

Figure 70: The prosecution obtains information from school or other educational institution

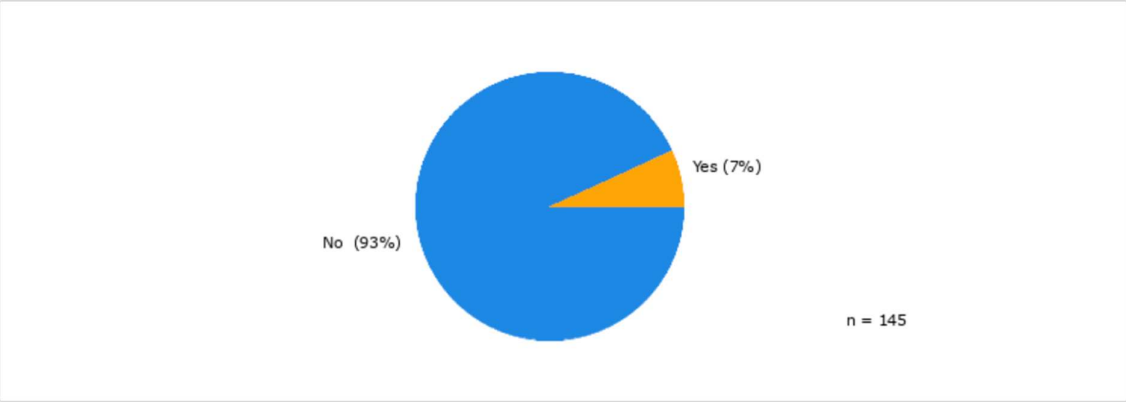

Figure 71: The police obtain information from school or other educational institution

When the prosecution and the police gathered information from the young person's school or other educational institution, the data was mainly on the child's education, their sensitivity and personal characteristics, emotional and behavioural issues, social and family circumstances, and other issues, mostly bullying (*Figure 72*).

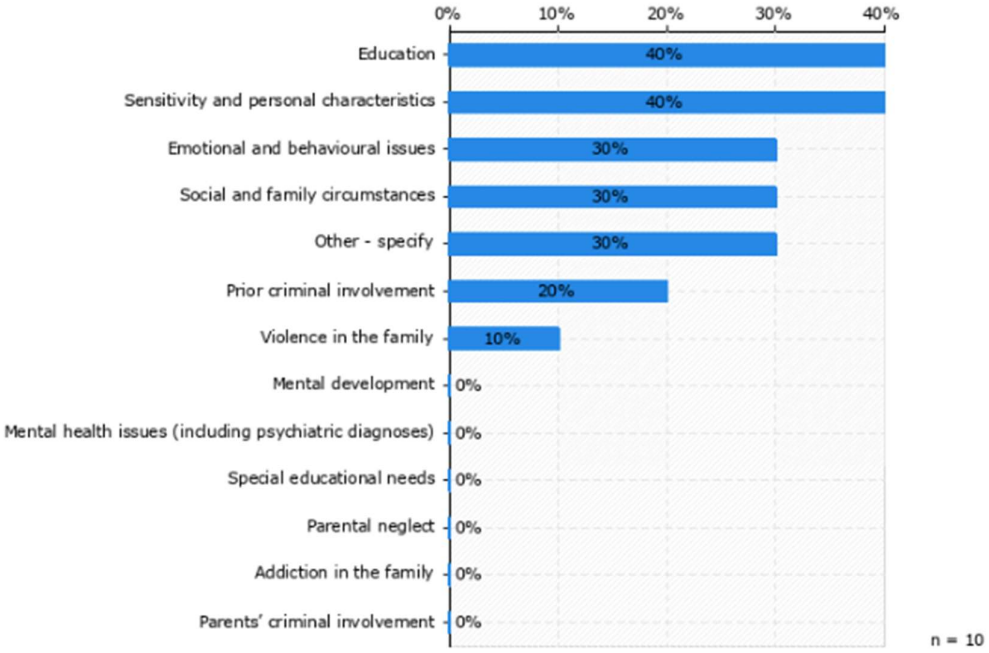

Figure 72: Information about the child and their circumstances – school or other educational institution (prosecutorial level)

In only twelve cases, the prosecution obtained information about the child and their circumstances from sources other than social services and schools. In these cases, the prosecution enquired about the child at the Association for Non-violent Communication, other NGOs, and the Ministry of Justice in 67%, the police in 17%, the correctional home in 17%, a psychologist in 17%, and previous prosecutorial cases in 8% of cases (*Figure 73*).

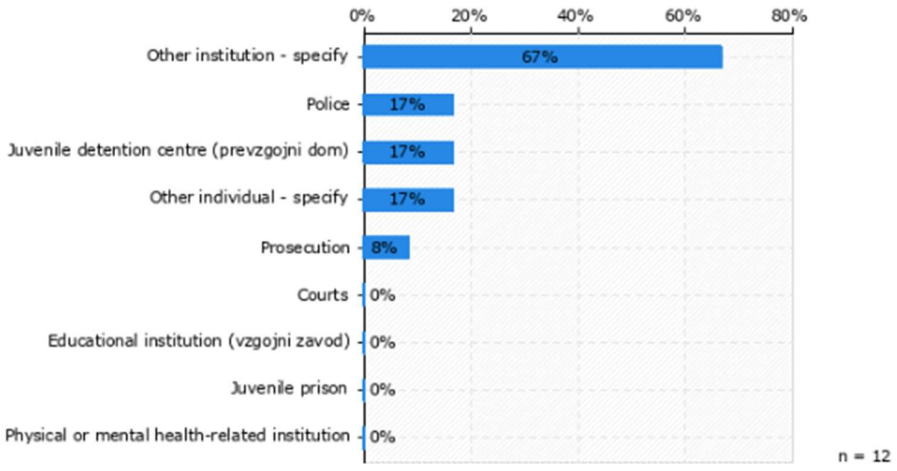

Figure 73: Information about the child and their circumstances – other institutions (prosecutorial level)

7.1.2 Judicial level

At the judicial level, we inspected how often courts examined the young person's development, needs, vulnerabilities, and other personal and family circumstances as part of their *individual assessment* based on Article 469 of the ZKP. We explored how often courts gathered information from the juvenile, their parents, social services, and other individuals or institutions during the preliminary proceedings and/or the panel session or main hearing.

7.1.2.1. Preliminary proceeding

In the preliminary proceedings, courts interviewed the juvenile in 92% of cases (*Figure 74*). As part of the interviews, the courts established the facts of the case and routinely gathered information about the young person's personal and family circumstances. In 95% of cases, courts also – through a juvenile judge, judicial assistant, or a court-employed social worker – interviewed the young person's parents in the preliminary proceedings (*Figure 75*). As part of the preliminary proceedings, the courts obtained a social services report in 97% of inspected cases (*Figure 76*).

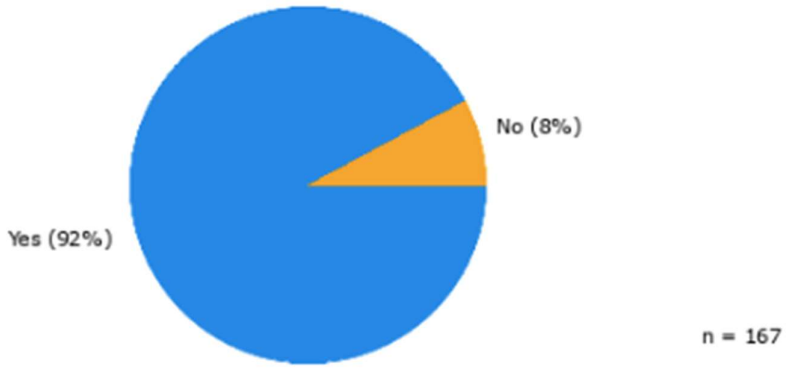

Figure 74: The court interviews the juvenile – preliminary proceedings

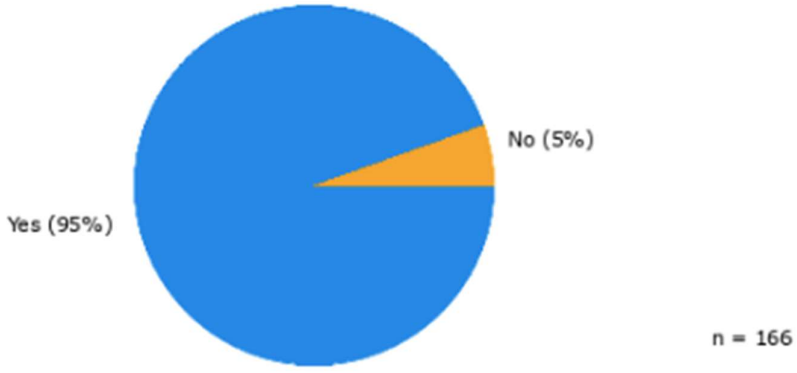

Figure 75: The court interviews the parents – preliminary proceedings

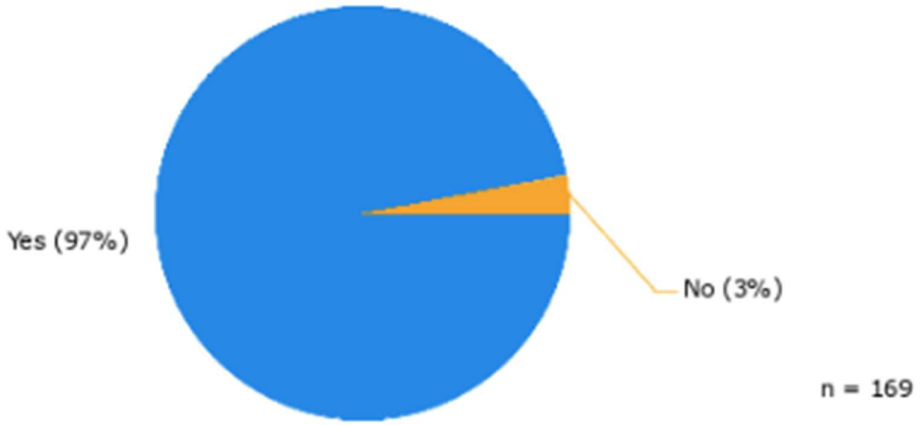

Figure 75: The court obtains a social services report – preliminary proceedings

Social services interviewed the juvenile in 77% and their parents in 84% of cases to prepare their reports for the courts. They conducted one interview in 70%, two in 41%, three in 14%, five in 3%, and six in 1% of cases.

Social services conducted more interviews with young people that were recidivists or displayed offending behaviour as children. Consequently, their reports usually entailed information about the number of completed interviews. However, higher numbers did not necessarily reflect that the social workers conducted all the interviews as part of the inspected criminal proceeding. Where social services conducted several interviews with the child and their family, this was often across time and the family's involvement with social services. Social workers made a home visit in 11% of cases.

Social services reports in the inspected judicial case files included information about education, social and family characteristics, sensitivity and personal life, emotional and behavioural difficulties, prior criminal involvement, violence in the family, special educational needs, mental health and mental development problems, addiction in the family, and parents' criminal involvement (*Figure 76*).

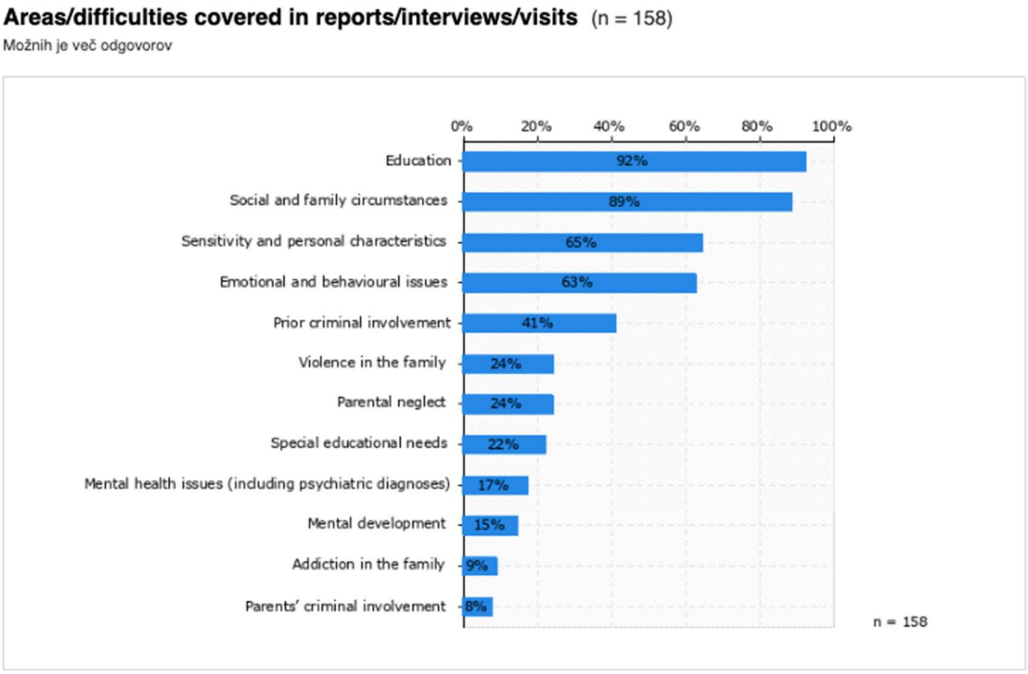

Figure 76: Information about the child and their circumstances – social services report (court level – preliminary proceedings)

As part of preliminary proceedings, courts obtained information from an educational institution where the young person resided in 22% of the inspected court cases (*Figure 77*). When they did, the reports from educational institutions were like social services reports and contained various information about the young person's circumstances (*Figure 78*)

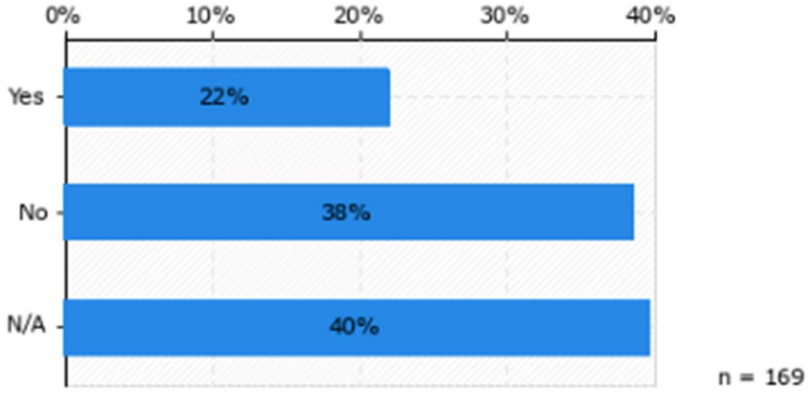

Figure 77: The court obtains information from educational institution where young person resides – preliminary proceedings

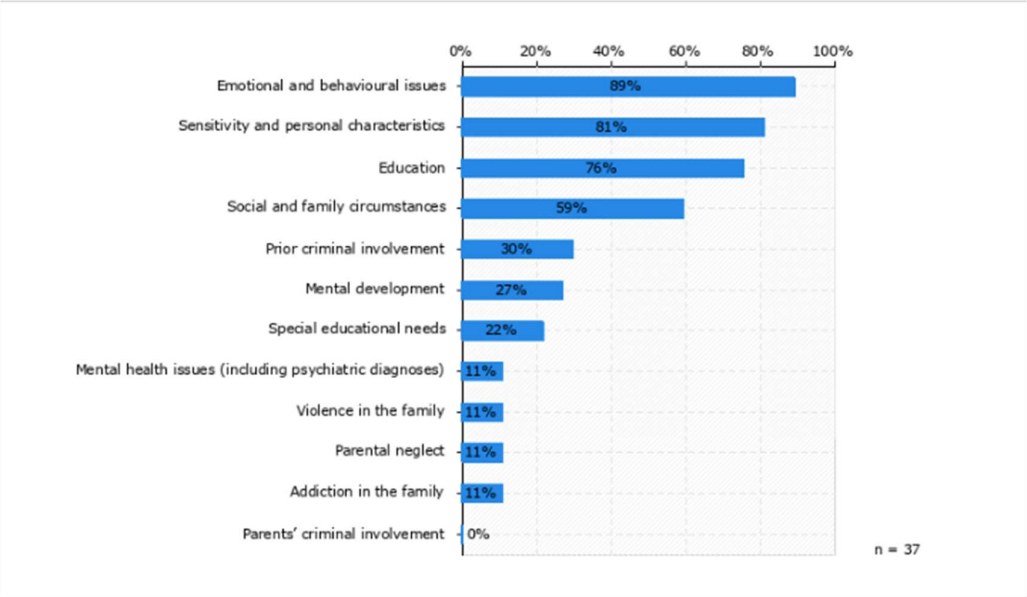

Figure 78: Information about the child and their circumstances – educational institution report (court level – preliminary proceedings)

Like the prosecutors, the courts seldom obtained information from the young person's school or other educational institution where the child did not reside; in 9% of the inspected judicial case files (*Figure 79*). As mentioned, this might not necessarily mean that courts – or the prosecution – do not act in the child's best interest. It might be that they do not want to stigmatise children in contact with the justice system in their educational environment among their teachers and peers.

As expected, schools usually provided courts with information on the young person's education, sensitivity and personal characteristics, emotional and behavioural difficulties, and special educational needs. Sometimes, school reports entailed information on the child's social and family situation, prior criminal involvement, domestic violence, and parental neglect (*Figure 80*).

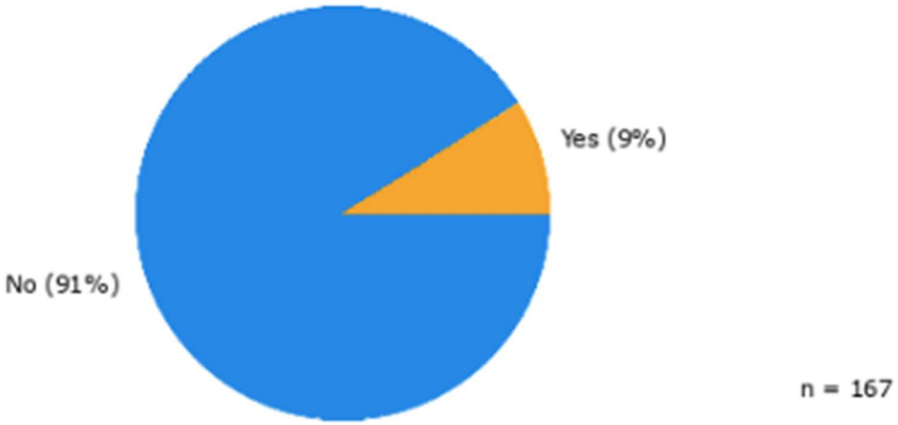

Figure 79: The court obtains information from school or other educational institution – preliminary proceedings

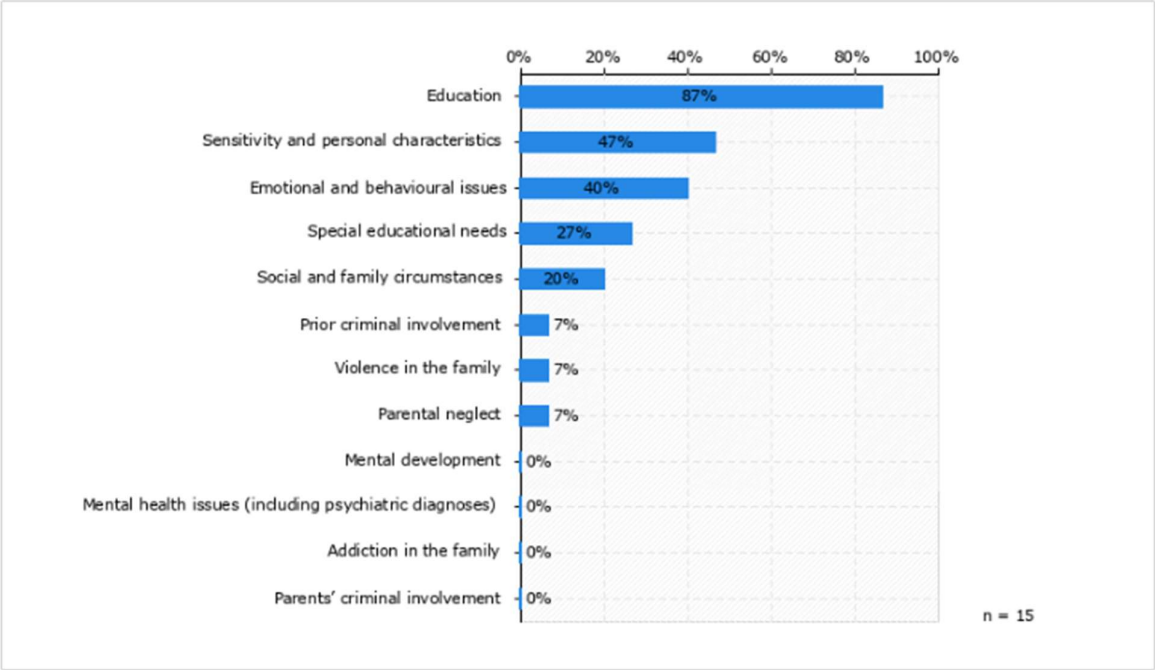

Figure 80: Information about the child and their circumstances – school or other educational institution (court level – preliminary proceedings)

In the preliminary proceedings, the courts rarely obtained information from sources other than those mentioned above, specifically in only 3% of cases (*Figure 81*). When they did, they gathered data from a Slovenian embassy in a foreign country, a medical institution, a child and adolescent psychiatric clinic, a psychologist, and a judicial case file in a previous proceeding against the youth. Consequently, reports obtained from these sources entailed more information about the young person's prior criminal involvement, mental development, emotional and behavioural difficulties, special educational needs, sensitivity, and mental health (*Figure 82*).

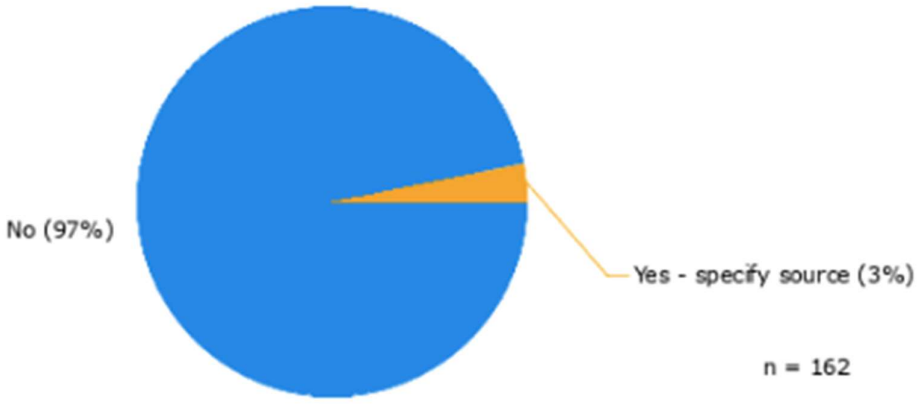

Figure 81: The court obtains information from other sources – preliminary proceedings

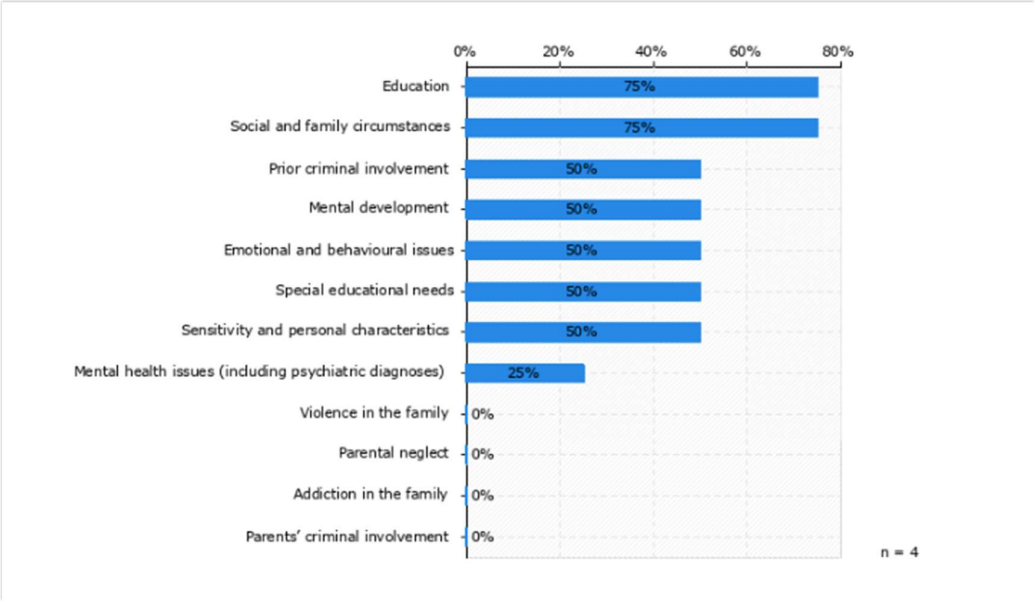

Figure 82: Information about the child and their circumstances – other sources (court level – preliminary proceedings)

In the inspected case files, courts also rarely nominated a physician, psychiatrist, psychologist, or educator according to Article 469/IV of the ZKP to evaluate the young person's medical condition, mental development, mental properties, etc., in the preliminary proceeding. In the 7% of cases that they did (*Figure 83*), they nominated experts that were psychologists, child and adolescent psychiatrists, and clinical psychologists.

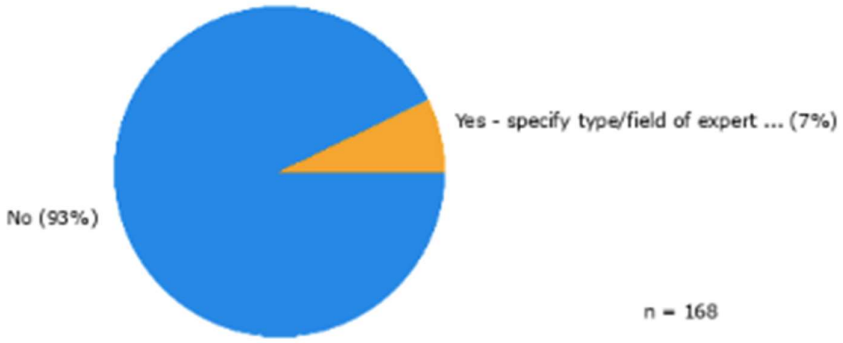

Figure 83: The court nominates an expert to assess the young person's development – preliminary proceedings

7.1.2.2. Panel session or main hearing

In the panel session or main hearing, the judge interviewed the young person in 88% of cases (*Figure 84*). In 75% of cases, the judge also interviewed the young person's parents (*Figure 85*). Before the panel session or main hearing, courts obtained additional information from social services in only 39% of cases (*Figure 86*). However, the judge interviewed the young person's social worker at the panel session or main hearing in 73% of cases about the changes in the young person's life since the preliminary proceeding. (*Figure 87*).

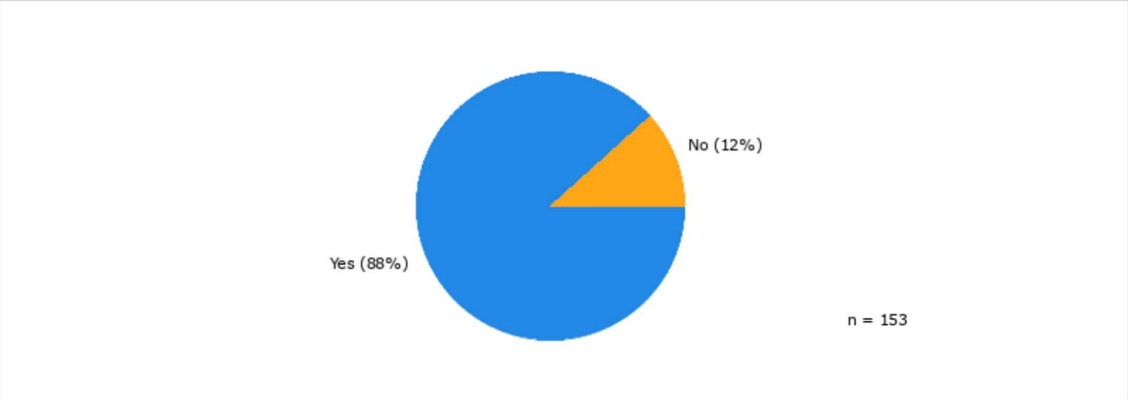

Figure 84: The court interviews the juvenile – panel session or main hearing

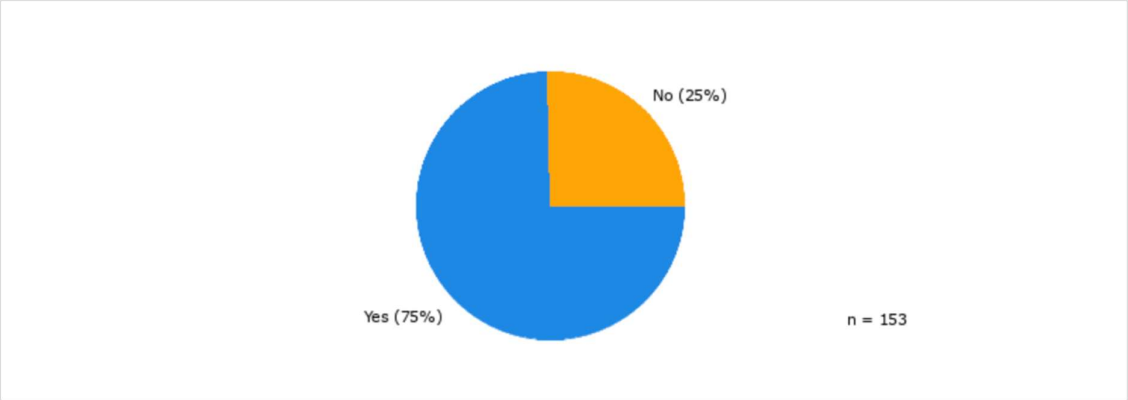

Figure 85: The court interviews the juvenile's parents – panel session or main hearing

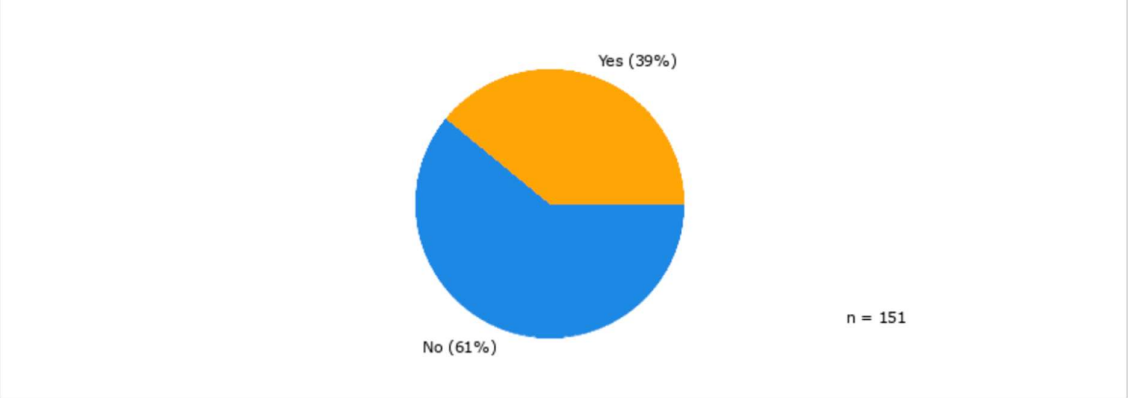

Figure 86: The court obtains additional written report from social services – panel session or main hearing

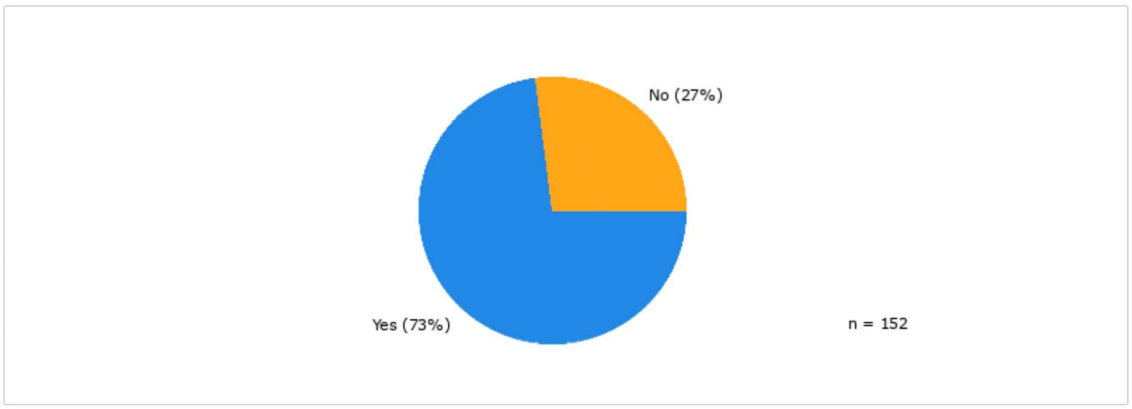

Figure 87: The court interviews social worker – panel session or main hearing

Further, courts obtained information from educational institutions where the young person resided, the child's school, and other sources (social services from another region, social pedagogue's report, etc.) during the panel session or main hearing less frequently than in the preliminary proceedings. More specifically, in 16% (*Figure 88*), 3% (*Figure 89*), and 2% (*Figure 90*) of cases. They nominated a physician, psychiatrist, psychologist, or educator to evaluate the young person slightly more frequently than in the preliminary proceedings, specifically in 9% of cases, most of which were cases where the courts nominated the same expert in the preliminary proceedings and the panel session/main hearing (*Figure 91*).

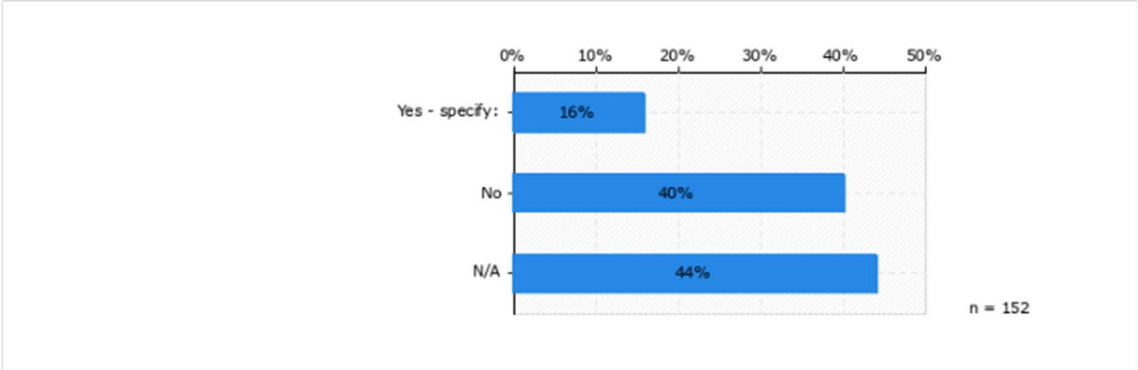

Figure 88: The court obtains information from educational institution where young person resides – panel session or main hearing

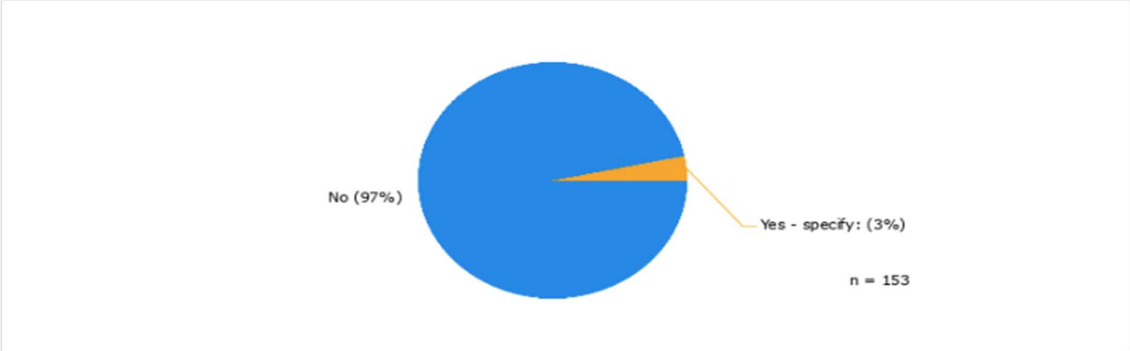

Figure 89: The court obtains information from school or other educational institution – panel session or main hearing

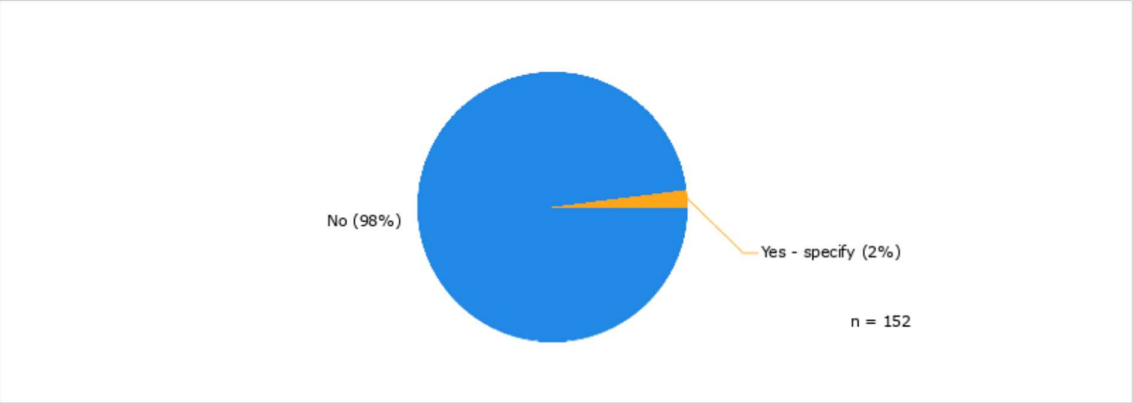

Figure 90: The court obtains information from other sources – panel session or main hearing

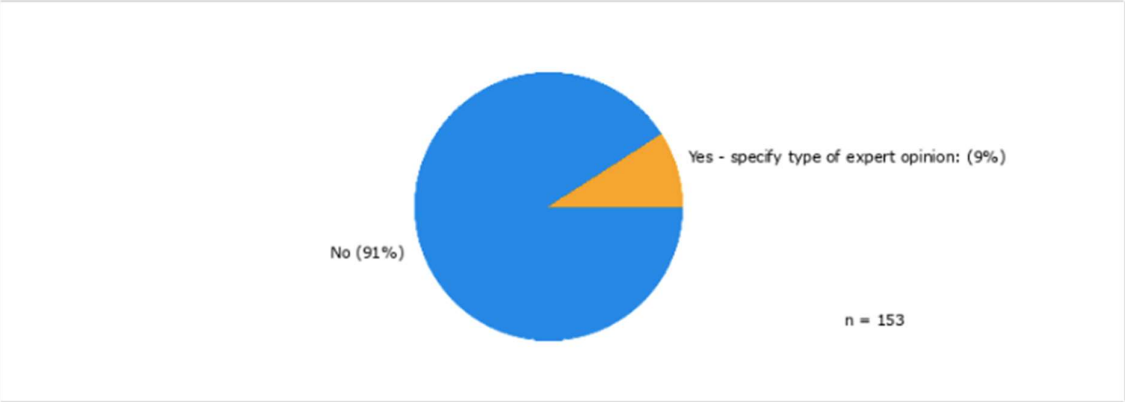

Figure 91: The court nominates an expert to assess the young person's development – panel session or main hearing

Like in the preliminary proceedings, the courts gathered most of the additional information during the panel session and main hearing from the young person, their parents, and social services, rarely from educational institutions, schools, and other institutions. They also seldom nominated experts to assess the child's mental development or other characteristics that might be important in the court's decision-making. They mainly obtained further information on the young person's education, social and family circumstances, emotional and behavioural difficulties, sensitivity and personal characteristics, prior criminal involvement, mental development, special educational needs, domestic violence, mental health issues, substance misuse in the family, parental neglect, and parents' prior criminal involvement (*Figure 92*).

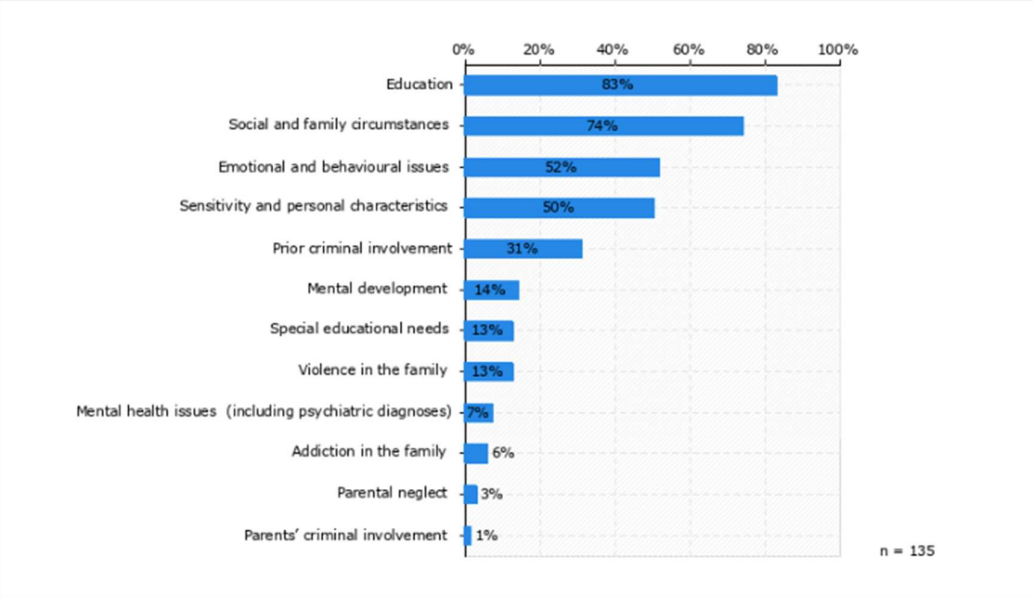

Figure 92: Information about the child and their circumstances – other sources (court level – panel session or main hearing)

The courts updated the young person's assessment through interviews with the child, parents, and social worker at the panel session or main hearing. However, as section 7.8. of this report will show, most judicial proceedings in our sample lasted more than a year. Maybe courts had to assess the youth's mental development, vulnerabilities, educational needs, and other circumstances relating to their personality and living conditions again at the panel session or main hearing as a long time had passed since the preliminary proceedings. Also, judicial assistants, not judges, usually held preliminary proceedings. Perhaps the juvenile judge had to obtain information about the young person's circumstances again to familiarise themselves with the data before deciding and imposing a sanction.

A thorough but swift one-time assessment of the child in more quickly administered judicial proceedings might be in their better interest. However, this might only be possible if social services, prosecutor's offices, and courts were specialised and dealt merely with juvenile criminal cases.

When courts nominated an expert, they asked them to assess the child's condition, circumstances, and development. However, courts sometimes asked the expert which educational measure they think the court should impose. This evaluation requires legal reasoning, not an expert opinion, and should be part of judicial decision-making.

At other times, courts did not follow the expert opinion and imposed a specific educational measure contrary to the expert's assessment of the child. In one of the inspected case files, the first instance court imposed a non-residential educational measure. However, the expert (and social services) suggested a residential educational measure based on the child's complex needs. The prosecutor appealed the first instance decision due to the imposed criminal sanction. The Court of Appeal changed the decision and concluded that the juvenile offender should be committed to an educational institution, as the expert and social services suggested. In this case, the court's first-instance decision delayed the appropriate treatment of the young person within a suitable institution.

The relationship between expert assessment of the child and their development and legal reasoning about the appropriateness of criminal sanctions against them should be clarified according to the

aims of juvenile criminal procedure. The courts can nominate a second expert if the first expert opinion does not convince them. Suppose courts decide not to follow the expert opinion in assessing the juvenile's personality and development. In that case, they should explain that in their final decision and adequately justify their choice of sanction.

Last, courts in the sample always acquainted social services with the proceedings against the young person. However, social services were not as active as prescribed in Article 458 of the ZKP or Article 43 of the draft ZOMSKD, according to which social services can make motions during the proceedings and call attention to facts and evidence necessary for a correct judicial decision.

In the sample, social workers wrote reports and gave statements at the panel session or main hearing. The quality and thoroughness of their reports varied between districts and individual social workers. While some reports were generic, others were detailed and individualised.

Further, the practices of district courts in cooperating with social services differed from district to district. While some courts obtained at least two social services reports – in the preliminary proceedings and during the panel session or main hearing – others obtained only one. Sometimes, the second report informed the court about essential changes in the child's life. At other times, the second report seemed like a copy of the first one.

When courts wanted to get to know the child and their circumstances, some judicial practices were identified as not optimal or even concerning. Judicial interviews with the young person's parents – conducted by judges, judicial assistants, or court-employed social workers – were often generic and did not provide much more information than social services reports. The interviews with the young person's parents did not add much to their assessment while they prolonged the proceedings. Judicial interviews with parents are essential and should be more individualised. In preparation for the interviews, the court should thoroughly investigate the case file and communicate with the young person's social worker in the community.

When the young person was a recidivist subject to previous judicial proceedings, the courts sometimes did not ask for a new social services report or interview their parents. They obtained the reports and transcripts of interviews from previous proceedings, even if a long time had passed since.

The judges at the roundtable on 8 December 2022 explained that courts sometimes obtain information from previous proceedings as social services take too long to produce a report due to organisational problems. While such practices are understandable, courts should not employ them against the child's best interests. A lot can happen in a few months or weeks of a young person's life. A social services report from a few months prior is substantially outdated. It should not be used as credible information on the young person's development or impact the court's final decision.

For the same reason, Article 72/II of the draft ZOMSKD, stating the court can decide not to interview the child's parents (or potentially obtain a new social services report) if social services had already interviewed them and the court deems the interviews are not necessary as it has enough information from previous proceedings, should be implemented with caution. While the provision is not problematic *per se*, it might work against the child's best interests in light of the duration of judicial proceedings, further analysed in section 7.8. of this report.

7.2 Excluding the child from an unfavourable environment

According to Article 471 of the ZKP, the juvenile judge can decide to remove the young offender from their old surroundings and place them in a transitional home, diagnostic centre, or under the supervision of social services or another family. The judge excludes the young person from their previous environment if they are experiencing adverse circumstances or need help, protection, or lodging. As removing the child from an unfavourable environment is urgent, Article 471 of the ZKP foresees the measure from the preliminary proceedings onward. Article 481 of the ZKP allows the judge to impose this measure or call it off during the panel session or main hearing.

In the sample, the juvenile judges excluded the child from their environment during the preliminary proceedings only in 1% of cases (*Figure 93*). The number of measures increased slightly to 4% during the panel session of the main hearing (*Figure 94*).

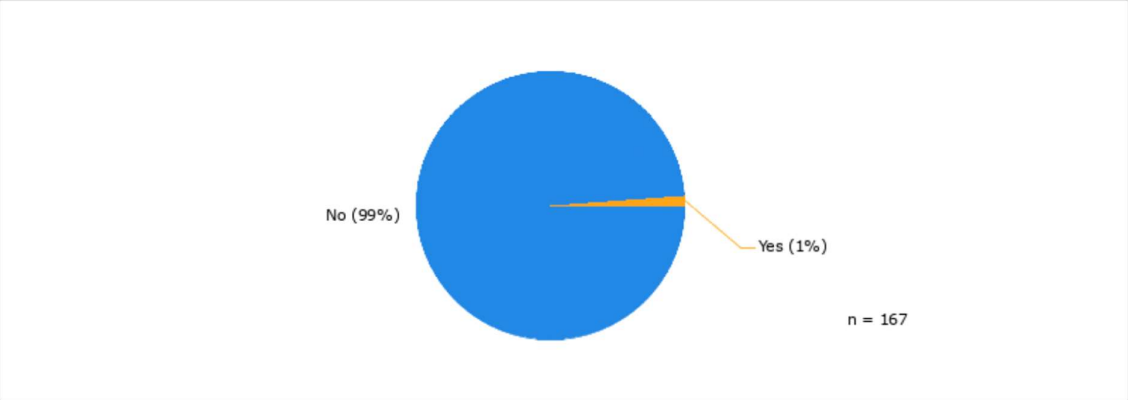

Figure 93: Excluding the child from an unfavourable environment – preliminary proceedings

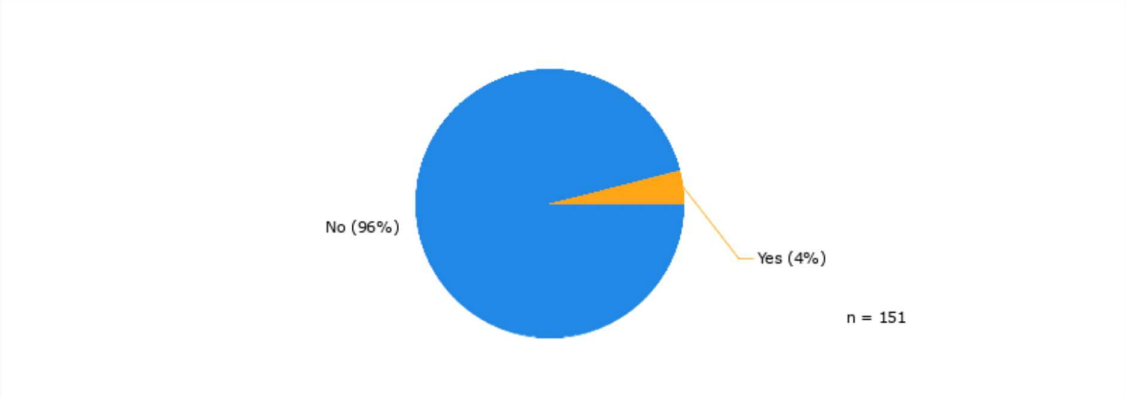

Figure 94: Excluding the child from an adverse environment – panel session or main hearing

A measure implying the child's removal from their home environment should be used as a last resort and only in the child's best interests. Therefore, the small number of removals in the sample is not surprising. However, the reason why removing a child from an unfavourable environment increased slightly from the preliminary proceedings to the panel session or main hearing should be considered. If the child is experiencing adverse circumstances, the court should impose this measure as soon as possible, so in the earlier stages of the criminal proceedings, more often than later.

In the sample, perhaps adverse circumstances emerged after the preliminary proceedings had ended. As judicial assistants, rather than judges, run preliminary proceedings, judges might not always find out about the child's need until the panel session or main hearing. Moreover, courts might rarely decide to remove the child from their home environment since a diagnostic centre, as predicted by Article 471 of the ZKP, has never existed. When the courts in the sample chose this measure, they directed only 33% of children to a transit home and 67% to educational institutions or the correctional home (*Figure 95*), using an option that the ZKP does not predict.

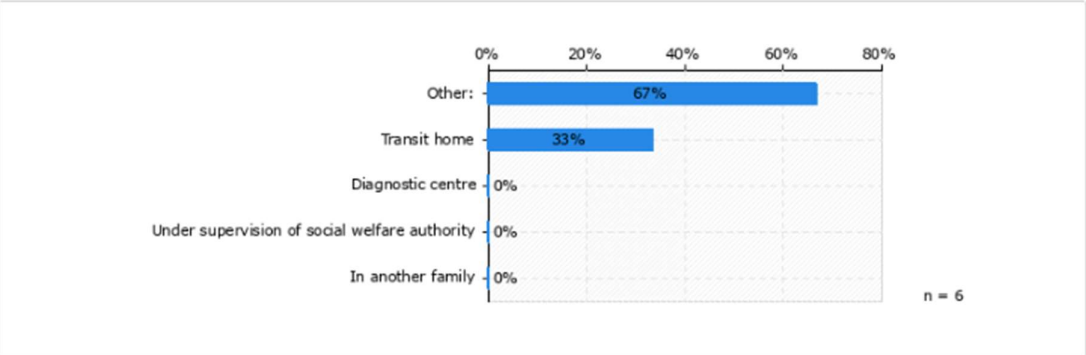

Figure 95: Environment in which the juvenile is temporarily placed

Article 64/I of the draft ZOMSKD states that the child can be temporarily removed from their home environment and placed under the care of social services, another family, or an educational institution. It does not mention the diagnostic centre or transit home as an option for temporary accommodation.

Further research must explore if courts can place children that need to be removed from their home environment and have not yet received a sanction based on a final judicial decision in an educational institution or the correctional home. This option might not be in the child's best interests from a legal and developmental perspective.

It also needs to be examined whether courts can use educational institutions as temporary placements for young people during criminal proceedings against them. Educational institutions might be at full capacity and thus unable to take in additional children. Moreover, they might not necessarily have programmes in place to cater to the needs of a child excluded from their home environment merely for the duration of the criminal proceedings.

Article 64/V of the draft ZOMSKD only mentions the diagnostic centre as an institution where the court can place the juvenile for up to thirty days if they need detailed assessment as part of an expert opinion. However, a diagnostic centre does not exist in Slovenia. The responsible authorities should establish a diagnostic centre and rethink its role.

Ideally, a diagnostic centre would be an independent institution offering a holistic multidisciplinary assessment of the child's complex social, educational, and psychological needs. Some units of the diagnostic centre could also temporarily house young people that need to be excluded from an unfavourable home environment during the criminal proceedings against them. Other divisions could accommodate a specific group of young people that received an educational measure of commitment to an educational institution but have complex needs or comorbidity of difficulties (e.g., social conditions, special educational needs, and personality disorders). The analysis has revealed that educational institutions are sometimes inappropriate for young people with a

comorbidity of emotional and behavioural challenges, as will be described in section 8 of this report.

Last, it is essential to clarify the relationship between expert centres in the ZOOMTVI and diagnostic centres, as predicted by the ZKP and the draft ZOMSKD. According to Article 1 of the ZOOMTVI, the ZOOMTVI – like the ZOMSKD - applies to children, young people, and young adults (18-20) who have received an educational measure of committal to an educational institution under the law governing the treatment of juvenile offenders. Expert centres are educational institutions, but, for now, housing and assessing the young person as part of an expert opinion in a criminal proceeding is not one of their tasks, as established in Article 4 of the ZOOMTVI.

7.3 Pre-trial detention and non-custodial restrictive measures

According to Article 472 of the ZKP, the juvenile judge may impose pre-trial detention upon the young person for three reasons. More specifically, if the young person is:

(1) Hiding, of unknown identity, or might abscond.
(2.) At risk of destroying evidence or influencing witnesses, accomplices, or people helping them conceal the offence.
(3) At risk of reoffending or completing an attempted offence based on the gravity, commission, or circumstances in which they committed the previous offence or their characteristics, previous life choices, living conditions, or other exceptional circumstances (Article 201/I of the ZKP).

Before the prosecution charges the young person, pre-trial detention may last up to a month based on a detention order from the juvenile judge. The juvenile chamber of the same court may extend the pre-trial detention before the charge for two more months when justified. After the prosecution charges the child, pre-trial detention can last up to two years, the same as against adult defendants.

Based on Article 473 of the ZKP, minors should be detained separately from adults. However, the juvenile court judge may, exceptionally and after obtaining the prison director's opinion, order that a minor be confined together with adults if this is in the child's best interests. The court assesses the child's best interests based on their personality and the case circumstances, paying particular attention to whether the child would be – if not detained together with adults – isolated. In their detention order, the judge must explain why such placement is in the child's best interests.

Based on Articles 451 and 192 of the ZKP, the court may also issue other restrictive measures against the juvenile offender, namely a restraining order or pre-trial house detention, thus having to use pre-trial detention as a last resort.

7.3.1 Type of and reasons for restrictive measures

Courts imposed restrictive measures only in 10% of the judicial cases in the sample: pre-trial detention in 7%, restraining orders in 2%, and pre-trial house detention in 1% (*Figure 96*). In cases of pre-trial detention, they decided to use the measure due to the young person's flight risk in two cases. In nine cases, the reason for pre-trail detention was the youth's risk of reoffending.

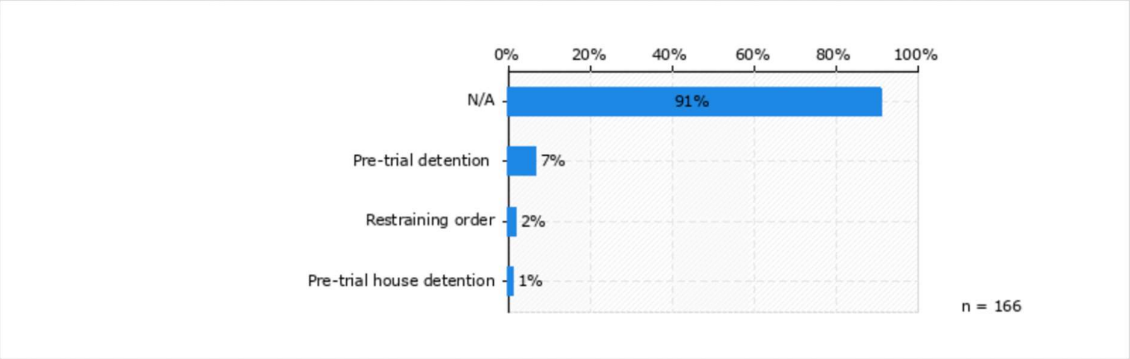

Figure 96: Type of imposed restrictive measure

In their decision-making, courts should evaluate the reasons for pre-trial detention or another restrictive measure and carefully examine the young person's personal and familial circumstances. In one of the inspected cases, the court imposed pre-trial house detention. However, they did not adequately explore the juvenile's family situation. The young person's poor relationship with their stepfather was a risk factor in their offending behaviour, so they lived away from the family home. The court imposed pre-trial house detention at the young person's family home. As a result of a dispute at the family home during the pre-trial house detention, the child assaulted their stepfather. Ultimately, the court imposed pre-trial detention.

7.3.2 Duration of pre-trial detention and using it as a measure of last resort

Courts used pre-trial detention as a last resort in the inspected case files. In 91%, the judicial detention orders entailed explicit references to using pre-trial detention after carefully considering why other, less restrictive measures were inappropriate (*Figure 97*). In 75% of cases, the detention orders also included references to the minimum duration of the pre-trial detention (*Figure 98*). The pre-trial detentions imposed in the inspected judicial case files lasted 30-90 days in 36%, 90-180 days in 36%, 15-30 days in 18%, and more than 180 days in 9% of cases (*Figure 99*).

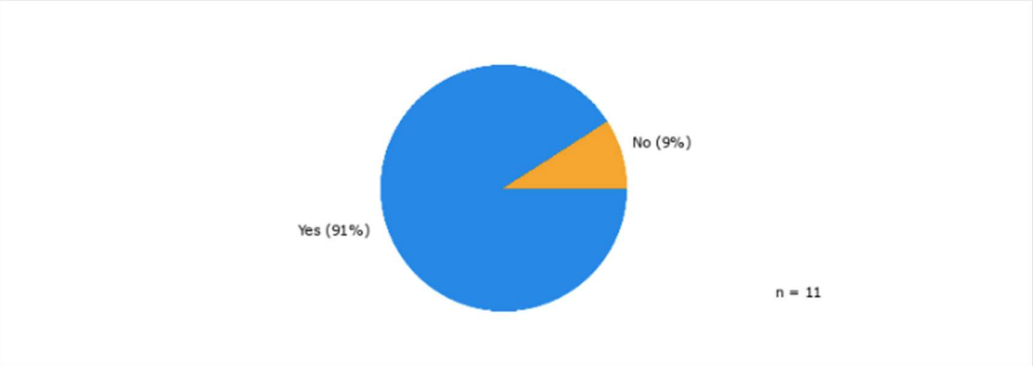

Figure 97: References in detention orders to pre-trial detention used as a last resort

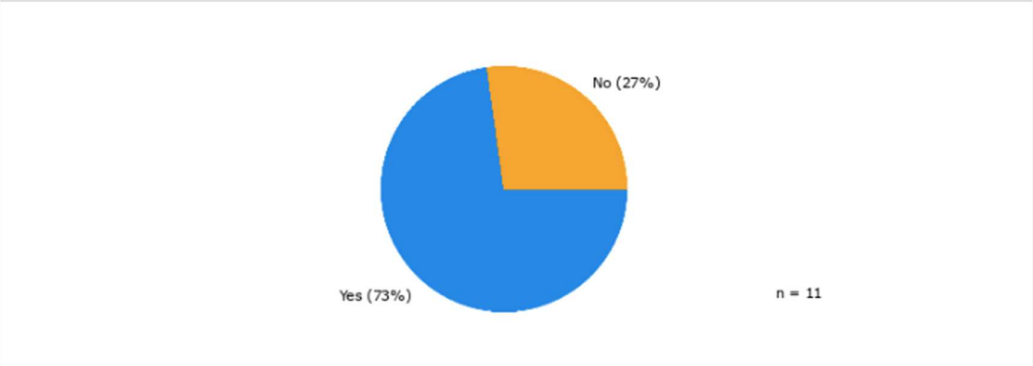

Figure 98: References in detention orders to the minimal duration of pre-trial detention

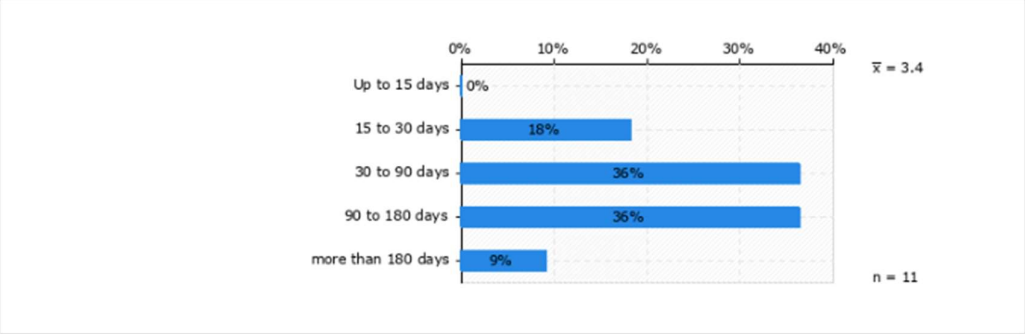

Figure 99: Duration of pre-trial detention

The analysis revealed that the sample's courts rarely used pre-trial detention. When they did, they adequately explained and justified their decisions. To assess if courts used pre-trial detention for young people as a last resort, even compared to adult offenders, it would have to be inspected how often pre-trial detention was imposed and upheld against adult offenders in the same time frame. This information was unavailable. However, future research can compare pre-trial detention in adults and young people.

Attempts of the draft ZOMSKD to ensure pre-trial detention will be further used as a last resort in juvenile criminal cases are welcome. Under Article 65/VI of the draft ZOMSKD, courts can impose juvenile pre-trial detention for a maximum of 6 months rather than two years, as allowed under the current ZKP.

Also, under Article 432/I of the ZKP, young people are disadvantaged compared to adult offenders when it comes to conditions for pre-trial detention in more and less serious offences. For children, the same conditions (i.e., those that apply only to more serious offences when it comes to adult offenders) apply in more and less serious offences, which is unjustified given the exceptional nature of pre-trial detention against children. Article 65 of the draft ZOMSKD distinguishes the grounds for detention according to the gravity of the offence. Article 65/I of the draft ZOMSKD states pre-trial detention conditions for offences punishable by imprisonment of more than three years, while Article 65/II states pre-trial detention conditions for offences punishable by imprisonment of three years or less.

7.3.3 Placing the young person in pre-trial detention with other children and/or adults

In the sample of cases where courts imposed pre-trial detention, courts placed 64% of young people in pre-trial detention with adults and only 18% with other children. In 18% of cases, the information about the young person's placement was unknown (*Figure 100*).

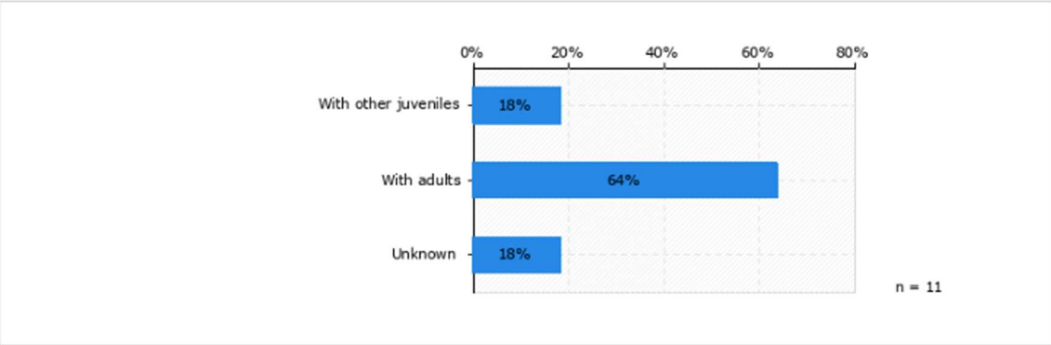

Figure 100: Young person's placement in pre-trial detention

In Slovenia, there is no pre-trial detention facility for juveniles only. According to the director of the juvenile prison, interviewed for the national Research and Gap Analysis, Output 1, developed in the framework of this project, juvenile pre-trial detention is rarely imposed. When it is, children are often detained together with adults, so that they are not isolated. According to the juvenile prison director, the prison administration ensures the placement of the juvenile with adults is in the child's best interests by assessing the adult detainees' characteristics (e.g., age, type of committed offence, personality, etc.) and informing the court about them. While there was no reason not to believe the director of the juvenile prison, there was a lack of information about the checks that he described in the inspected case files.

In the sample, only 29% of case files where the court imposed juvenile pre-trial detention contained evidence that the prison administration suggested detaining the juvenile with adults (*Figure 101*). None of these case files entailed the prison administration's opinion of why placing the young person with adults is in the child's best interests or how the adult detainees' characteristics benefit the youth (*Figure 102*). 71% of the case files entailed the judge's explicit decision to detain the young person together with adults (*Figure 103*). However, these judicial decisions did not specifically justify why detaining the young person with adults is in the child's best interests.

Figure 101: Prison administration's suggestion to detain the young person with adults

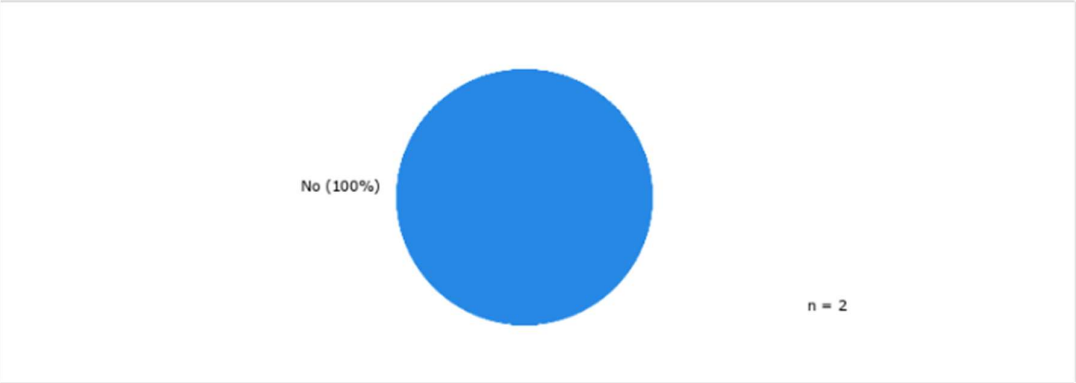

Figure 102: Prison administration's explanation of why detaining the juvenile with adults is in the child's best interest

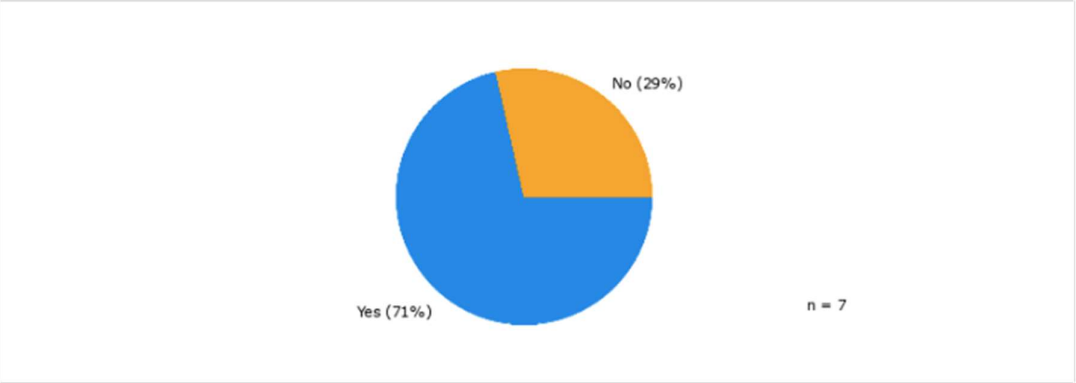

Figure 103: The juvenile judge's decision to detain the juvenile with adults

It must be emphasised that the absolute number of inspected case files where courts imposed juvenile pre-trial detention was small, so the results in this report section might not be conclusive. Moreover, the ZKP in force between 2015 and 2019 did not require the juvenile judge to obtain the prison administration's opinion about the appropriateness of detaining the juvenile with adults or to issue a written judicial decision about such placement. The lack of information about these issues in the inspected case files might reflect this.

The need for the judge to issue a written decision about detaining the young person with adults after they've obtained the opinion of the prison administration is now part of Article 473 of the ZKP-O and Article 67 of the draft ZOMSKD. This is a welcome and necessary normative change. In the long run, however, imposing even fewer juvenile pre-trial detentions should be encouraged. In addition, children should not be detained together with adults.

At the roundtable held on 8 December 2022, judges deemed pre-trial detention sometimes the only possible restrictive measure that courts can use against the child. Nevertheless, they also spoke about the psychological distress pre-trial detention caused to the detained children and young people. In the difficult situations where judges deem pre-trial detention absolutely necessary, they are forced to choose between two options that are both far from ideal: detaining the young person with adults or detaining them in isolation. This dire situation is, however, mostly a result of the low absolute numbers of juvenile pre-trial detainees, which can only be deemed a good thing. But it also indicates that solutions to the current difficulties must be sought elsewhere.

Article 66 of the draft ZOMSKD offers more alternatives to pre-trial detention than the current ZKP. In Article 66/III, the draft ZOMSKD explicitly states that when pre-trial detention is

unnecessary, the court can also place the young person in an educational institution as an alternative.

In the future, placing young people in detention in educational institutions where they reside with other children should be encouraged. However, further research must investigate whether educational institutions have the capacity and safety measures necessary to detain young people. More specifically, educational institutions might be at full capacity. They might be unable to house children in alternatives to pre-trial detention, especially if they temporarily accommodate young people removed from their adverse home environments, as established in section 7.2. of this report. Also, educational institutions fall under the competence of the Ministry of Education, Science, and Sport, not the Ministry of Justice. Consequently, educational institutions have a semi-open regime and do not employ prison officers. The correctional home, however, falls under the competence of the Ministry of Justice and employs prison officers.

Regardless of whether children will be in pre-trial detention, educational institutions, or correctional homes in the future, judges should visit them regularly, as depriving the young person of their liberty is distressful for them. In the sample, judges saw juveniles in pre-trial detention in only 9% of cases, and this data was unavailable in 36% of cases. In 55%, the judges did not visit the juvenile in pre-trial detention (*Figure 104*), which is unsatisfactory. However, the judges might have seen the child in pre-trial detention but did not indicate the visit in the case file. Maybe another judicial official, e.g., the court-employed social worker, visited the detained young people on the judge's behalf. The specialisation of youth courts and judges would allow the judges more time for one-on-one contact with each young detainee.

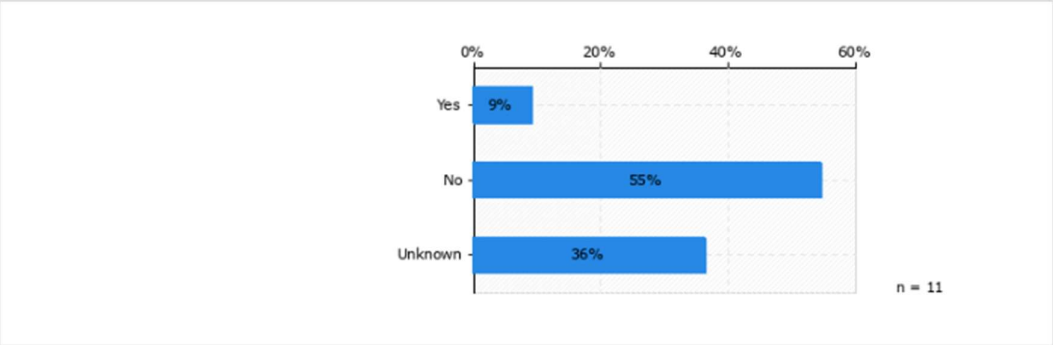

Figure 104: The juvenile judge visits the young person in pre-trial detention

7.4 The child's right to legal representation

According to Article 454 of the ZKP, the young person has the right to legal representation throughout the criminal proceedings against them. Apart from situations warranting mandatory defence in adult criminal cases, the child must have legal representation from the beginning of the preliminary proceedings against them for an offence punishable by imprisonment of more than three years. In cases of other criminal offences, the young person must have legal representation if the juvenile judge deems it necessary based on the child's understanding, cognitive capacities, and characteristics, as well as the complexity of the case and the severity of the sanction the court is likely to impose. The child must also have legal representation if they are detained.

In cases of mandatory legal representation, the young person can nominate a lawyer. If they do not, the court must appoint a lawyer *ex officio*.

7.4.1. Prosecutorial level

In the cases inspected at the prosecutorial level, only 3% of young people had a legal representative (*Figure 105*). In the five cases they did, the defence was not mandatory, and the young people chose their lawyers (*Figure 106*). This finding was expected as most offences in which the prosecution diverts young people are less severe, so legal representation is not mandatory.

Figure 105: Legal representation – prosecutorial level

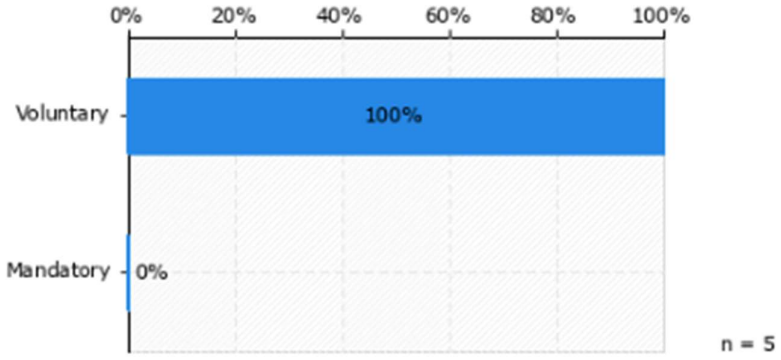

Figure 106: Type of legal representation – prosecutorial level

7.4.2. Judicial level

At the judicial level, young people had a legal representative in 65% of the inspected case files (*Figure 107*). In 88% of those, young people had mandatory legal representatives appointed by the court. Only 12% of young people had voluntary legal representation (*Figure 108*). A higher percentage of mandatory court-appointed defence lawyers is unsurprising since juvenile courts deal with more serious offences, so legal representation is more likely to be mandatory. Also, several families cannot afford a lawyer.

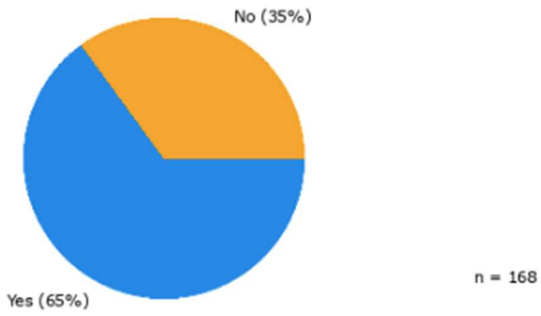

Figure 107: Legal representation – judicial level

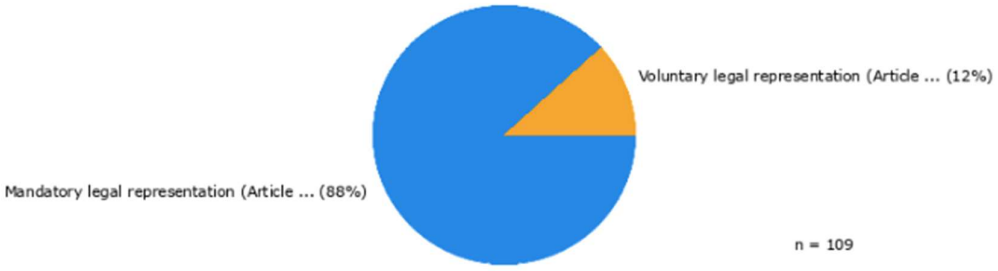

Figure 106: Type of legal representation – prosecutorial level

The defence can be mandatory for two reasons; the gravity of the offence or because the young person needs legal assistance due to their understanding, cognitive capacities, characteristics, the complexity of the case, or the severity of the likely sanction. If the defence is mandatory, the court must secure legal representation for the entire criminal proceedings from the beginning of the preliminary proceeding (or even before for some investigative acts) (Article 454 of the ZKP and Article 41 of the draft ZOMSKD). Courts should respect this legal requirement. However, some courts in the sample might not have believed the young person needed a legal representative until the last session of the main hearing.

In the inspected judicial case files, there were worrying breaches of the child's right to legal representation. In some criminal proceedings where legal representation was mandatory, the juvenile judges did not nominate a defence lawyer for the juvenile at the beginning of the preliminary proceedings as required under Article 454 of the ZKP. Instead, they did so at one of the main hearing sessions. Before, they had questioned the juvenile without a lawyer in the preliminary proceeding and a previous main hearing session. In other cases, the court nominated a mandatory defence lawyer, but it conducted some sessions of the main hearing in their absence. Also, although the court held a session that evaluated new evidence, the transcripts said they held a panel session and not a hearing.

Article 478/V of the ZKP, which was in force between 2015 and 2019, allowed courts to hold a panel session without the young person's defence counsel if they informed the counsel about the session but the counsel decided not to attend. However, procedural criminal lawyers have criticised

such a rigid understanding of Article 478/V of the ZKP and perceived holding the session without the young person's defence counsel as a breach of their due process rights (Horvat 2004). This is a valid critique, and the changes introduced by Articles 478/V of the ZKP-O and 78/I of the draft ZOMSKD requiring the court to invite – rather than merely informing – the prosecutor, juvenile, and their defence lawyer to the panel session or main hearing are welcome. According to the ZKP-O, the court cannot hold a panel session or main hearing without the child's lawyer.

Sometimes, the courts in the sample nominated a mandatory defence lawyer merely for the last session of the main hearing, where they imposed a sanction against the young person. Before the last session of the main hearing, the young person gave statements without having a defence lawyer. Also, the defence lawyer could not challenge any other evidence explored by the court in the preliminary proceeding and main hearing.

Some young people in the judicial sample were recidivists in multiple criminal proceedings. Nevertheless, they had different court-appointed defence lawyers in each proceeding. Having two or more legal representatives is not in the child's best interest as – in juvenile criminal cases – guarding the child's due process rights and assisting with legal questions is only a part of the defence's lawyer's task. Other parts entail guiding and helping the juvenile with their development and desistance from crime. For clarity and rapport, the child should thus have one defence lawyer to build a trusting relationship.

Article 41 of the draft ZOMSKD states that if a child is in multiple proceedings, they should have the same defence lawyer, preferably a specialised one. Such a normative change is welcome, and courts of different districts should diligently inform one another of criminal proceedings against the same young person.

At the roundtable on 8 December 2022, judges explained that sometimes, defence lawyers in juvenile criminal cases focus too much on the child's due process rights and less on their development. Specialising defence lawyers for young offenders, as predicted by Articles 452b of the ZKP-O and 41 of the draft ZOMSKD, is pivotal for respecting the child's due process right and contributing to their development and rehabilitation.

7.5 The child's right to be heard

According to Article 12 of the Convention on the Rights of the Child (CRC), a child that can form their opinion can freely express their views in all matters affecting them. Responsible institutions – including the prosecution and the judiciary – must acknowledge the young person's perceptions according to age and maturity. The child should be able to speak in any judicial and administrative proceeding affecting them, either directly or through a representative or appropriate body. The child should also be involved in decision-making about anything that affects them.

Although criminological research cannot analyse all the aspects of the child's right to be heard through a case law analysis, this right was investigated through inspecting the following parameters:

(1.) The child's knowledge about the charges against them, their right to participate in the proceedings, and express their opinion about the offence and other issues that affect the final decision.
(2.) The presence and assistance of parents, guardians, or other people the child trusts in the proceedings against them.

7.5.1. Prosecutorial level

7.5.1.1. The child's knowledge about the charges and their participation in the proceedings

The child knew about the charges against them in all the inspected dismissals after successful mediation or deferred prosecution. In mediation cases, the prosecution obtained written consent from the young person and the victim for mediation according to Articles 161.a/III and 466/I and II of the ZKP (*Figure 107*). The mediators held meetings with the young people and the victims, and the prosecution dismissed the charges based on the children's successful completion of their tasks.

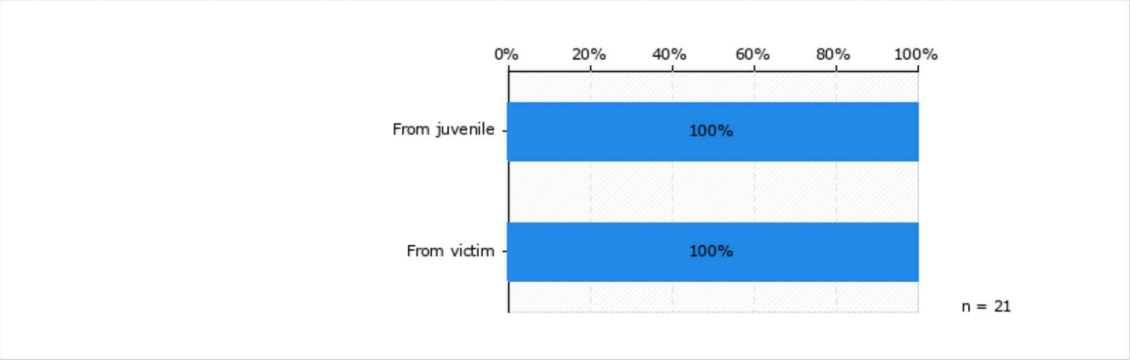

Figure 107: Prosecutor obtains written consent for mediation from young offender and victim

The prosecution dismissed the charges in all the inspected cases of deferred prosecution. It was thus inferred that the child paid the damages or contribution to a voluntary organisation or completed the imposed amount of voluntary work in dialogue with the prosecution.

In some dismissals based on the expediency principle or due to the minor significance of the offence, neither the police nor the prosecution informed the juvenile of the charges against them. Such practices are not in the child's best interest, although the prosecution diverts the case, and the child avoids criminalisation.

According to Articles 452.c/II of the ZKP-O and 7/III of the draft ZOMSKD, any competent authority – including the police and the prosecution – must inform the child of the charges against them. They should also inform the young person about their rights to be accompanied by a parent or guardian, have a lawyer, and have privacy. The authorities should also tell the child's parents or guardian about the offence they suspect the young person committed.

In some of the case files examined at the prosecutorial level, the prosecution did not serve their final decision to dismiss the case to the juvenile or their parents. The prosecution only informed the police. The child should know about the police's charges against them and if, when, and why the prosecution dismisses them. Notifying a child and/or their parents about the reasons for the dismissal is also vital since different dismissals are qualitatively different. Dismissal due to the minor significance of the offence or not charging the child because the prosecution estimates they had not committed the offence might be an essential distinction for the child and/or their parents.

7.5.1.2. The presence and assistance of parents, guardians, or another trusted person

In the sample's prosecutorial cases, parents were present during 59% of proceedings where the prosecution diverted the young person based on successful mediation (*Figure 108*). In cases dismissed due to the expediency principle, the minor significance of the offence, or after

successfully deferred prosecution, no information was encountered about the presence and assistance of parents at the prosecutorial level. Perhaps the prosecution dismisses the case without meeting the child and/or their parent. Maybe it simply does not indicate this in the case files.

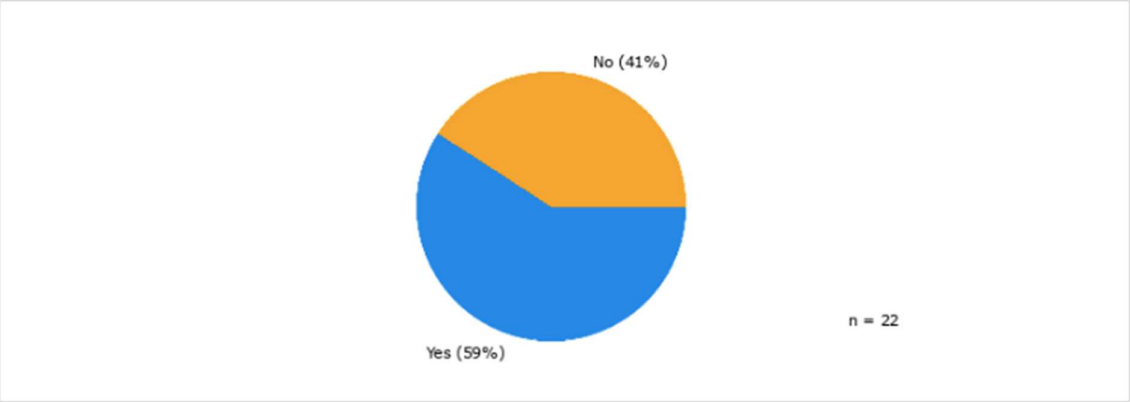

Figure 108: Presence of parents and parental assistance during mediation

Articles 452.c/I of the ZKP-O and 7/I of the ZOMSKD explicitly give young people the right to the presence of their parents or guardians at any stage of the criminal proceedings against them. If the presence of parents or guardians is not in the child's best interest or the authorities cannot contact them, children can nominate another trusted person (e.g., youth or social worker, teacher, older sibling, etc.) to accompany them. If the authorities believe the person appointed by the child will not act in the young person's best interest, they nominate a trusted person for the child *ex officio*.

This normative change is welcome and will hopefully contribute to the prosecution respecting the child's right to be heard and have a parent present in all proceedings against them, including those where it dismisses the charges. Articles 452.c/V of the ZKP-O and 7/III of the draft ZOMSKD instruct the police, prosecution, and court to inform the child, their parents, or guardian about their rights under the ZKP-O or the ZOMSKD. They should also enable the young person and their parents or guardians to exercise these rights – including the child's right to be heard and assisted by their parents - effectively. The authorities should inform the young person about their rights orally and in writing and indicate this in police, prosecutorial, and judicial case files.

The report's section 7.1.1. explains that no information was found in the prosecutorial case files that the prosecutor had requested information about the young person and their circumstances from the child, their parents or invited the family, social workers, or other experts to a meeting where they would discuss this.

7.5.2. Judicial level

7.5.2.1. The child's knowledge about the charges and their participation in the proceedings

As established in sections 7.1.2.1. and 7.1.2.2. of this report, courts interviewed the juvenile in 92% of cases. As part of the interviews, the courts established the facts of the case and routinely gathered information about the young person's family circumstances. In the panel session or main hearing, the judge interviewed the young person in 88% of cases.

The data gathered on the child's right to be heard, as assessed through the child knowing about what they are charged with and being able to respond to the charges in an interview, approximately reflected the above data. The courts generally respected the child's right to be heard in the

preliminary proceedings (*Figure 109*) and the panel sessions or main hearings (*Figure 110)*, but less so at later stages: sessions regarding the legal remedy (*Figure 111*), session to change or terminate the educational measure (*Figure 112*). However, it should be noted that the court should interview every young offender during preliminary proceedings and/or the panel session or main hearing.

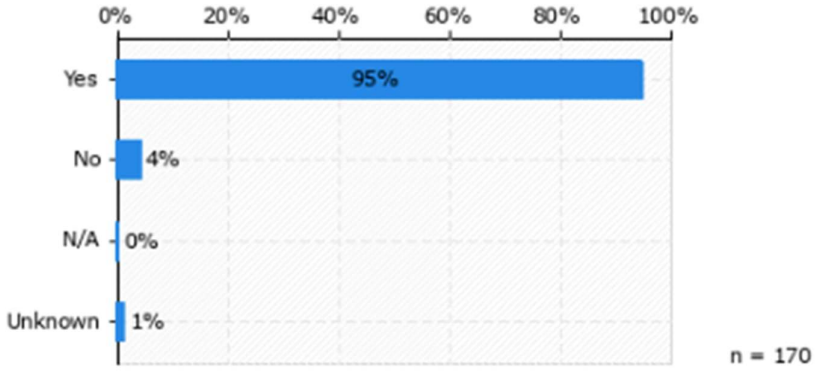

Figure 109: The child's right to be heard in the preliminary proceedings

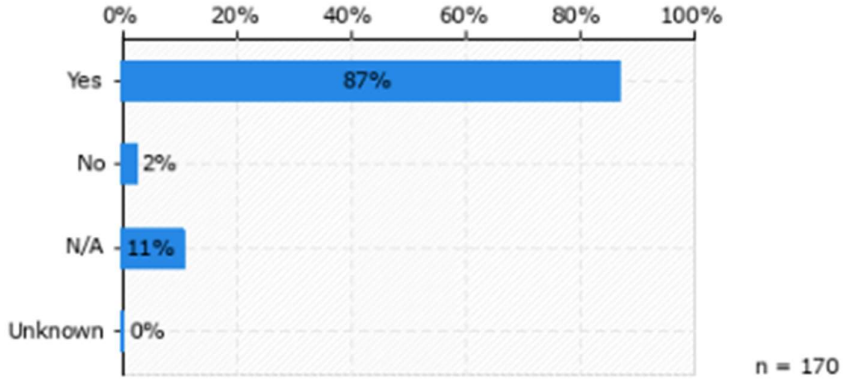

Figure 110: The child's right to be heard at the panel session or main hearing

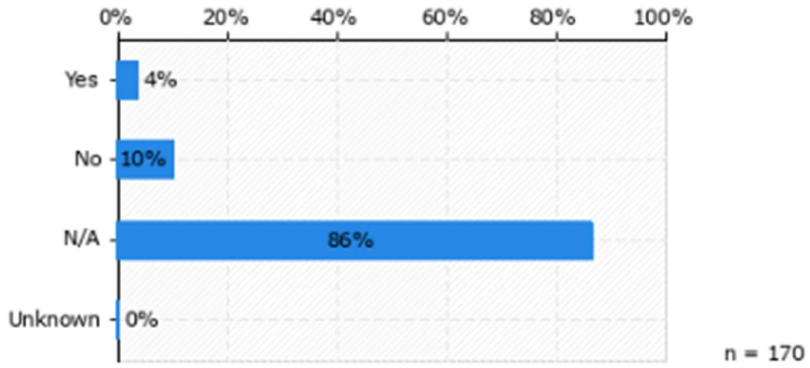

Figure 111: The child's right to be heard in proceedings regarding the legal remedy

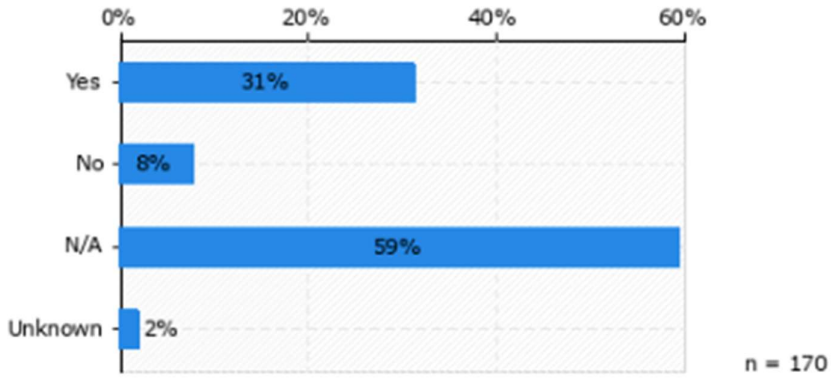

Figure 112: The child's right to be heard in proceedings regarding the change or termination of educational measure

Analysing the judicial case files revealed that courts sometimes do not hold a closing session before terminating the educational measure, especially in supervision by social services or instructions and prohibitions. Moreover, courts do not always issue a final decision to end the execution of an educational measure officially but merely send a notice about the end of the educational measure to the Ministry of Justice. Therefore, fewer young people than educational measures imposed are heard at the closing sessions.

Such practices are worrying and contrary to the child's best interest. Section 5.1.2. of this report established that 92% of the imposed education measures in Slovenia are non-residential, most of which are: supervision by social services and instructions and prohibitions. Not holding a closing session or inviting the juvenile to express their opinion about the educational measure and the end of proceedings against them reduces the educational impact of criminal proceedings and sanctions against young people. Suppose the young person has respected their obligations under the imposed educational measure. In that case, the court should acknowledge their progress and encourage their further desistance from crime by holding an in-person closing session and issuing a written decision, officially terminating the educational measure. It is even more concerning when courts do not hold closing sessions in cases where it is clear from the social services reports that the minor has not complied with their obligations under the imposed educational measure.

As the interested parties appealed against the court's decisions only in 9% of cases, the Court of Appeal rarely heard the child in proceedings regarding legal remedies. Also, according to Article 378 of the ZKP, the Court of Appeal only invites the juvenile to their session if they deem it worthwhile. Article 83 of the draft ZOMSKD offers a welcome normative change by establishing different rules about inviting young people to an appeal hearing. When the first-instance court imposes a residential educational measure, a safety measure of compulsory psychiatric treatment and care in a psychiatric institution, or juvenile imprisonment, the Court of Appeal must invite the child to their hearing.

7.5.2.2. The presence and assistance of parents, guardians, or another trusted person

As established in sections 7.1.2.1. and 7.1.2.2. of this report, in 95% of cases, courts – through a juvenile judge, judicial assistant, or a court-employed social worker – interviewed the young person's parents in the preliminary proceedings. In 75% of cases, the judge also questioned the young person's parents in the panel session or main hearing. However, the young person's parents, guardians, or other trusted persons were present when the court interviewed the child in only 31% of cases during the preliminary proceedings (*Figure 113*) and 78% in the panel session or main hearing (*Figure 114*).

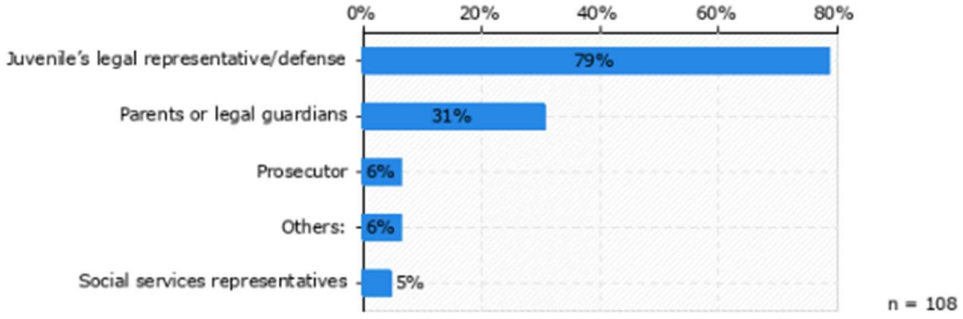

Figure 113: The presence of parties during the preliminary proceedings

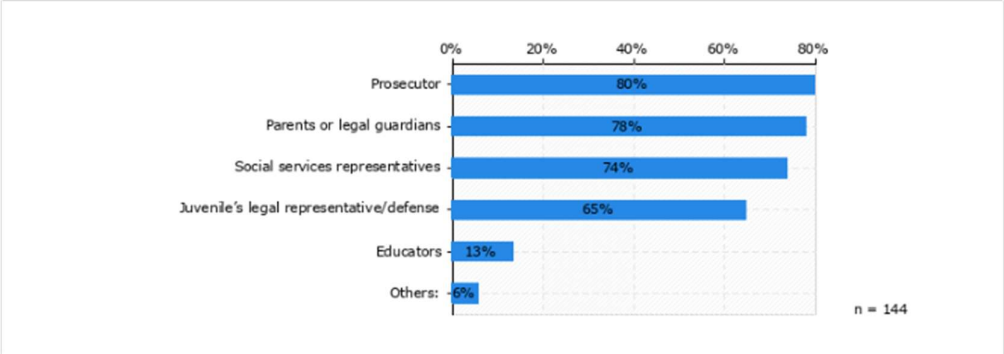

Figure 114: The presence of parties during the panel session or main hearing

As stated in section 7.5.1.2. of this report, Articles 452.c of the ZKP-O and 7 of the draft ZOMSKD now explicitly give the child the right to be accompanied by their parent, guardian, or another trusted person during the criminal proceedings against them. Suppose the child does not nominate a suitable adult, or the court estimates the nomination is not in the child's best interest.

In that case, the court should appoint an appropriate adult or ask social services to do that as soon as possible.

Hopefully, this normative amendment will contribute to the courts diligently respecting the child's right to be heard and other due process rights formally and substantively. This research could not, for example, determine to what extent the diverted young people freely expressed their views in all matters affecting them, including the choice of tasks as part of deferred prosecution. Similarly, it remains unknown whether judges talked to young people at length about what sanction they would find most beneficial as part of the youth justice intervention. Apart from enabling the reading of the transcripts, a case file analysis does not allow a nuanced examination of the interactions between young people in trouble with the law and the officials they are in contact with 'on the ground'. Further youth-involved research (interviews with children, participant observation of police, prosecutorial, and judicial proceedings) is needed to draw more precise conclusions.

Proceedings against young people in trouble with the law – including diversion at the prosecutorial level – should be educational and help young people desist from further criminal behaviour. Respecting the child's right to be heard and other due process rights is essential at all procedural stages to acknowledge young people as subjects rather than objects of the proceedings against them. In the analysis, some questionable practices or breaches of procedural rights were encountered that need to be examined critically. The next section of this report is dedicated to this task.

7.6 The respect and breaches of other due process rights

7.6.1. Judicial level - The preliminary proceedings

In some judicial case files in the sample, the prosecutor was not present during the preliminary proceedings, nor did they attend all sessions of the main hearing. The absence of prosecutors in the preliminary proceedings is not in the child's best interest, although it is formally allowed under Article 470/II of the ZKP. It reduces the transparency and educational value of criminal proceedings against young people and does not allow the child to challenge the charges against them directly. These practices should be thought through and the specialisation of juvenile criminal prosecutors that could attend every judicial session against the child should be considered.

Often, merely the judicial assistant running the preliminary proceedings and the court typist were present at the preliminary proceedings in the inspected judicial case files. Further, juvenile judges conducted no preliminary proceedings against the children in the sample, except interviewing the young people that were in pre-trial detention. While such practices are possible under the ZKP, Article 44 of the draft ZOMSKD states that the judge must run preliminary proceedings.

Such a normative change is reasonable and welcome. It is beneficial for the young person to have regular contact with the same official throughout the judicial proceedings against them (i.e., not two different judges[30] and not the judicial assistant in the preliminary proceeding and the judge at the panel session or main hearing). Also, the judge must get to know the young person thoroughly and directly to impose the most appropriate sanction against them. The juvenile criminal procedure

[30] According to Article 44 of the draft ZOMSKD, the judge who conducted the preliminary proceedings must be part of the panel that decides at panel session or main hearing, unless a prosecutor files a motion for the court to impose a criminal punishment or has decided to initiate proceedings under Articles 63/III or 68 of the ZKP, or the juvenile chamber of the Court of Appeal has decided, at the request of the prosecutor based on Article 69/III of the ZKP, to institute proceedings against the young person.

also loses its educational function and can be lengthy if the officials keep shifting. A judge who has not led the preliminary proceedings will usually have to question the child and interview their parents again at the session or main hearing to obtain information about the young person's development. Also, duplication of interviews can prolong criminal proceedings and emotionally drain and traumatise the young offender.

Further, the welcome amendment in Article 43/VI of the draft ZOMSKD states that the same juvenile judge should run all criminal proceedings against the young person at the same District Court. This normative solution does not breach the principle of impartiality and natural justice; such a judge is appointed randomly at the first charge against a young person. Also, Article 43/VI of the draft ZOMSKD allows the judge to exclude themselves from decision-making should they deem they cannot conduct the proceedings efficiently and impartially.

At the roundtable on 8 December 2022, the prosecutors explained that the same prosecutor tries to deal with the same young person and all their cases. Ensuring this prosecutor will partake in the preliminary proceedings and/or all the panel sessions or main hearings is sometimes impossible. Such organisational problems occur due to the understaffing at some, especially bigger, district prosecutor's offices (e.g., Ljubljana and Maribor). The prosecutors at the roundtable clarified that they try to ensure at least the same prosecutor is always attending sessions if a young person is in pre-trial detention.

The judges at the roundtable exposed that they would like to run preliminary proceedings against young people but cannot as the courts organise their work poorly. Judges are too busy with adult criminal cases, so they cannot dedicate enough time to juvenile criminal cases. It is not in the child's best interest for judges to be working on adult and juvenile criminal cases. Juvenile criminal courts should be specialised independent bodies or departments of existing District Courts.

7.6.2. Judicial level - The panel session or main hearing

As part of this research, information about the type of session the court held in every judicial case was also gathered. The type was classified as a panel session or main hearing according to what the court would hold based on the ZKP according to the session's content, not how the court called it in its transcript. Court transcripts sometimes said the court held a panel session when it held a main hearing as it collected new evidence. Based on the content of the sessions, the courts in the sample held a main hearing in 93% of cases (*Figure 115*).

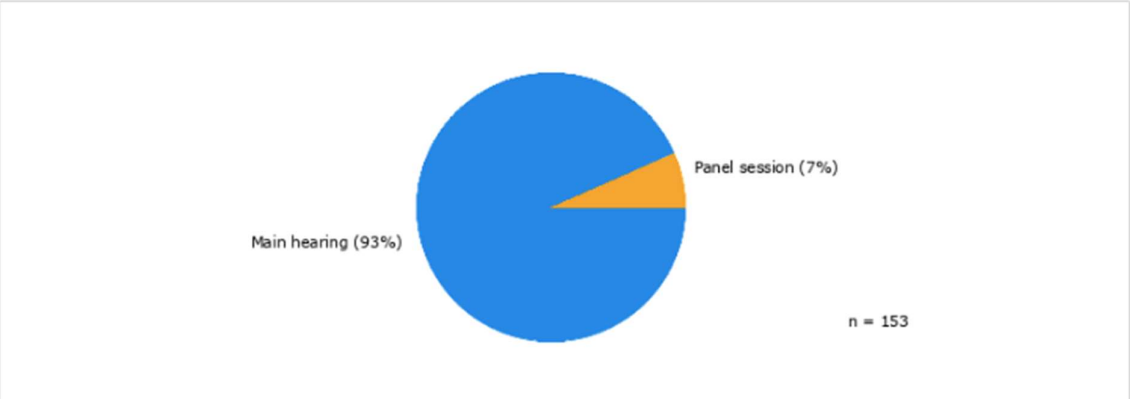

Figure 115: Type of session

The courts must distinguish adequately between the circumstances in which they need to hold the main hearing and those in which a panel session is sufficient. According to the established commentary of the ZKP (Horvat 2004: 1010) and case law,[31] the juvenile judge must be familiar with the case in detail before they decide to hold a panel session or main hearing after they have received the prosecution's proposal to impose an educational measure or punishment. The court must hold a main hearing when the prosecutor proposes a residential educational measure or punishment or when the judge anticipates they will impose such sanctions. However, the court must also hold a main hearing if they will likely impose a non-residential educational measure, but they must assess the facts of the case and/or directly examine the evidence (e.g., question the juvenile, their parents, the social worker, the educator, etc.) to do so.

According to Articles 75 of the KZ and 14 of the draft ZOMSKD, the court shall impose a sanction against the child based on their age, mental development, psychological characteristics, inclinations, motives for committing the offence, behaviour after the offence, attitude towards the injured party, reparation, previous upbringing, family environment and living circumstances, the gravity and nature of the offence, recidivism, any other aspects of the young person's personality, and the expected effect of the sanction on the functioning of the child in their social environment.

The court should thus hold a main hearing every time it directly examines evidence about the offence or the young person's circumstances. More specifically, in juvenile criminal cases, evidence about the young person's personal or family circumstances will sometimes decide the court's choice of educational measure. The courts in the sample further interviewed the juvenile at the main hearing in 88%, witnesses in 63%, parents in 75%, and social workers in 73% of cases (section 7.1.2.2. of this report). Courts may have to directly examine this evidence again as a long time passes between the preliminary proceeding and the main hearing. Also, the judge might want to directly examine the evidence at the main hearing since they do not hold the preliminary proceedings. However, in all instances where it directly examines evidence about the offence or the child's circumstances, the court should hold a main hearing, ensuring the young person has the required due process rights and abiding by procedural rules about the necessary presence of parties.

Between 2015 and 2019, when the courts processed the inspected judicial cases, Article 478/V of the ZKP stated that courts must *inform*, not *invite*, the prosecutor, mandatory defence lawyer, and social services, as well as *can inform* the young person and their parents, about the panel session. This normative possibility was criticised in criminal procedural theory (Horvat 2004: 1011). Apart from enabling the court to reach a final decision without having ever seen the child in person, the court could also hold the panel session and reach a final decision without the prosecutor, social services, and the young person's mandatory defence.

In the sample, the courts sometimes held a panel session without the prosecutor, defence lawyer, and/or young person present. In some cases, they also called the main hearing a panel session and therefore bypassed the procedural rules of the ZKP that required all parties to be invited to the main hearing that they could thus not – except for one exception – hold in their absence.

According to Articles 478 of the ZKP-O and 78 of the draft ZOMSKD, the court must *invite* the child, prosecutor, and defence lawyer to the panel session. All these parties must attend the panel session unless the court has already questioned the young person and the judge assesses whether

[31] For example, Court of Appeal in Ljubljana, case II Kp 3552/2015: http://www.sodnapraksa.si/?q=id:2015081111404526&database%5bIESP%5d=IESP&_submit=išči&rowsPerPage=20&page=0&id=2015081111404526 [Accessed 21 February 2023].

they can impose the sanction in their absence. The court must justify its decision to hold the panel session in the child's absence in their final decision. The court must *notify* the child's parents and social services about the panel session, but their attendance is not mandatory.

At the roundtable with judges on 8 December 2022, the judges had different opinions about whether the young person should always be present at the panel session. Some believed the child's absence should not prevent the court from holding a session. According to others, the young person's absence signals that they will likely not cooperate with the imposed sanction. Most judges agreed that the court should be able to hold a panel session in the child's absence if they decide to dismiss the case.

Based on Articles 479 of the ZKP-O and 79 of the draft ZOMSKD, the courts cannot hold main hearings without the young person, their defence lawyer, or the prosecutor. The court also must invite to the main hearing social services and the juvenile's parents; if they do not attend, the court can still hold the main hearing.

The normative change introduced by the ZKP-O and ZOMSKD concerning panel sessions and main hearings is welcome. The amendment better protects the procedural rights of young people and acknowledges them as subjects rather than objects of criminal proceedings against them. Suppose the responsible authorities establish specialised youth courts or youth justice divisions. In that case, all court hearings – panel sessions or main hearings – should be conducted as multidisciplinary sessions, always bringing together the young person and all the relevant people in their life.

7.6.3. Judicial level - Other

The case law analysis revealed that courts sometimes make mistakes in using substantive criminal law. There were also inconsistencies or breaches in the child's right to be heard and the due process rights described above. In addition, other procedural violations were inspected that indicate courts sometimes do not treat juvenile criminal cases seriously enough. Two examples will be used to demonstrate how.

Example 1

Before the criminal proceedings against the young person started, the child and their mother moved from Slovenia to another European country. The court did not interview the child or their mother as part of the preliminary proceedings. Social services informed the court that the child and their mother most likely reside in the capital of a European country. The court instructed the social services to contact the Slovenian embassy in that European country. The embassy invited the juvenile and their mother to the embassy to answer some questions about their family circumstances. Upon the social services' request, the embassy invited the child and their mother to their headquarters for a meeting. At the meeting, the embassy established that the child's mother is unemployed and is learning the language of the foreign country she is living in with her child while the child is trying to finish their primary school education. They do not intend to return to Slovenia. The prosecutor and the court deemed the information provided to the social services by the Slovenian embassy as sufficient evidence to dismiss the case based on the expediency principle. In this case, a judicial body never questioned the child or their mother in Slovenia or the other European country. The child committed a violent robbery, where they kicked the victim from a scooter, took it, and drove towards the victim while the victim was lying on the ground before driving off.

Example 2

Two young offenders were charged with raping a young victim. The first instance court found the young offenders committed the offence and imposed upon both a non-residential educational measure of instructions and prohibitions. The prosecution appealed the first instance court's decision. The Court of Appeal annulled the decision of the first instance court and referred the case back to the court for a retrial due to the inappropriateness of the previously

imposed sanction. In the new proceeding, the victim's lawyer told the court they did not want the victim to go through another proceeding. The court dismissed the case, although the criminal offence of rape is prosecuted ex officio, not at the request of the injured party. The prosecutor did not file an appeal, and the dismissal became final.

Although the procedural breaches described in the two examples were severe, they were exceptions rather than the rule. Such violations might also happen in criminal proceedings against adults, but adult criminal cases were not inspected as part of this project. Both would need to be compared to establish if breaches of due process rights are more frequent in juvenile than adult criminal cases. This comparison was beyond the scope of the research.

7.7. Legal remedies

According to Article 485 of the ZKP, anyone who can appeal against a judicial decision in criminal proceedings against adults can appeal in juvenile criminal proceedings against a judgment imposing a sentence or a decision imposing an educational measure or dismissing the case. In juvenile criminal proceedings, the young person's defence counsel, prosecutor, spouse, relative in the direct line, adoptive parent, guardian, sibling, and foster parent may also appeal against their will but in their favour.

The frequency and outcomes of appeals in the judicial sample were inspected. It was also examined who most often appealed against the decisions of the first-instance courts and why.

7.7.1. Frequency of appeal

In the sample, appeals against the first-instance courts' decisions were rare. While appeals were filed in 9% of cases on average (*Figure 116*), some districts had only 4% of appeals, while others had six times as many (24%). Exploring the reasons for regional discrepancies was beyond the scope of this research.

The small percentage of appeals filed against first-instance courts' decisions could mean that in juvenile criminal proceedings, all parties are working restoratively and in the child's best interest, thus reaching a decision everybody agrees with. On the other hand, the small number of appeals could be another indicator of how courts do not deal with juvenile criminal cases as seriously as adult criminal cases and more easily tolerate violations of children's due process rights, described in more detail in the previous section of this report. However, for such a conclusion to be definitive, it would have to be analysed how often the interested parties appeal first-instance courts' decisions in adult criminal cases and compare appeals in both.

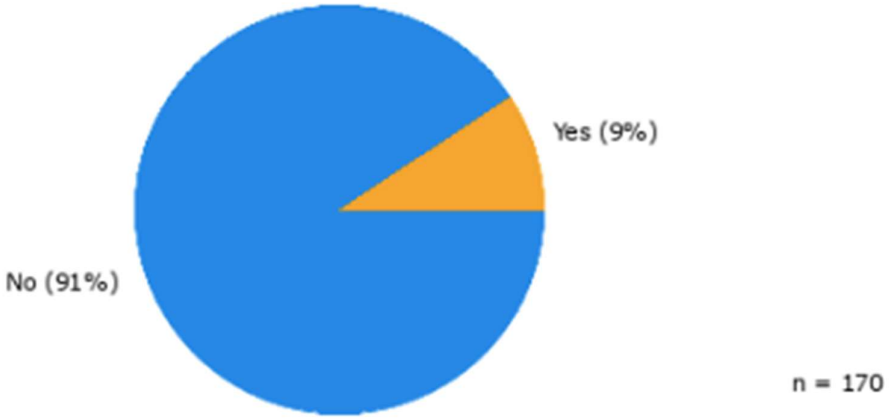

Figure 116: Appeals against first-instance courts' decisions in juvenile criminal cases

7.6.2. Parties, reasons for, and outcomes of appeal

In the sample, defence lawyers filed an appeal in 88%, the young person in 19%, the prosecutor in 6%, and the parents in 6% of cases (*Figure 117*). Several parties sometimes appealed the first-instance court's decision.

According to the ZKP, the parties can appeal due to one, several, or all reasons stated in the ZKP. In the sample, the parties appealed due to erroneous or incomplete findings about the facts of the case in 88%, fundamental violations of the provisions of criminal procedure in 69%, breaches of substantive criminal law in 44%, and the decision about the criminal sanction in 25% of cases (*Figure 118*).

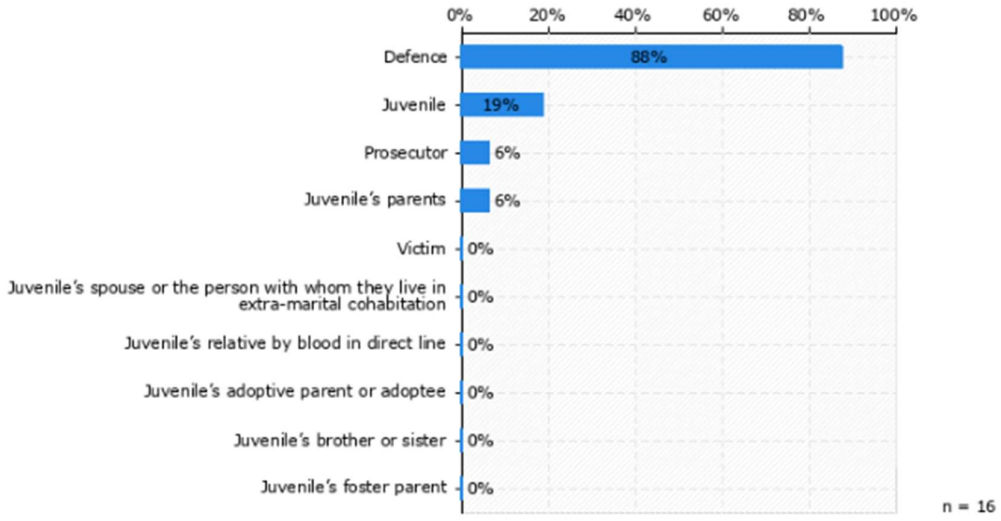

Figure 117: Parties appealing against first-instance courts' decisions in juvenile criminal cases

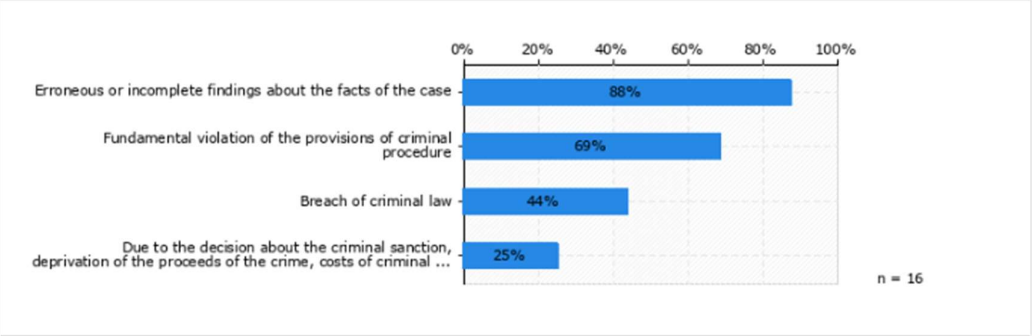

Figure 118: Reasons for appealing against first-instance courts' decisions in juvenile criminal cases

In 44% of appeals, the Court of Appeal rejected the appeal as unfounded and upheld the first-instance court's judgment. In 31% of cases, it changed the first-instance court's decision. In 25%, the Court of Appeal overturned the decision of the first-instance court and returned the case to the first-instance court for a retrial (*Figure 119*).

When the Court of Appeal changed the decision of the first-instance courts, it imposed a less severe educational measure in 80% of cases (*Figure 120*). This information is worrying as inappropriate educational measures might be imposed more often, but nobody appeals to the court's final decision. The outcomes of the appellate processes in the sample may be a coincidence. The few inspected appealed cases do not allow for definitive conclusions. On the other hand, it is also worrying if Courts of Appeal interfere with first-instance decisions on sanctions without holding their own proceedings. Courts of Appeal typically do not interview the child and their legal guardians and only assess data in the case file. While they may have more of an impartial view of the case, they might be missing crucial information gathered in in-person proceedings. However, the small number of appealed cases in the sample does not allow us to assess the appropriateness of the measures imposed at the appellate level.

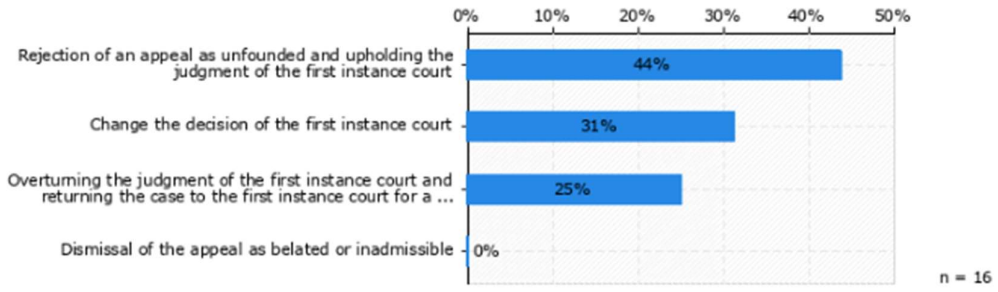

Figure 119: Outcomes of the appellate process – decisions by the Court of Appeal

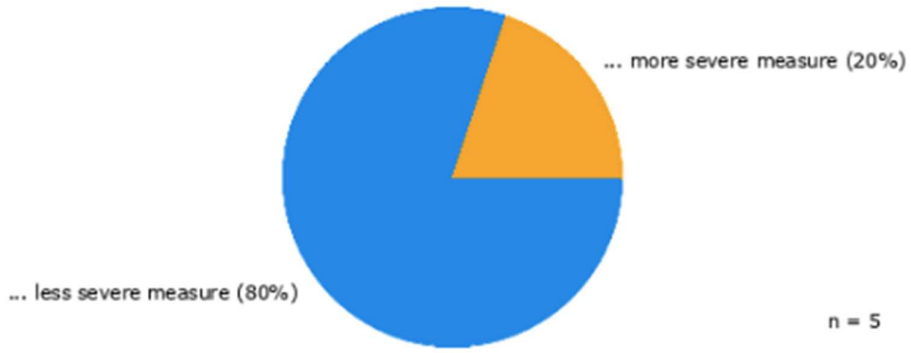

Figure 120: Court of Appeal changes decision of first instance court – type of educational measure/ sanction

In the inspected case files, no examples of extraordinary legal remedies were found (*Figure 121*).

Figure 121: Extraordinary legal remedies

7.8. Duration of proceedings

According to Articles 461 of the ZKP and 40 of the draft ZOMSKD, the authorities involved in juvenile criminal proceedings and those institutions from which authorities request reports and opinions should act expeditiously so the proceedings against a young person end as soon as possible.

The duration of proceedings in prosecutorial and judicial case files was inspected. The courses of specific phases and the proceeding as a whole were examined. In the following subsections, the data collection results are shown with figures and a short analysis is provided.

7.8.1. Prosecutorial case files

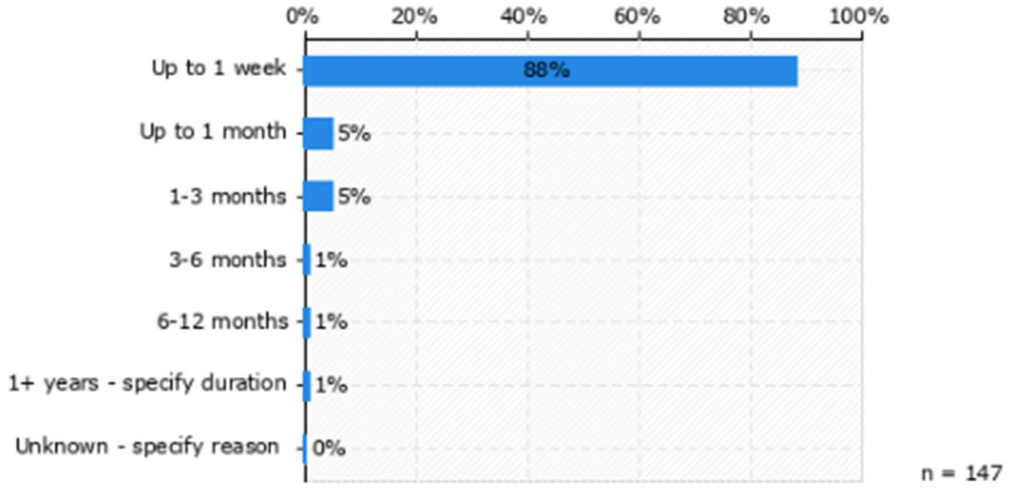

Figure 122: Time from the commission of the offence to reporting the offence to the police or detection of the offence by the police if police intervened without crime being reported

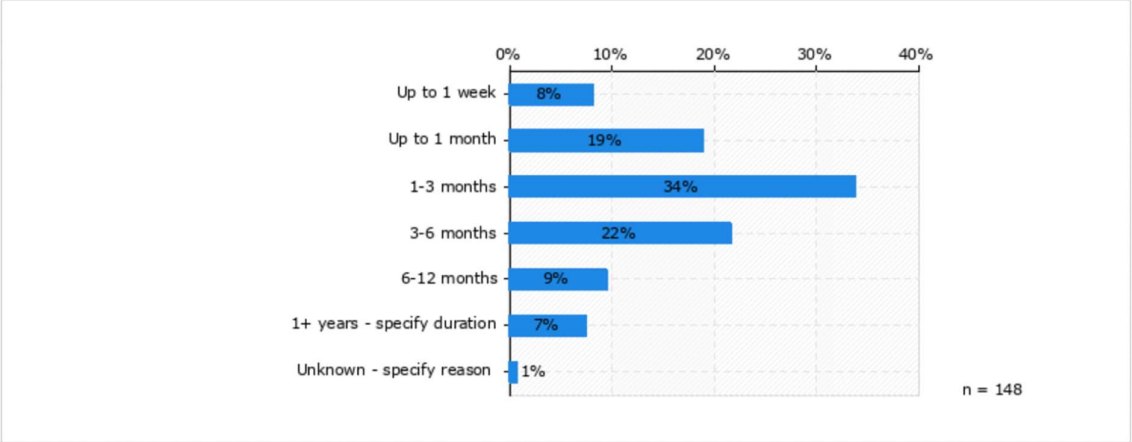

Figure 123: Time from the commission of the offence to the police filing a complaint against the juvenile

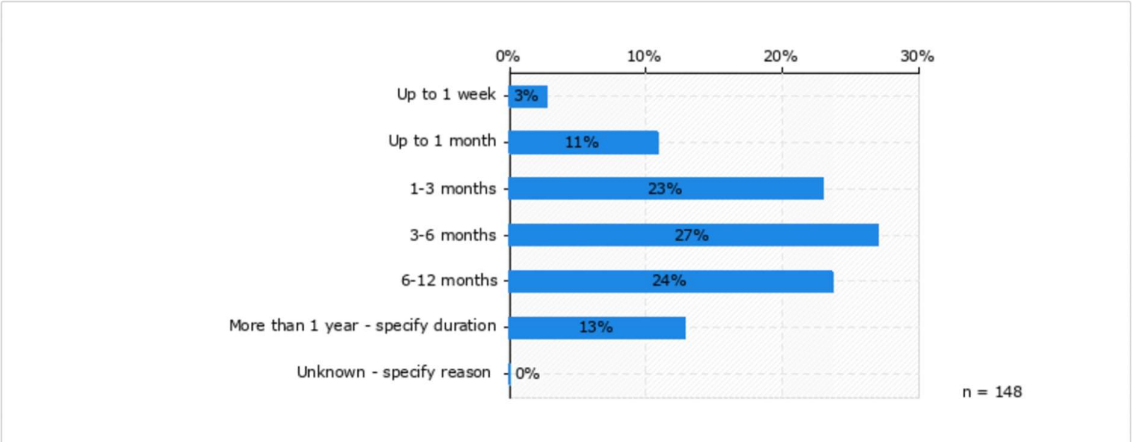

Figure 124: Time from the complaint filed against the juvenile to the prosecutor's dismissal of the case (all dismissals)

It was surprising that some prosecutorial dismissals lasted over a year, specifically 13% (*Figure 124*). In rare cases, a long time passed between the child committing the offence and the police filing a complaint against the young person (*Figure 123*). In those cases, the police usually filed a complaint against an unknown perpetrator soon after detecting the offence but could not link the offence to an individual perpetrator until later.

In other examples, the prosecution could not dismiss the cases earlier because successful proceedings of deferred prosecution and mediation take their time. The data on the duration of deferred prosecution was presented in section 5.1.1. of this report. The timelines for mediation proceedings are introduced below (*Figures 125-129*). Where the time of specific phases in the figures is unknown, the duration could not be detected from the case files. The data might have been available in mediators' files, but those were not analysed as part of the research.

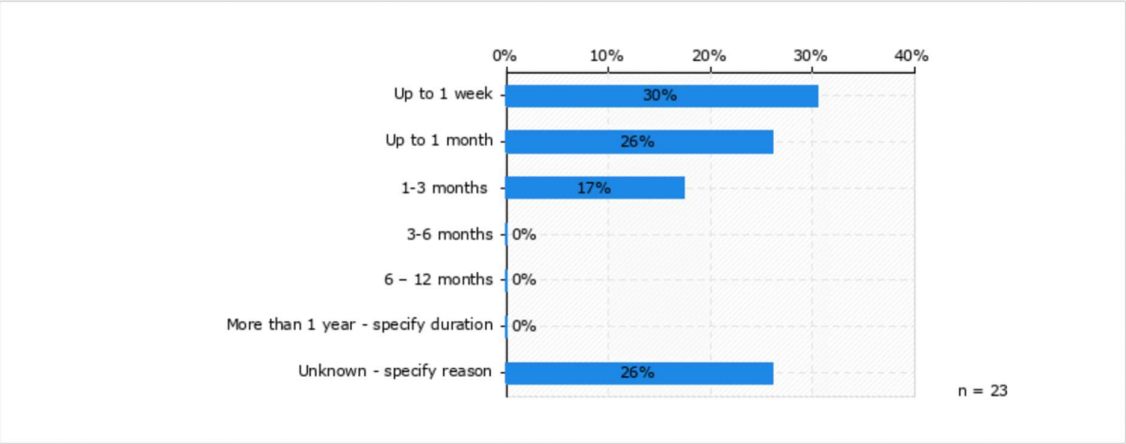

Figure 125: Time between referring the case to mediator and mediator contacting juvenile and victim (date of invitation sent)

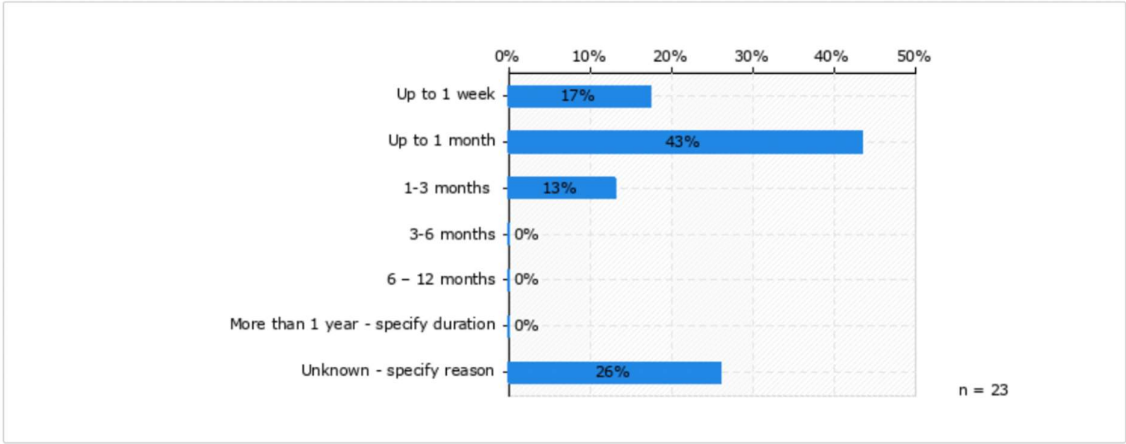

Figure 126: Time between mediator contacting juvenile and victim (dates of invitations received by juvenile and victim) and mediator holding a meeting with the juvenile and victim

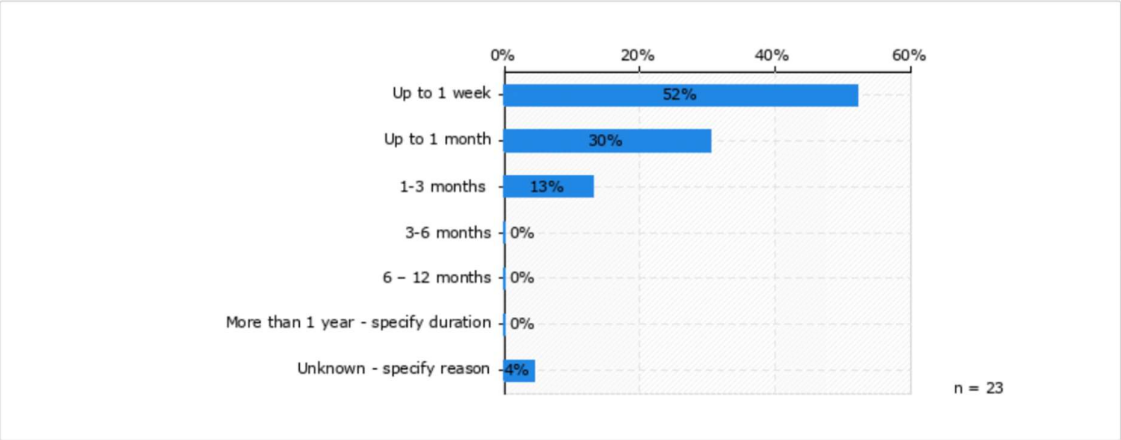

Figure 127: Time between mediator having first meeting with the juvenile and victim and reaching agreement between juvenile and victim

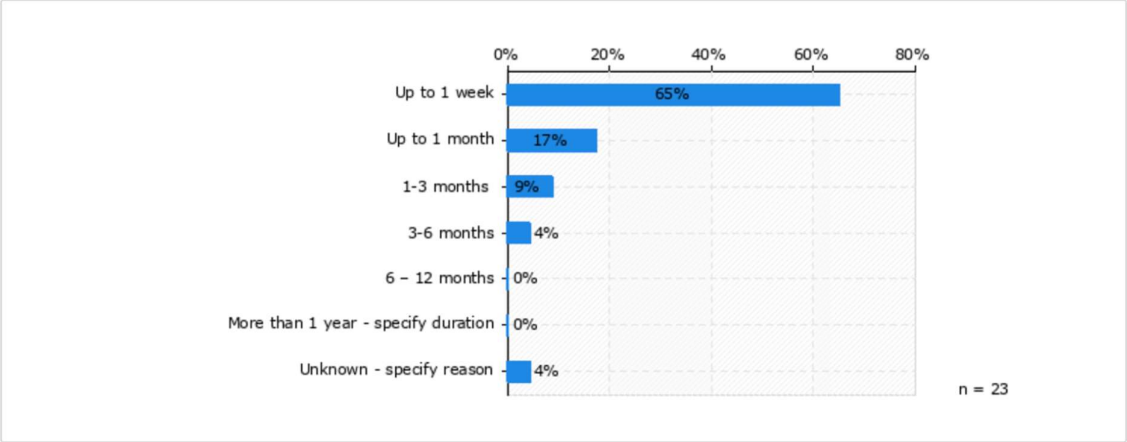

Figure 128: Time between execution of the settlement/ agreement and the mediator sending the report and the entire file to the prosecutor

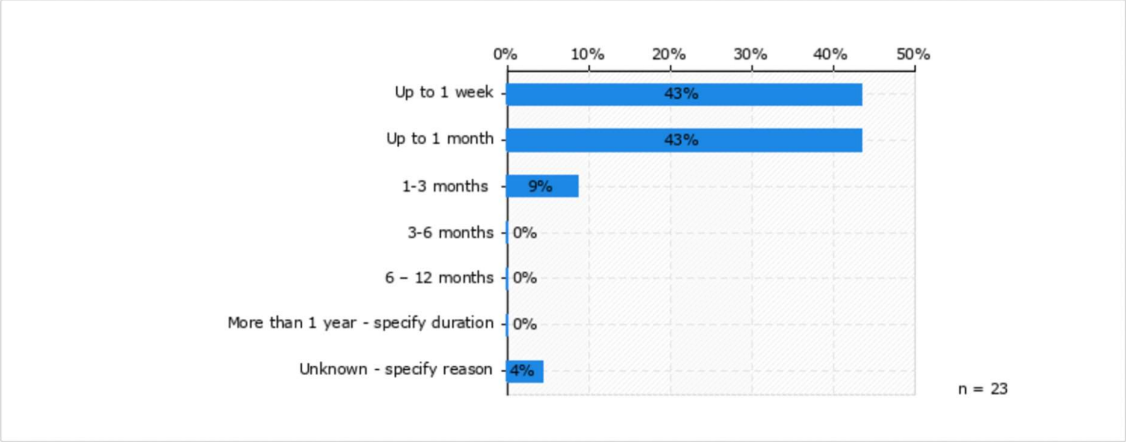

Figure 129: Time between the prosecutor getting the report and file and the prosecutor dismissing the case

In dismissals after successfully deferred prosecution and mediation, the accumulation of phases, rather than any particular part of the proceedings, might lead to their longer duration. While this is understandable, it goes against diversion working in the child's best interest if organised and carried out swiftly. A specialisation of prosecutors, working only on juvenile criminal cases and having more direct contact with mediators and institutions involved in deferred prosecution might

contribute to more expeditious diversion. However, this must be thought through in light of staff shortages in some State Prosecutor's Offices.

7.8.2. Judicial case files

69% of judicial proceedings against young people in the sample lasted more than a year, and 21% between six months and one year. Only 9% of proceedings against young people in conflict with the law in the sample finished in under six months (*Figure 130*). The cumulative duration of criminal proceedings against a young person was determined from when they committed the offence to when the court dismissed the case or when the child started exercising the imposed educational measure or sanction. This approach was adopted to grasp how long a proceeding feels for a child. Young people usually perceive contact with different officials and practitioners (police, prosecution, court, etc.) as one youth justice response. In 77%, the police detected the offence within a week of the child's crime. Hence, the proceedings against young people often formally began soon after they committed the offence (*Figure 131*).

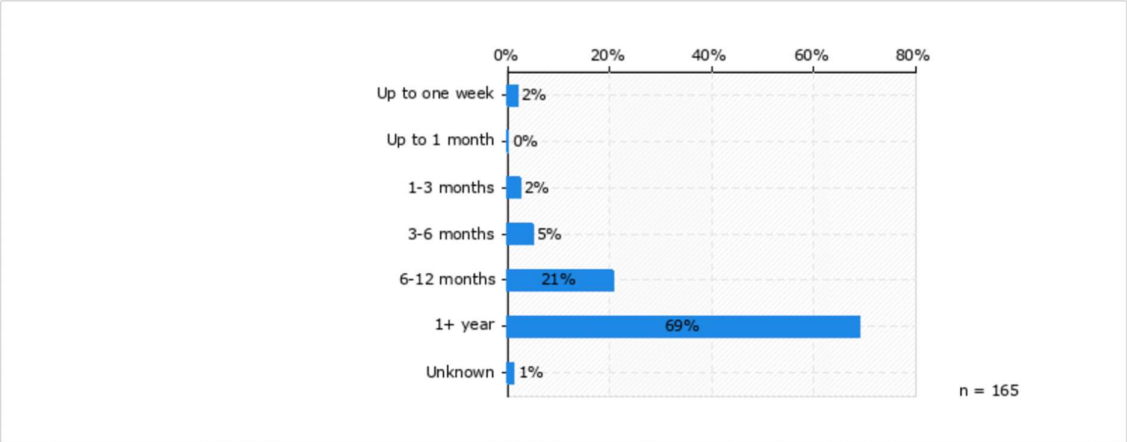

Figure 130: Time from commission of criminal offence to dismissal of the case or juvenile beginning to exercise educational measure

The specific phases of judicial proceedings lasted as follows from *Figures 131-144*. The figures' time frames suggest that delays accumulate in judicial proceedings against young people in conflict with the law, rather than any institution working particularly slowly compared to others. The different durations also reflect the diverse procedural tasks that various institutions must undertake (e.g., the court must lead and finish a judicial proceeding with proscribed procedural safeguards that differ from those of the prosecution and police).

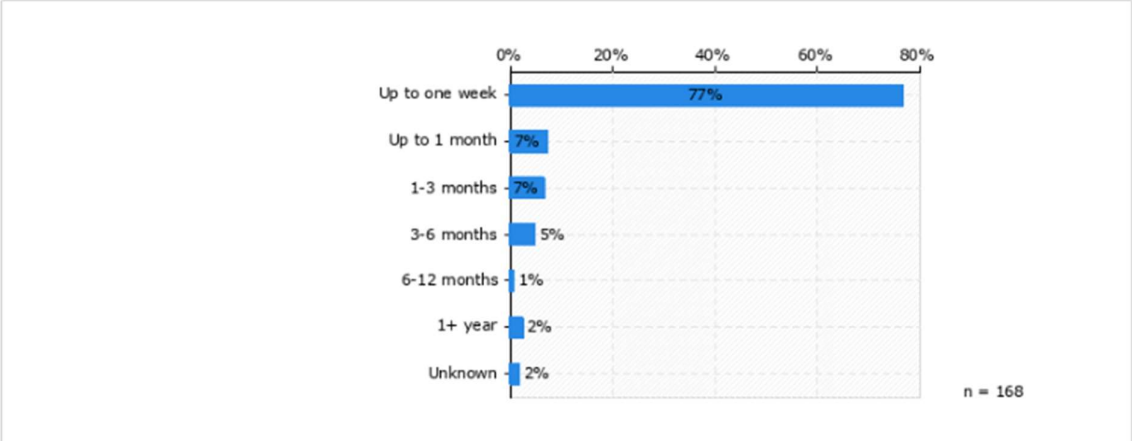

Figure 131: Time from commission of criminal offence to reporting the offence to the police or police detecting the offence

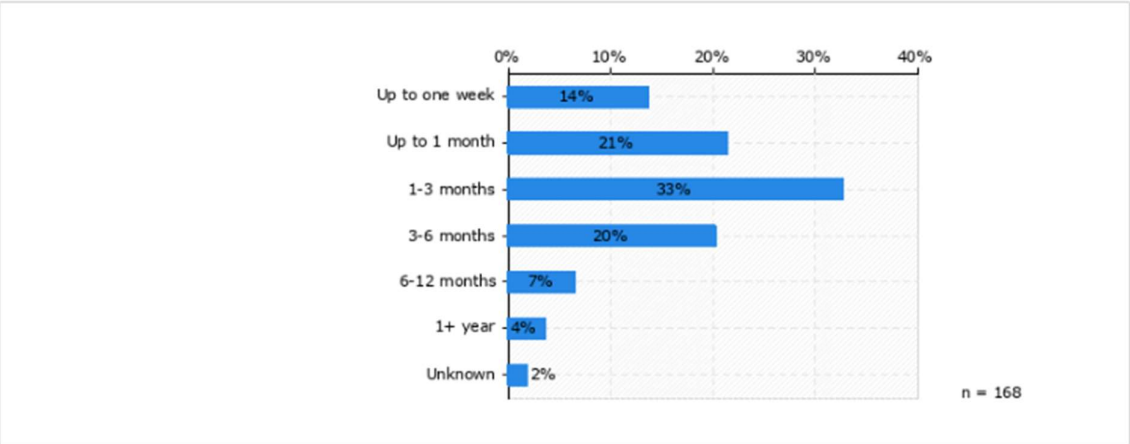

Figure 132: Time from reporting the offence or police detecting the offence to the police to police filing complaint against the juvenile

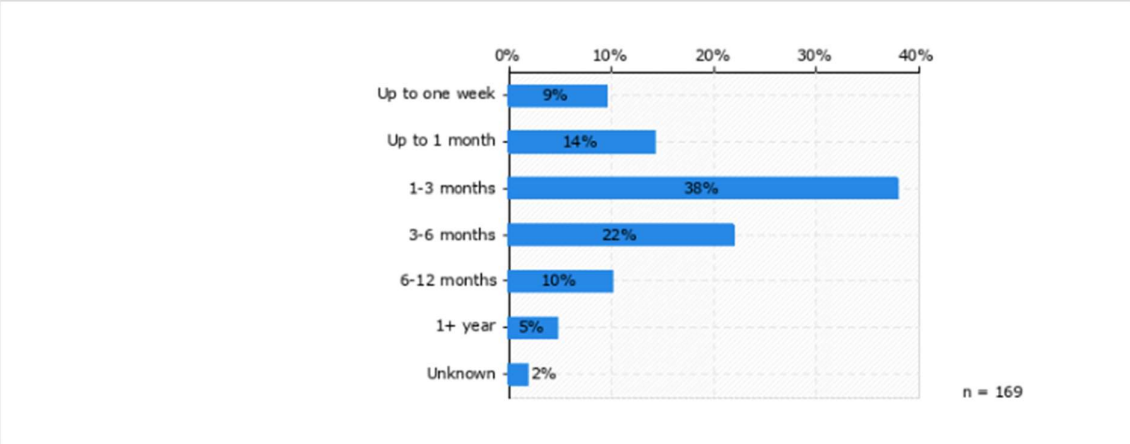

Figure 133: Time from the police's complaint filed against a juvenile to the prosecutor's decision to instigate preliminary proceedings or the juvenile panel's decision to initiate proceedings under Article 465/III of the ZKP

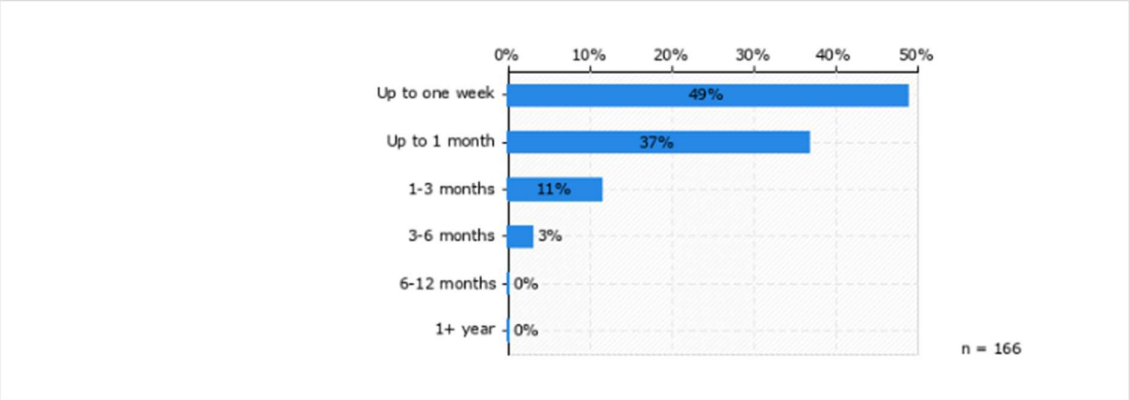

Figure 134: Time from the prosecutor's or juvenile panel's decision to instigate preliminary proceedings to the actual beginning of the preliminary proceedings

It is worrying that in 51% of cases, it took the court more than a month to schedule the (first session of) preliminary proceedings after the prosecutor instigated them. This was probably due to organisational problems and a backlog of cases in the inspected time frame, perhaps also connected to the fact that juvenile courts in Slovenia are not specialised. Also, juvenile judges primarily work on adult criminal cases, as was established in section 7.6.1. of this report. They

might thus attend to juvenile criminal cases with a delay when they must solve demanding adult criminal cases.

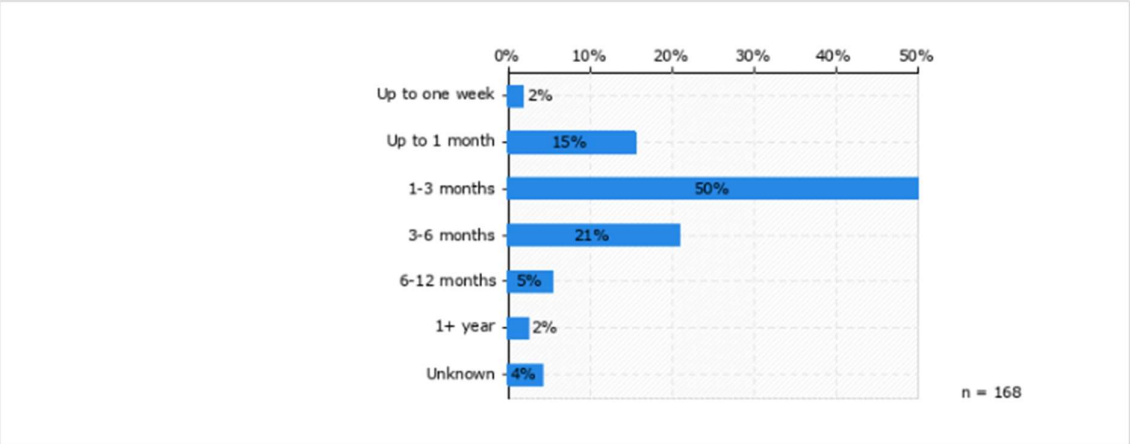

Figure 135: Time from the beginning and end of the preliminary proceedings

When preliminary proceedings lasted more than a month, this was primarily due to poor organisation of court work in 45% of the cases (noted as 'other' in *Figure 136*). The category of 'other' also entailed some delays where courts could not question the juvenile as they were absconding from an educational institution and delays due to mergers of criminal proceedings. Sometimes, courts delayed the preliminary proceedings for the entire court collective break between 15 July and 15 August. Such delays are problematic as juvenile criminal cases should be a priority and processed as urgent, akin to cases against adults and children in pre-trial detention.

Other reasons for the long duration of preliminary proceedings were: problems with serving court letters to witnesses in 32%, the number of witnesses to interview in 32%, waiting for information from social services in 25%, problems with serving court letters to the young offender in 25%, the complexity of the case in 8%, waiting for an expert opinion in 8%, the number of young offenders to interview in 2%, and the removal of the child from their home environment in 1% of cases (*Figure 136*).

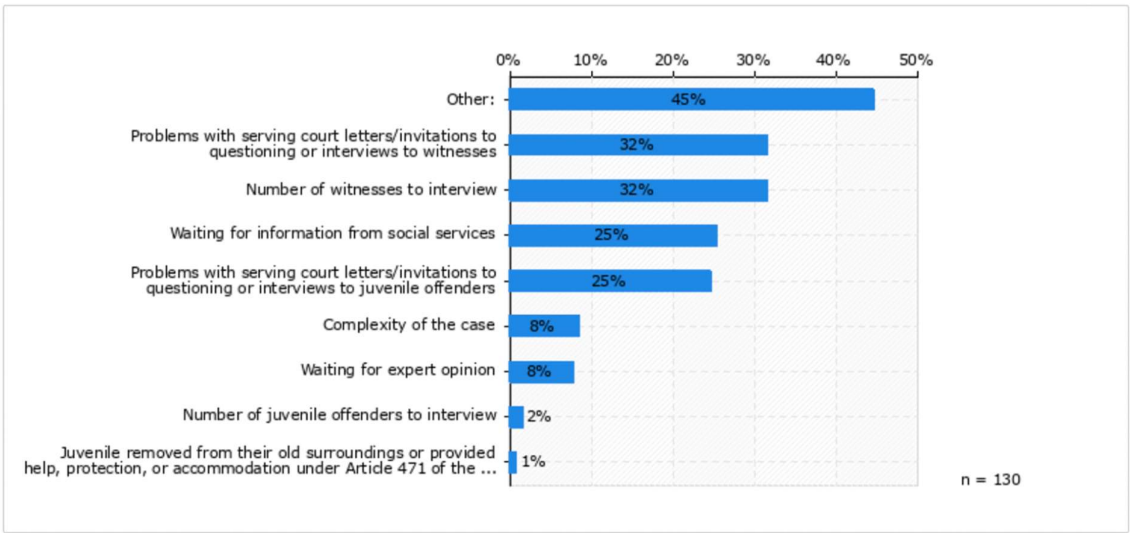

Figure 136: Reasons for the long duration of preliminary proceedings

In at least 53% of cases, the prosecution needed more than a month to submit to the court a reasoned motion to dismiss the procedure or to impose a punishment or educational measure. In 41% of cases, the prosecution took less than a month to do this (*Figure 137*). It took the courts more than eight days from then to schedule the panel session or main hearing in 43% of cases (*Figure 138*).

Scheduling the panel session of the main hearing in eight days is a legal requirement under Article 482/I of the ZKP. Some district courts did not respect this requirement in any of the inspected cases. An eight-day deadline is short, and judges dealing with adult and juvenile criminal cases sometimes cannot always organise their work this quickly. If juvenile courts were specialised, this deadline would be more feasible. Since they are not, the eight-day deadline in the ZKP to schedule the panel session or main hearing could be extended. Article 81 of the draft ZOMSKD, for example, proposes a 15-day deadline for the court to schedule the panel session or main hearing, which seems more reasonable considering the current situation.

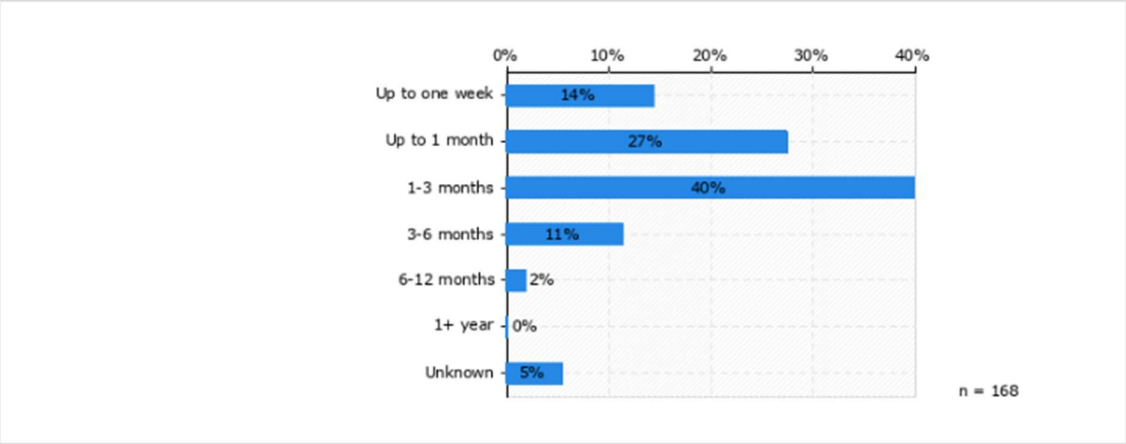

Figure 137: Time between the end of preliminary proceedings and the prosecution submitting a motion to dismiss the case or impose a punishment or educational measure

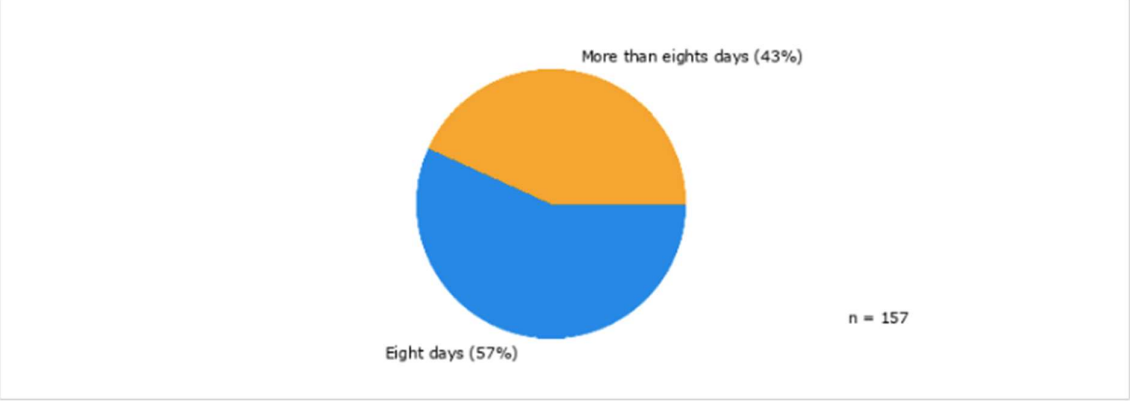

Figure 138: Time between the prosecution submitting a motion to dismiss the case or impose a punishment or educational measure and the court scheduling the panel session or main hearing

Further, the draft ZOMSKD does not require that the juvenile judge obtains the approval of the court's president for the delay in scheduling the panel session or main hearing, as proscribed in Article 482/I of the ZKP. This normative change is sensible since, in the sample, none of the judges asked for such approval from the courts' presidents, or if they did, this could not be detected

from the case files (*Figure 139*). On the other hand, not obtaining approval for delays in scheduling panel sessions and main hearings removes oversight over court administration.

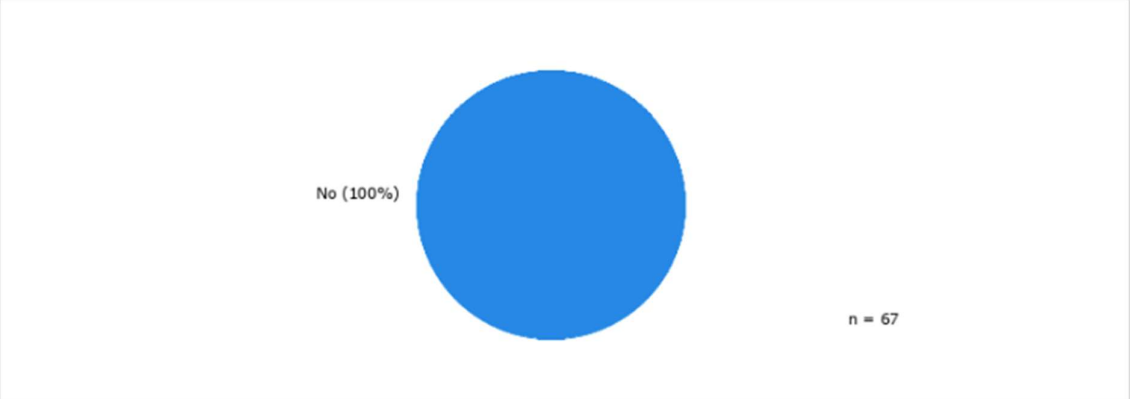

Figure 139: Approval of the court's president given to the juvenile judge for delay (Article 482 of the ZKP)

In the sample, at least 63% of the panel sessions or main hearings lasted over a month (*Figure 140*). The delays were due to the poor organisation of court work in 59% of the cases (noted under 'other' in Figure 141). Sometimes, it took the court three months to schedule the panel session or main hearing.

Other reasons for the long duration of panel sessions or main hearings were: problems with serving court letters to the young offender in 21%, the postponement or suspension of the panel session or main hearing in 15%, the number of witnesses to interview in 14%, problems with serving court letters to witnesses in 13%, waiting for an expert opinion in 11%, waiting for information from social services in 9%, the complexity of the case in 8%, the number of young offenders to interview in 2%, and the removal of the child from their home environment in 1% of cases (*Figure 141*).

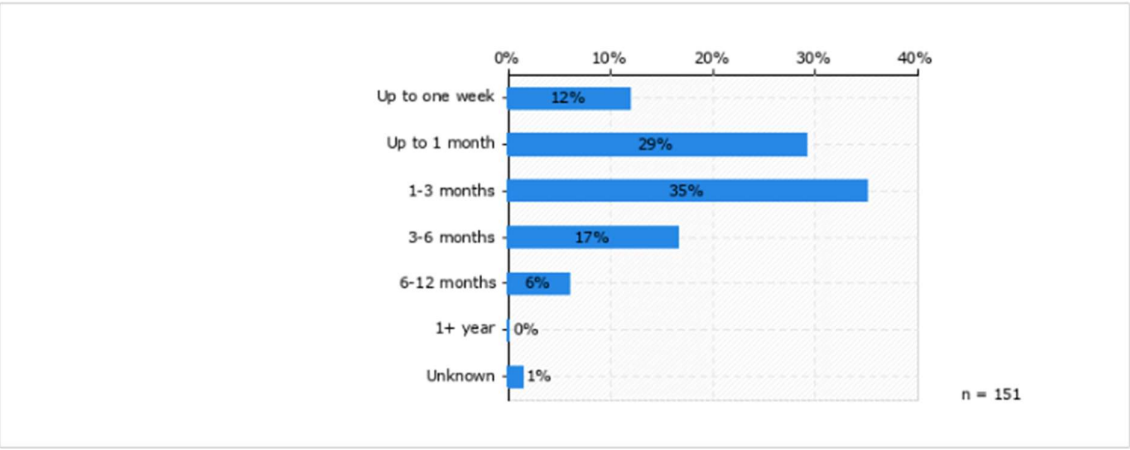

Figure 140: Time from beginning to end of panel session or main hearing

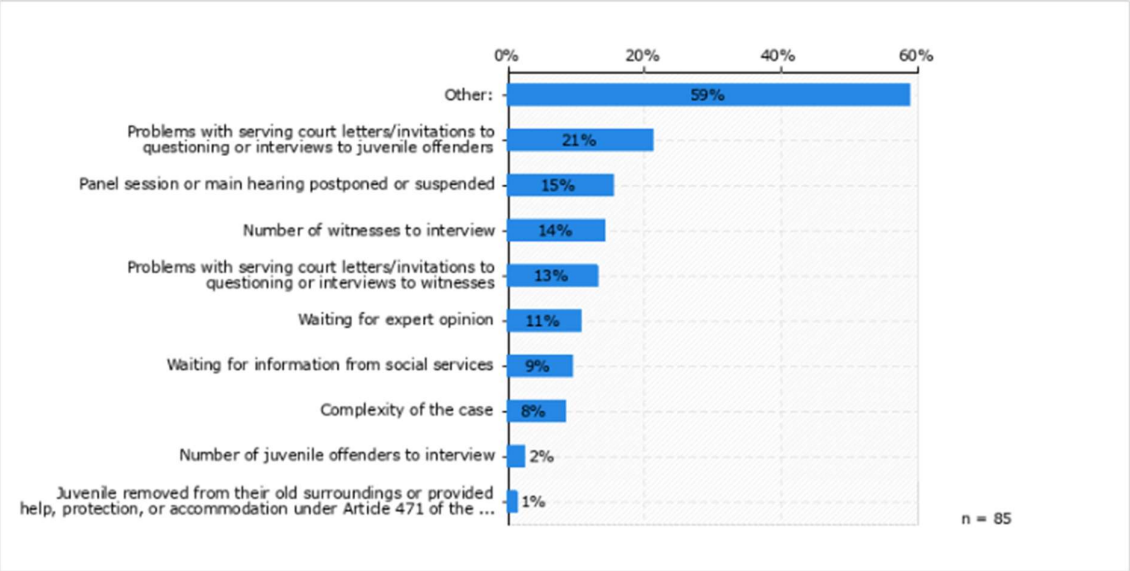

Figure 141: Reasons for the long duration of panel session or main hearing

Further, the judge needed more than three days from the end of the panel session or main hearing to produce a written judgment or decision in 36% of the inspected judicial cases (*Figure 142*). The three-day deadline for the judge to produce a written judgment or decision, as included in Article 482/III of the ZKP, is sometimes unrealistic. Article 81 of the draft ZOMSKD proposes a fifteen-day deadline or eight days if the young person is in pre-trial detention. Until juvenile criminal courts are specialised, the deadline extension is a sensible normative change that corresponds better with the reality of the duration of judicial decision-making.

Last, the time between the judge producing the written judgment or ruling and the time the verdict becomes final was not problematic in the inspected case files but mainly reflected when the interested can appeal the decision (*Figure 143*). It was worrying, however, that at least in 36% of cases, over a month passed between the judgment or decision becoming final and the young person beginning to exercise the educational measure or punishment (*Figure 144*).

Article 90/IV of the draft ZOMSKD states that social services or the educational institution responsible for the execution of the educational measure should start carrying out the measure no later than 30 days after it receives the court's ruling. Further research is needed to establish why there are delays in commencing the execution of the educational measures.

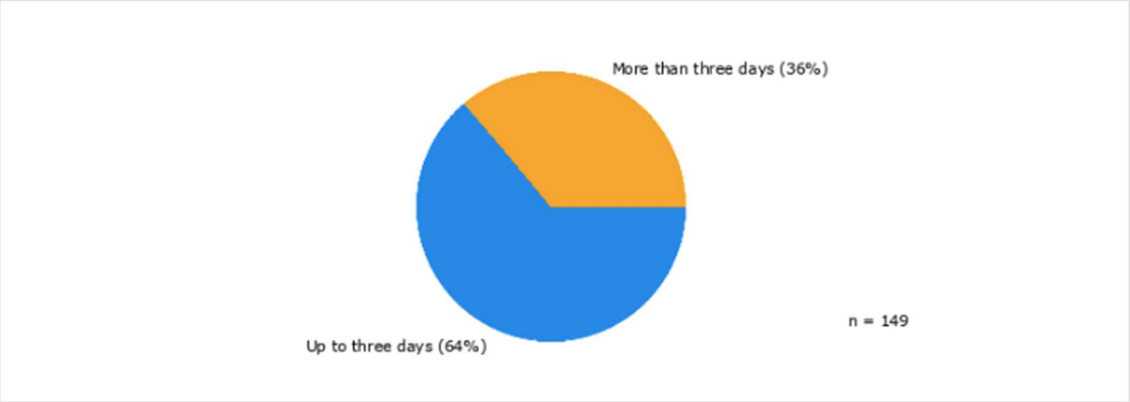

Figure 142: Time between the end of the panel session or main hearing and the time the judge produces a written judgment or decision

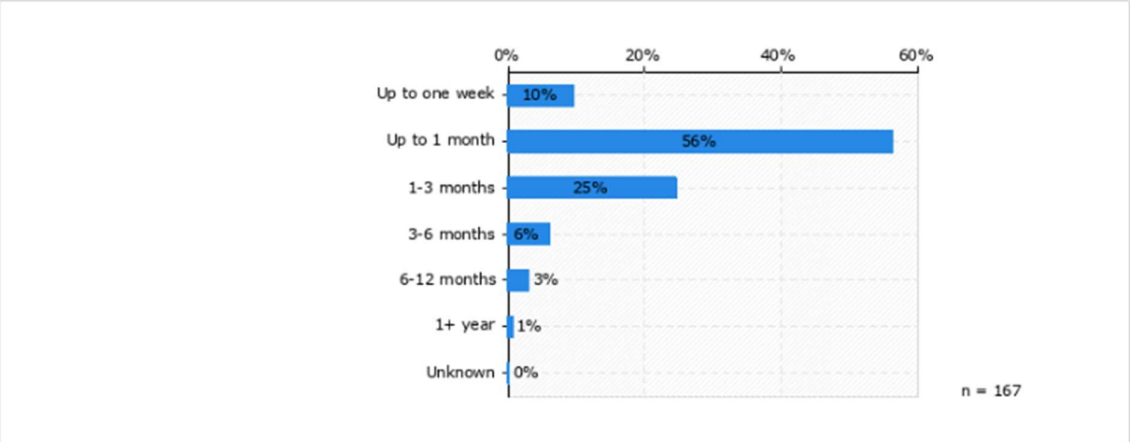

Figure 143: Time between the judge producing a written judgment or decision and when the judgment or decision becomes final

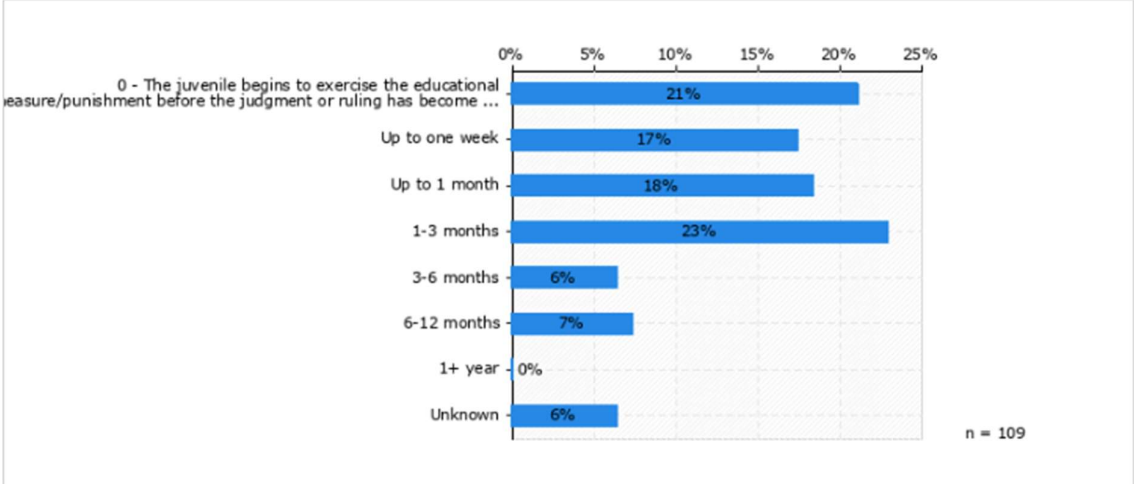

Figure 144: Time between the judgment or decision becomes final, and the young person begins to exercise punishment or educational measure

Last, many problems regarding the duration of judicial proceedings stem from juvenile judges working on cases against adults (sexual offences, domestic violence) and cases against juveniles. At the roundtable on 8 December 2022, the judges exposed that this organisation follows the organisation of police and prosecutorial units. Also, the Courts Act (ZS) changed with the amendment of the law, more specifically, the ZS-J in 2011. According to the changes, individual units/departments of courts should have at least five judges unless an exemption is stated in the law, for example, for family courts (Article 98a of the ZS). In accepting the amendments to the ZS, the legislator forgot to include juvenile criminal departments as an exception. Before then, juvenile criminal departments were organised as special units of the District Courts regardless of the number of judges. In Ljubljana, for example, three judges were specialised juvenile criminal judges at the time of the change. Because of such a legislative mistake, judges now deal with adult and juvenile criminal cases. For example, four judges deal with 70% of adult cases and 30% of juvenile criminal cases in Ljubljana. In Celje, two judges deal with adult cases 100% of the time and deal with juveniles on top of this requirement.

Also, the amended ZS requires judges in specialised departments to have a full caseload. As juvenile criminal cases are fewer than adult cases, juvenile judges would not – even if organised within specialised departments – reach the full caseload. However, this perception stems from a

general misunderstanding of what constitutes a full caseload. Juvenile criminal cases are ongoing after the court reaches its final decision. Judges must inspect how educational measures or punishments are progressing after they have imposed a sanction against a child. Also, juvenile judges must be in touch with the young person, the parents, social services, and schools throughout the proceedings and, ideally, during the implementation of the criminal sanction. They need legal knowledge and learn about children's special needs, development, mental health, etc., constantly evolving in psychology, neuroscience, education, and social work. In some ways, working with young people is thus more demanding and/or at least fundamentally different from working with adults. This difference should also be considered when juvenile judges want to progress to the Court of Appeal or the Supreme Court. Juvenile judges feel like they do not advance in their careers equally to other criminal law judges.

The specialisation of youth courts or departments is thus fundamental. However, youth crime rates are different across districts. As this could mean that some district courts would not have enough cases, the judges at the roundtable suggested mobile judges, which would not be against the child's best interest. It is in the child's best interest that the proceedings against them occur in their community.

7.9 Data on the procedure: Summary of findings and recommendations

Summary of findings:

- In their efforts to **get to know the juvenile offender and their family** before diverting the case, prosecutors did not request information about the young person from their parents or invite the family, social workers, or other experts to a meeting. They obtained a social services report in 7% of the diverted cases. Before charging the juvenile, the police obtained a social services report or sent it to the prosecution along with their charge in 3% of cases. The prosecution and the police obtained information from the young person's school or other educational institution where they do not reside in 1% and 7% of the dismissed cases.
  Gaining information on the child, their family, and extra-familial contexts is essential for an informed prosecutorial decision that diversion is in the child's best interest. **Recommendations should be developed where the prosecution could - following Article 466 of the ZKP - explore the child and their family's circumstances by obtaining a social services report (or instructing the police to submit a social services report with their criminal charge). The prosecution could also meet with the child, their parents, and other important people in the child's life (teachers, grandparents, siblings, and other practitioners working with the child) to proceed most appropriately (charge, dismissal, diversion).** However, since social services are overburdened, **further research is needed to establish if such a protocol is realistic and beneficial.** Namely, involving social services to attend to every case – even that fit for diversion – thoroughly could have stigmatising and net-widening effects.
  In the preliminary proceedings, courts interviewed the young person and routinely gathered information about their personal and family circumstances in 92% of cases. In 95% of cases, courts interviewed the young person's parents in the preliminary proceedings. As part of the preliminary proceedings, the courts obtained a social services report in 97%, information from an educational institution where the young person resided in 22%, and information from the young person's school or other educational institution where the child did not reside in 9% of the inspected case files. In 7% of cases, courts nominated experts that were psychologists, child and adolescent psychiatrists, and clinical psychologists.

In the panel session or main hearing, the judge interviewed the young person in 88% and the young person's parents in 75% of cases and obtained information from educational institutions where the young person resided, the child's school, and other sources (social services from another region, social pedagogue's report, etc.) in 16%, 3%, and 2%. They nominated a physician, psychiatrist, psychologist, or educator to evaluate the young person in 9% of cases.

The courts updated the young person's assessment through interviews with the child, parents, and social worker at the panel session or main hearing. However, most judicial proceedings in the sample lasted more than a year. **A thorough but swift one-time assessment of the child in more quickly administered judicial proceedings might be in their better interest. However, this might only be possible if social services, prosecutor's offices, and courts were specialised and dealt merely with juvenile criminal cases**.

The relationship between expert assessment of the child and their development and legal reasoning about the appropriateness of criminal sanctions against them according to the aims of juvenile criminal procedure should be clarified. The courts can nominate a second expert if the first expert opinion does not convince them. If courts decide not to follow the expert opinion in assessing the juvenile's personality and development, they should **explain that in their final decision and adequately justify their choice of sanction**.

More research is needed to establish a more active role of social services in judicial proceedings against young people in trouble with the law in line with Article 458 of the ZKP or Article 43 of the draft ZOMSKD. Protocols must be developed to define social services reports' number, structure, and quality to become a better basis for the court's individualisation of sanctions. **The role of court-employed social workers should be thought through so that their interviews with the young person's parents add to the social services reports rather than duplicating them.**

Article 72/II of the draft ZOMSKD, stating the court can decide not to interview the child's parents (or potentially obtain a new social services report) if social services had already interviewed them and the court deems the interviews are not necessary as it has enough information from previous proceedings, **should be implemented with caution.** While the Article is not problematic in itself, it might work against the child's best interest in light of the duration of judicial proceedings.

- The juvenile judges **excluded the child from their environment** in 1% during the preliminary proceedings and 4% during the panel session of the main hearing.

  Article 64/I of the draft ZOMOSKD states that the child can be temporarily excluded from their home environment and placed under the care of social services, another family, or an educational institution. Before implementing this article, **further research must explore if courts can place children that need to be removed from their home environment and have not yet received a sanction based on a final judicial decision in an educational institution or the correctional home. This option might not be in the child's best interest from a legal and developmental perspective**.

  Article 64/V of the draft ZOMSKD mentions the diagnostic centre as an institution where the court can place the juvenile for up to thirty days if they need detailed assessment as part of an expert opinion. However, a diagnostic centre does not exist in Slovenia. **The responsible authorities should establish a diagnostic centre and rethink its role. The relationship between expert centres in the ZOOMTVI and diagnostic centres, as predicted by the ZKP and the draft ZOMSKD, should be clarified.**
- **Courts rarely used pre-trial detention. When they did, they adequately explained and justified their decisions.** Future research can compare pre-trial detention in adults

and young people to assess if courts used pre-trial detention for young people as a last resort, even compared to adult offenders.

The draft ZOMSKD attempts to ensure pre-trial detention will be further used as a last resort in juvenile criminal cases. **Article 65/VI of the draft ZOMSKD allows courts to impose juvenile pre-trial detention for a maximum of 6 months** rather than two years, as allowed under the current ZKP.

Under Article 432/I of the ZKP, young people are disadvantaged compared to adult offenders when it comes to conditions for pre-trial detention in more and less serious offences. **Article 65 of the draft ZOMSKD offers a much-needed amendment, distinguishing the grounds for detention according to the gravity of the offence**: Article 65/I states pre-trial detention conditions for offences punishable by imprisonment of more than three years, while Article 65/II states pre-trial detention conditions for offences punishable by imprisonment of three years or less.

Courts placed 64% of young people in pre-trial detention with adults and only 18% with other children. In 18% of cases, the information about the young person's placement was unknown. **The need for the judge to issue a written decision about detaining the young person with adults after they've obtained the opinion of the prison administration is now part of Article 473 of the ZKP-O and Article 67 of the draft ZOMSKD. This is a welcome and necessary normative change. However, courts should impose fewer juvenile pre-trial detentions in the long run. In addition, children should not be detained together with adults. A pre-trial detention facility or unit for juveniles only should be established. Article 66 of the draft ZOMSKD offers more alternatives to pre-trial detention than the current ZKP, which is a welcome normative change.** In Article 66/III, the draft ZOMSKD explicitly states that when pre-trial detention is unnecessary, the court can also place the young person in an educational institution as an alternative. **Before implementing this Article, further research is needed to establish if educational institutions in Slovenia can serve as alternatives to pre-trial detention and how to establish alternatives to pre-trial detention that would not require the deprivation of the child's liberty. The draft ZOMSKD should also state that the judge must regularly visit the young person in pre-trial detention.**

- **Courts sometimes breach the child's right to legal representation.** Articles 478/V of the ZKP-O and 78/I of the draft ZOMSKD offer a welcome amendment, requiring the court to invite – rather than merely informing – the prosecutor, juvenile, and their defence lawyer to the panel session or main hearing. According to the ZKP-O, the court cannot hold a panel session or main hearing without the child's lawyer.

  If the defence is mandatory, **the court must secure legal representation for the entire criminal proceedings from the beginning of the preliminary proceeding (or even before for some investigative acts) (Article 454 of the ZKP- and Article 41 of the draft ZOMSKD). Courts should respect this legal requirement.**
- **Article 41 of the draft ZOMSKD states that if a child is in multiple proceedings, they should have the same defence lawyer, preferably a specialised one.** This is a welcome normative change, and courts of different districts should diligently inform one another of criminal proceedings against the same young person. Specialising defence lawyers for young offenders, as predicted by Articles 452b of the ZKP-O and 41 of the draft ZOMSKD, is pivotal for respecting the child's due process right and contributing to their development and rehabilitation.
- According to Articles 452.c/II of the ZKP-O and 7/III of the draft ZOMSKD, **any competent authority – including the police and the prosecution – must inform the child of the charges against them. They should also inform the young person about their rights to be accompanied by a parent or guardian, have a lawyer, and have**

privacy. The authorities should also tell the child's parents or guardian about the offence they suspect the young person committed. Articles 452.c/I of the ZKP-O and 7/I of the ZOMSKD explicitly give young people **the right to the presence of their parents or guardians at any stage of the criminal proceedings against them.** If the presence of parents or guardians is not in the child's best interest or the authorities cannot contact them, children can nominate another trusted person (e.g., youth or social worker, teacher, older sibling, etc.) to accompany them. If the authorities believe the person appointed by the child will not act in the young person's best interest, they nominate a trusted person for the child *ex officio*. This welcome normative change will hopefully contribute to the prosecution respecting the child's right to be heard and have a parent present in all proceedings against them, including those where it dismisses the charges.

Articles 452.c/V of the ZKP-O and 7/III of the draft ZOMSKD instruct the **police, prosecution, and court to inform the child, their parents, or guardian about their rights under the ZKP-O or the ZOMSKD. They should also enable the young person and their parents or guardians to exercise these rights – including the child's right to be heard and assisted by their parents - effectively.** The authorities should inform the young person about their rights orally and in writing and indicate this in police, prosecutorial, and judicial case files.

Courts should always **hold a closing session before terminating the educational measure** and should **issue a final decision to end the execution of an educational measure officially**.

- Article 83 of the draft ZOMSKD offers a welcome normative change by establishing **new rules about inviting young people to an appeal hearing.** When the first-instance court imposes a residential educational measure, a safety measure of compulsory psychiatric treatment and care in a psychiatric institution, or juvenile imprisonment, the **Court of Appeal must invite the child to their hearing**.
- Article 44 of the draft ZOMSKD states that **the judge must run preliminary proceedings**. This normative change benefits the young person by enabling them to have regular contact with the same official throughout the judicial proceedings against them. Article 43/VI of the draft ZOMSKD states that the **same juvenile judge should run all criminal proceedings against the young person at the same District Court**, which is also beneficial.
- In practice, **courts must distinguish adequately between the circumstances in which they need to hold the main hearing and those in which a panel session is sufficient**. The court should thus hold a main hearing every time it directly examines evidence about the offence or the young person's circumstances.
- **Appeals against first-instance court decisions were rare and unequally distributed among the inspected districts.** Further research needs to explore the reasons why.
- 13% of prosecutorial dismissals and 69% of judicial proceedings against young people lasted over a year. **Delays accumulate in judicial proceedings against young people in conflict with the law, rather than any institution working particularly slowly compared to others.** Many problems regarding the duration of judicial proceedings stem from juvenile judges working on cases against adults (sexual offences, domestic violence) and cases against juveniles. **The Courts Act should be changed to allow specialised juvenile criminal departments and judges. Specialised juvenile criminal courts could offer a more viable youth justice system in the long run.**

Recommendations:

- **Specialisation and information gathering**

It is recommended, in the interests of a good administration of justice and of a juvenile justice system which respects the rights of the child, to enable the specialisation of professionals within social services, prosecutor's offices, and courts and allow them to deal exclusively with juvenile criminal cases.

It is recommended, in order to guarantee the child's right to a speedy response and to have their best interest considered, to make efforts to accelerate juvenile justice proceedings and to ensure, at the beginning of each juvenile justice case, an expert assessment of the child's personality and development and their social and family situation.

It is also recommended to require courts to explain any decision that departs from the recommendations made in the expert assessment and adequately justify their choice of a different measure or sanction.

- **Social services involvement**

It is recommended that protocols be developed to define the involvement of the social services in juvenile justice procedures, notably by clarifying the structure and content of their reports and by establishing quality standards for individual assessments which can serve as a basis for the court's individualisation of measures and sanctions.

It is recommended that Article 72/II of the draft ZOMSKD, stating the court can decide not to interview the child's parents (or potentially obtain a new social services report) if social services had already interviewed them and the court deems the interviews are not necessary as it has enough information from previous proceedings, should be nuanced by adding that such a decision cannot be made if it risks obtaining a social services report that was prepared in a previous criminal proceeding a long time ago, and does not entail the most up-to-date information about the child and their circumstances.

- **Temporary placement during proceedings**

It is recommended, before adopting and implementing Article 64/1 of the draft ZOMSKD, to carefully consider if courts should be able to place children who may need to be removed from their home environment, but who have not yet received a sanction based on a final judicial decision, in an educational institution or the correctional home.

It is also recommended that the responsible authorities should establish a diagnostic centre and carefully rethink its precise role and responsibilities. The relationship between expert centres in the ZOOMTVI and the future diagnostic centre, as predicted by the ZKP and the draft ZOMSKD, should also be clarified.

- **Pre-trial detention**

It is recommended to establish a pre-trial detention facility or unit for juveniles only, which respects international standards in terms of deprivation of liberty of children and ensures that children will no longer be detained together with adults.

It is also recommended, before adopting and implementing Article 66/III of the draft ZOMSKD, to carefully examine if educational institutions in Slovenia are adequately equipped to serve as viable alternatives to pre-trial detention, and to consider what other alternatives may exist which do not involve the young person's deprivation of liberty.

- **Regular judicial monitoring during pre-detention**

It is recommended to introduce into the draft ZOMSKD a provision stating that the judge must regularly visit the young person in pre-trial detention.

- **Right to legal representation**

It is recommended to adopt and implement articles 78/I and 41 of the draft ZOMSKD and to ensure that courts respect these new legal requirements, guaranteeing legal representation for children from the very start of the proceedings and all through to the end.

It is also recommended that defence lawyers for young offenders receive an adequate specialisation to fully respect the child's rights to due process and to legal representation.

It is recommended, if the juvenile is involved in more than one case, that the same defence lawyer be allowed to represent the juvenile across all judicial proceedings in which they are involved, even if such proceedings take place in different districts.

- **Right to be informed and accompanied**

It is recommended that, in respect of the child's right to information, the relevant authorities should inform the young person about their rights orally and in writing in a language and manner appropriate to the young person's age and level of maturity and development, and indicate this in police, prosecutorial, and judicial case files.

It is also recommended that the relevant authorities should enable the young person and their parents or guardians to effectively exercise the rights set forth in the law – including the child's right to be heard and accompanied by their parents.

- **Differentiating between preliminary proceedings and main hearings**

It is recommended that judges must run preliminary proceedings and courts distinguish adequately between the circumstances in which they need to hold a main hearing and those in which a panel session is sufficient. A main hearing should be held every time the court directly examines evidence about the offence or the young person's circumstances.

- **One judge per young offender**

It is recommended that the provision currently expressed in Article 43/VI of the draft ZOMSKD be adopted and subsequently effectively implemented in practice.

- **Closing sessions**

It is recommended that courts should always hold a closing session before terminating an educational measure and should issue a final decision to end the execution of an educational measure officially.

- **Appeal procedures**

  It is recommended that the provision currently expressed in Article 83 of the draft ZOMSKD be adopted and subsequently effectively implemented in practice.

- **Specialisation of courts**

  It is recommended to amend the Courts Act to allow specialised juvenile criminal departments and judges. Specialised juvenile criminal courts could offer a more viable youth justice system in the long run and guarantee the effective implementation of established international juvenile justice standards.

8. Data on the individualisation and execution of sanctions

Section 5.1.2. of this report presented the types of sanctions the inspected four district courts imposed between 2015 and 2019. The district courts in Celje, Koper, Ljubljana, and Maribor dismissed approximately half of the cases referred to the panels for juvenile offenders to impose sanctions. In half of the cases, the courts imposed criminal sanctions: non-residential educational measures in 92 %, residential educational measures in 7,5 %, and juvenile imprisonment in 0,5 %. The courts did not impose a statistically significant number of safety measures against juvenile offenders in the inspected time frame, which matches the sample data, as presented in section 2.2. of this report.

This section of the report presents the difficulties that arise in the execution and individualisation of sanctions against young offenders based on the case file analysis. It first describes the general problems in the execution of criminal sanctions against young people (the duration, suspension, change, termination, and monitoring of the imposed sanctions). It then examines the difficulties in the execution of specific educational measures.

This section only captures some of the problems linked to the implementation and effectiveness of educational measures and other sanctions against young people in Slovenia. Further qualitative research is needed to thoroughly examine the issues that arise in how non-residential and residential educational measures, as well as other criminal sanctions against children, play out in practice.

8.1. General difficulties in the execution of criminal sanctions against young people in conflict with the law

8.1.1. Duration of the sanction

In most of the examined cases, the courts imposed sanctions for the duration allowed in the KZ. Nevertheless, the sample's non-residential and residential educational measures sometimes lasted longer than the legally allowed maximum. Consequently, some young people resided in educational institutions or the correctional home longer than proscribed by law. Most often, these situations occurred due to courts' organisational difficulties and delays in monitoring the execution of the measures and holding closing sessions to end them formally. Non-residential and residential educational measures exceeded the proscribed maximum in 8% and 24% of cases (*Figure 145*).

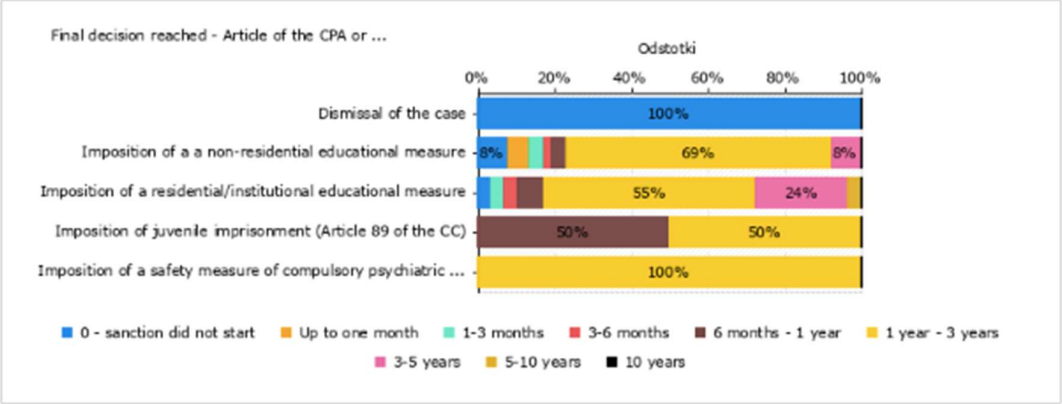

Figure 145: The duration of criminal sanctions against young people

When analysing the case files, it became clear that courts sometimes simultaneously imposed two or more educational measures against the same young person. Such situations occurred when different district courts or judges of the same district court ran separate procedures.

Different courts and/or judges had diverse approaches to criminal proceedings when a young person had already received a criminal sanction and was in another criminal proceeding for a different offence. Some courts dismissed a new charge due to a sentence or educational measure in progress under Article 466/III of the ZKP or the expediency principle under Article 466/I of the ZKP. Other courts did not dismiss the new charge. Instead, they used the legal provisions for imposing educational measures 'in a series', as prescribed by Article 85 of the KZ, taking both the existing and newly imposed educational measures into account to impose a single educational measure. Some courts or judges imposed an additional educational measure without considering the previously imposed criminal sanction, resulting in the young person being formally subject to two or more educational measures simultaneously.

Diverse practices of different district courts are worrying and threaten young people's equal treatment before the law. Courts need to have a consensus regarding the legally correct and most appropriate practice in such cases. The young person should not simultaneously be subject to two or more educational measures as that is legally flawed and causes difficulties in implementing educational measures. For example, suppose two district courts place a child in the correctional home based on their final decisions. In that case, it is unclear which court monitors the educational measure and when the three-year maximum duration lapses.

In all such cases, courts should use Article 85 of the KZ or, subject to future adoption, Article 21 of the draft ZOMSKD. When the court decides about two criminal offences in the same proceeding and wants to impose a sanction, they should apply the rules for imposing sanctions 'in a series', adapted to educational measures. More specifically, they should consider all criminal offences as one, not impose separate sanctions for each, and impose a unified sanction for all (Article 21/I of the ZOMSKD). The court should do the same if deciding about a new offence in a separate proceeding. In this endeavour, they should consider the educational measure the first court or judge had already imposed with a final decision in the previous proceeding as determined. They should also consider the extent to which the juvenile had already executed this measure unless committal to an educational measure is substituted by a correctional home (Articles 21/II and IV of the ZOMSKD). Such rules apply if the first court or judge imposes a non-residential educational measure and the second wants another non-residential educational measure. Suppose

the first court or judge imposes a non-residential educational measure, and the second court or judge wants a residential one. In that case, it will impose a 'unified' sanction of the residential educational measure.

Article 21/III of the draft ZOMSKD – unlike the KZ currently in force for young offenders - also predicts the maximum duration when a court imposes a unified sanction of one residential educational measure for a new offence after a previous court or judge has already imposed the same one. In that case, the 'unified' residential educational measure can last up to four years. This normative clarification about the maximum duration of unified residential educational measures is important. In the sample, there were worrying practices where some young people received several residential educational measures of the same kind and the maximum duration of the educational measure – at least formally – started anew with every final decision. Such lack of transparency in extending the duration of educational measures is inadmissible.

Suppose the juvenile receives committal to an educational institution for the first offence and to a correctional home for the second offence in a separate proceeding. In that case, Article 21/IV of the draft ZOMSKD states the court imposes one educational measure of committal to a correctional home, whereby the time spent in the educational institution does not count towards the duration of the correctional home. This provision seems reasonable as the two educational measures differ significantly in their goals.

According to Article 89 of the draft ZOMSKD, the court that imposed the most severe educational measure or last imposed a sanction of equivalent severity, whereby they accidentally did not use the provisions for educational measures 'in a series', must impose the unified sanction. Based on Article 116 of the ZOMSKD, this court should also monitor the execution of the imposed unified educational measure. This, on a normative level, solves the problem of different courts or judges imposing sanctions against the same young person and expecting educational institutions and the correctional home to send them reports. In the inspected judicial cases, educational institutions and the correctional home were sometimes rightly confused about which courts they should report on the progress of the residential educational measure.

At the roundtable with judges on 8 December 2022, the judges agreed that district courts must unify their practices when imposing unified educational measures against young people. However, they also argued that prosecutors should merge charges against the same young person instead of filing separate requests for preliminary proceedings. The judges believed prosecutors file separate motions to improve their statistics.

8.1.2. Suspension of the sanction due to the minor's absconding

In the inspected judicial cases inspected, young people sometimes absconded from educational institutions or the correctional home. However, courts rarely suspended the educational measure due to absconding. Neither the ZKP nor the KZ entails a provision about the consequences of absconding for the duration of the residential educational measure, and the normative changes in the draft ZOMSKD should be carefully considered.

Article 18 of the draft ZOMSKD explicitly states that the time the minor absconds from the educational institution does not count towards the duration of the measure. Article 19 of the draft ZOMSKD entails the same provision for when a young person absconds from a correctional home.

If a child absconds from an educational institution or a correctional home, the police can bring them back to the institution. The police can also apprehend a young person who does not return from an authorised exit from the educational institution or is hiding in an apartment or other premises in the community.

Two legal grounds allow the police to enter a dwelling and bring back to the educational institution or correctional home a young person absconding: (1.) The extradition warrant under the reasonable application of Article 548 of the ZKP; (2.) Arresting a child when informed of their absconding and runaway under Article 171 of the Enforcement of Criminal Sanctions Act-1 (ZIKS-1) and Article 26 of the ZOOMTVI.

However, it is questionable whether the current legal regime that does not require a judicial decision for the police to enter a dwelling and bring back to an educational institution or correctional home a young person absconding aligns with Article 36 of the Constitution of the Republic of Slovenia (Constitution). The normative changes predicted by Article 90/V of the draft ZOMSKD are thus welcome. This Article obliges the educational institution, correctional home, or social services to inform the court and police about the young person's absconding from a residential educational measure or lack of cooperation with a non-residential educational measure. Under such a provision, the institution informs the court about the child's absconding or lack of cooperation. The court can order a forced arrest to bring the young person back to the institution or a wanted notice in case of non-residential educational measures. The police can thus enter the premises of a building or an apartment where the child is hiding. Such a provision also does not oppose Article 36 of the Constitution.

Before the court issues a forced arrest or a wanted notice, and orders the young person is brought back to the institution, however, the judge and court-employed social workers or other specialised professionals should interview the child to explore the reasons behind their absconding. The child should also be adequately informed of their rights to make a complaint in case of violations of their rights. The time the young person absconds from the educational institution or correctional home should always count towards the duration of the measure.

8.1.3. Change of educational measures

Under Articles 83 of the KZ, 490 of the ZKP, and 117 of the draft ZOMSKD, the child has the right to have the sanction against them reviewed periodically to determine if the court should amend or terminate the measure to suit their needs better or reflect their progress. The court should change the educational measure if the young person's circumstances, development, or needs change and require a rethink of the treatment or assistance they are receiving.

In the sample, courts changed the imposed educational measures in only 8% of cases (*Figure 146*). The directors of educational institutions submitted motions to change the measure in 45%, prosecutors in 36%, and social services in 18% of cases (*Figure 147*).

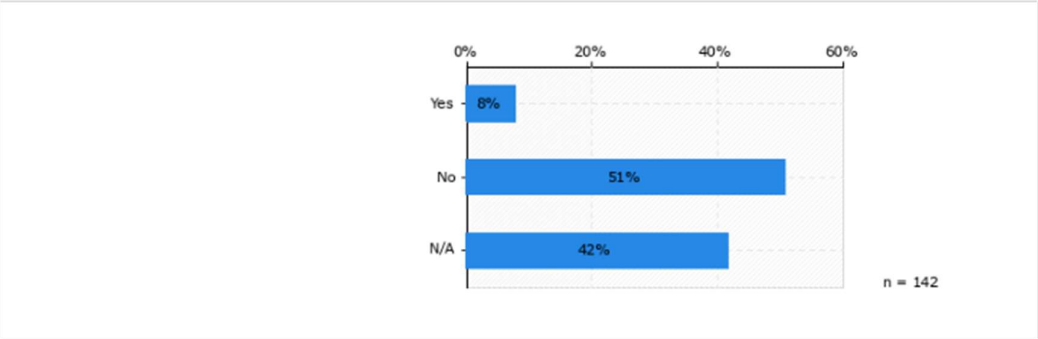

Figure 146: Change of educational measure due to changed circumstances

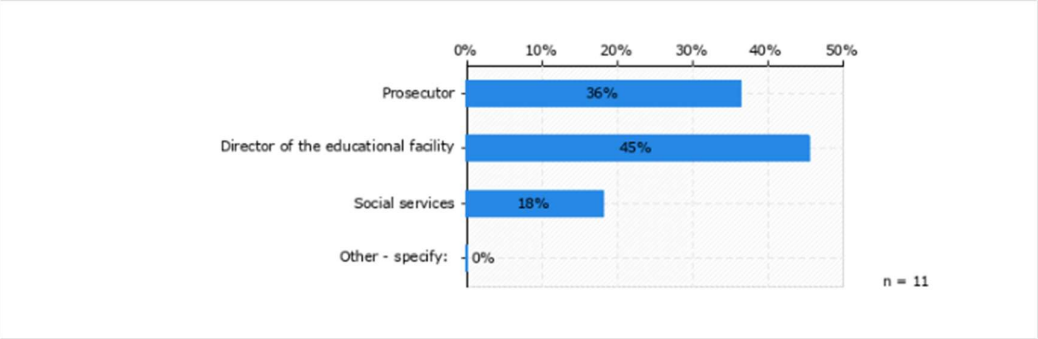

Figure 147: Motion for change submitted by

The reasons directors of educational institutions suggested changes to residential educational measures were the child's non-compliance with disciplinary rules, substance abuse, absconding, or not achieving the goals of their individual plan. They thus suggested that the young person is committed to a correctional home. In changes of residential educational measures, 78% were to the correctional home, 11% were to the educational institution, and 11% to an institution for physically and mentally disabled youth (*Figure 148*). The latter, however, was never carried out, which will be further discussed in the following sections of this report.

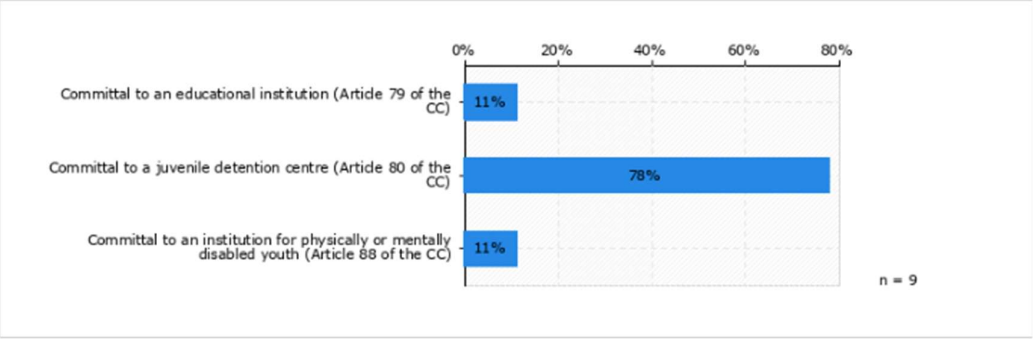

Figure 148: Changes to residential educational measure

Our analysis revealed that changes to non-residential educational measures due to non-compliance were rare. More specifically, only 18% of all changes were to non-residential educational measures (*Figure 149*). Too often, the courts in the sample did not decide to change a non-residential educational measure, even if it was clear from the social services reports that the child was not engaging with institutions as part of the imposed educational measure. In such cases, courts often did not schedule hearings to discuss the non-compliance with the young person and, if need be, change the imposed educational measure.

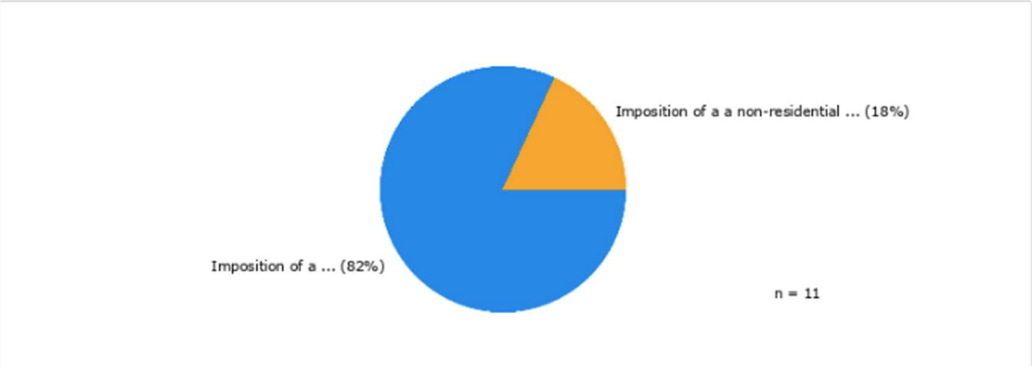

Figure 149: Shares of changes to residential or non-residential educational measures

Case study 1 is an example of when the court did not schedule the hearing to discuss the child's non-compliance with the educational measure or change the measure. *Case study 2*, however, illustrates how beneficial holding hearings to change educational measures can be. They can encourage a young person to start exercising the educational measure, thereby contributing to its effectiveness without necessarily changing it to a more punitive sanction.

Case study 1

According to the social services reports sent to the court after it imposed the educational measure, the young person was not engaging with social services as part of supervision by social services. The child failed academically and did not reach their plan's targets. After social services informed the court about the child's non-compliance and lack of progress, the court did not schedule a hearing to interview the child, their parents, and social services about the situation. The court never considered changing the imposed educational measure.

Case study 2

After imposing the educational measure, the court regularly received reports from social services about the measure's execution. The second social services report stated that the child and their father had not attended any sessions at the social services centre, nor had they paid damages to the victim, as imposed by the court's supervision by social services with accompanying instructions and prohibitions. The court scheduled and held a hearing to change the educational measure. At the hearing, the child's father said he would no longer attend sessions at the social services centre since his child is old enough to go there alone. The young person promised to participate in social services sessions and pay the victim's damages. Social services soon notified the court that the young person had not paid the victim. The court instigated a procedure to change the educational measure to committal to an educational institution and sent the case file to the prosecutor, who agreed with the change. The court then received a confirmation that the child paid for the victim's damages and is cooperating with social services. Consequently, the court held another hearing to confirm that the child paid the damages and cooperated with social services. Hence, they decided to terminate the educational measure as they deemed it had reached its goal.

At the roundtable on 8 December 2022, the judges explained that non-residential educational measures usually last a relatively short time. Consequently, the educational measures last close to the legally allowed time before the court can schedule a hearing to discuss changing them. Also, the judges clarified that they could not reverse instructions and prohibitions to residential educational measures.

While monitoring the execution of educational measures is challenging due to the judges' caseloads, the legislation regarding changing educational measures when the child does not comply or when their circumstances have changed is clear. Courts cannot change a reprimand as it is an educational measure imposed and enforced simultaneously. Articles 77/II of the KZ and 95/VII of the draft ZOMSKD explicitly state that the court can only substitute instructions and

prohibitions with supervision by social services. However, the court can replace supervision by social services or supervision by social services with accompanying instructions and prohibitions with other non-residential or residential educational measures. Articles 83/II of the KZ and 98 of the draft ZOMSKD do not explicitly mention this possibility, but they do not prohibit the change.

According to the ZKP, the court can change an educational measure at a panel session or main hearing based on the type of session it held when it imposed the measure. According to Article 119 of the ZOMSKD, the court can change an educational measure at a main hearing after they have interviewed the child, their parents, the prosecutor, the social worker, the educator from the educational institution or correctional home, or other necessary parties. According to Article 119/IV of the draft ZOMSKD, the court can only exceptionally change an educational measure to a non-residential one at a panel session if they deem that interviews with the abovementioned parties are unnecessary.

Scheduling and holding a hearing to change the imposed educational measure currently takes too long. However, this is probably mainly due to the absence of specialised juvenile criminal law departments or courts and poor social services organisation. Suppose judges dealt only with juvenile criminal cases. In that case, they could consult with social services more often and thus commence the change of an educational measure as soon as they found out about the child's breach of the educational measure or their changed circumstances. This collaboration could be more effective if some social workers dealt only with juvenile criminal cases and communicated with the young offenders and their families regularly to check the execution of the educational measures.

Lastly, the directors of educational institutions criticised the normative situation, in which the court's decision about changing an educational measure must become final before they can transfer a young person from an educational institution to a correctional home based on that decision. While waiting for the decision that changes the educational measure to become final is reasonable from a legal perspective, it can cause difficulties for educational institutions and the correctional home in practice. Suppose the reason for the change from committal to an educational institution to committal to a correctional home is the young person's conflict with other young people in the educational institution and/or their inability to fit in the institutional environment. In that case, waiting for the decision to become final before transferring the child to the correctional home is not in their best interests. Also, the correctional home cannot include the child in their reward system until the court's decision becomes final, which can be counter-productive for their desistance.

8.1.4. Termination and monitoring of educational measures

Under Articles 83 of the KZ, 490 of the ZKP, and 117 of the draft ZOMSKD, the court should terminate the educational measure if the young person does not require the treatment or assistance they are receiving due to changed circumstances, development, or needs. The court should also terminate the educational measure if the legally allowed duration of the educational measure has lapsed.

In the sample, the courts terminated the educational measure in 49% of cases. In 51% of cases, they did not end the execution of the educational measure (*Figure 15*0). Sometimes, this was because the court dismissed the case or imposed a reprimand. At other times, though, the court did not hold a closing session at the end of the measure's implementation, especially in supervision by social services or instructions and prohibitions, nor did they issue a final decision to stop the execution of the educational measure formally.

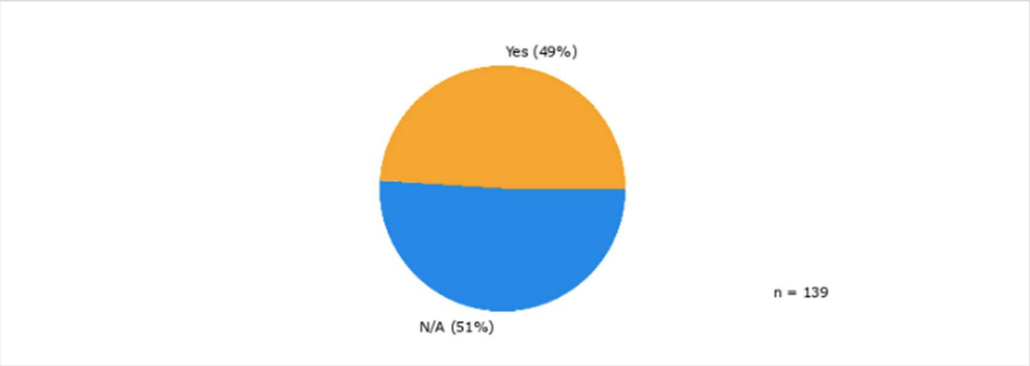

Figure 150: Termination of educational measure

When the courts in the sample imposed non-institutional educational measures, they sometimes failed to react when the child did not comply with the educational measure or only partially complied with it (e.g., attending only three out of ten sessions). As stated above, the courts did not always summon the young person to inform them that they could change the measure to a different, even more severe, one.

Often, the courts waited until the legally allowed time for the duration of the educational measure had lapsed. When that time passed, the courts did not always hold a session to terminate the educational measure, nor did they issue a final decision. Sometimes, the courts merely informed the Ministry of Justice that the educational measure has ended due to the passage of legally allowed time. In non-residential educational measures, the decision to formally end the execution of an educational measure as required by law was often missing at the end of the case file.

At the roundtable on 8 December 2022, the judges confirmed different practices. Some district courts held a closing session before terminating the educational measure to monitor the young person's progress. Others found holding closing sessions time-consuming and only notified the Ministry of Justice that the execution of the educational measure had ended.

Further, courts sometimes issued a final decision to terminate the educational measure. Still, they often stated the success of the educational measure as the reason for termination instead of saying the measure ended due to the legally allowed passage of time. The percentages in *Figures 151* and *152* should thus be interpreted with caution. The category of 'other' included cases where the imposed educational measure was successful and achieved the planned changes (e.g., 'the child finished school', 'the young person followed the guidance and rules of the educational institution'). In addition, 'other' included cases where the child's circumstances improved (e.g., 'the child re-established a good relationship with their parents'). However, 'other' also included some cases where the court terminated the educational measure due to the legally allowed passage of time or that time approaching (e.g., 'only three months of the educational measure left and no hope of progress because the child refused to cooperate').

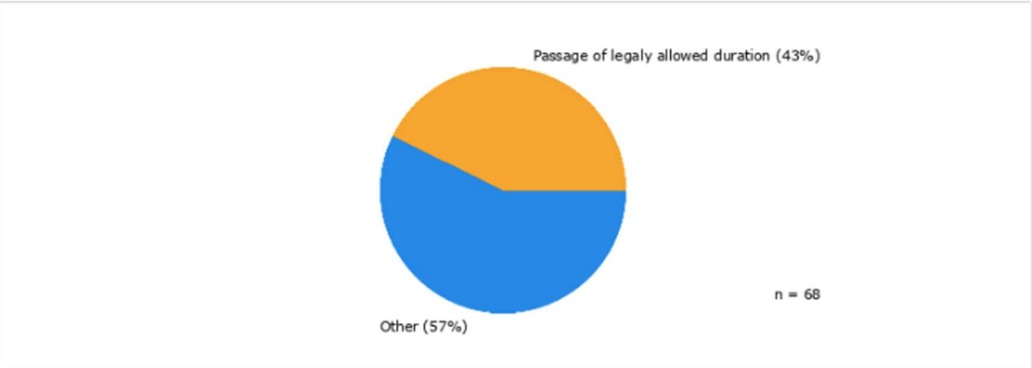

Figure 151: Reason for terminating educational measure

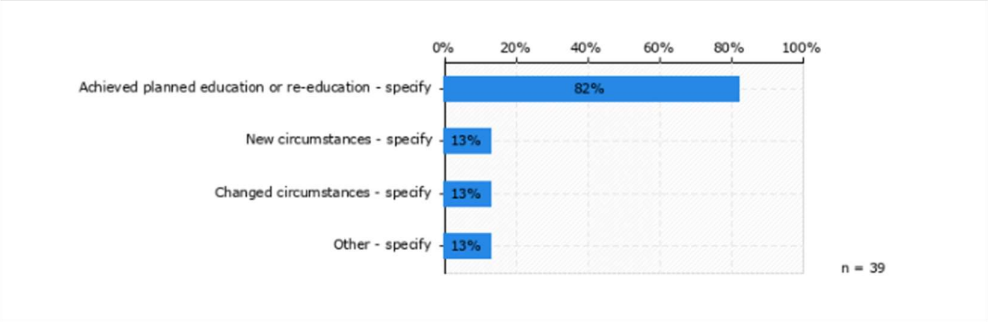

Figure 152: Other reasons for terminating educational measure

Case Study 3 indicates that courts in the sample did not always hold closing hearings, especially in non-residential educational measures they imposed for a short time. In such cases, the legally allowed time often passed before a court could organise a session to monitor and/or terminate the measure.

Case study 3

The social services reports were comprehensive, describing the child's social and family situation. It was evident from the case file that the young person had problems with educational attainment and school attendance. Yet, the court did not decide to individualise the educational measure of supervision by social services with accompanying instructions and prohibitions (e.g., regular school attendance). One of the social services reports stated that the child is not engaging with the imposed supervision of social services and that they are failing educationally. However, the court did not hold a hearing where it would interview the young person, their parents, and social services about the situation to consider changing the imposed educational measure. The educational measure lasted longer than allowed by law. Social services sent the first two reports to the court regularly: after six months and one year. A year and four months passed between the second and the third report and nine months between the third and the final report. The court never held a hearing at which it would decide about the termination of the educational measure due to the passing of legally allowed duration in line with article 490/III of the ZKP, nor did the court reach a formal decision about the termination of the educational measure. The court merely notified the social services that the educational measure ended due to the legally allowed passing of time.

When the court officially terminated the execution of the imposed educational measure, social services submitted the motions for the termination in 50%, the prosecutor in 21%, and the director of the educational institution in 16%. In 13%, the court terminated the execution of the educational measure *ex officio* (*Figure 153*)

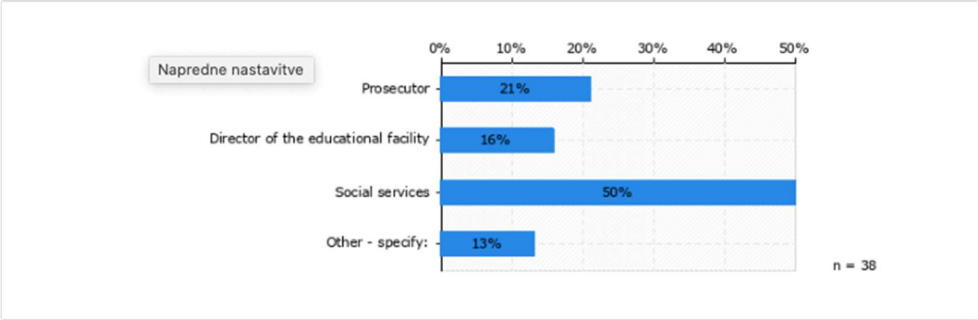

Figure 153: Motion for the termination submitted by

In 97% of the case files, social services, educational institutions, and the correctional home regularly – every six months as stated in Article 489 of the ZKP - reported the progress of the imposed educational measures to the court (*Figure 154*). However, while the reports on the execution of educational measures were mainly regular, they were sometimes generic and not detailed about the specific tasks imposed by the court (*Case study 4*).

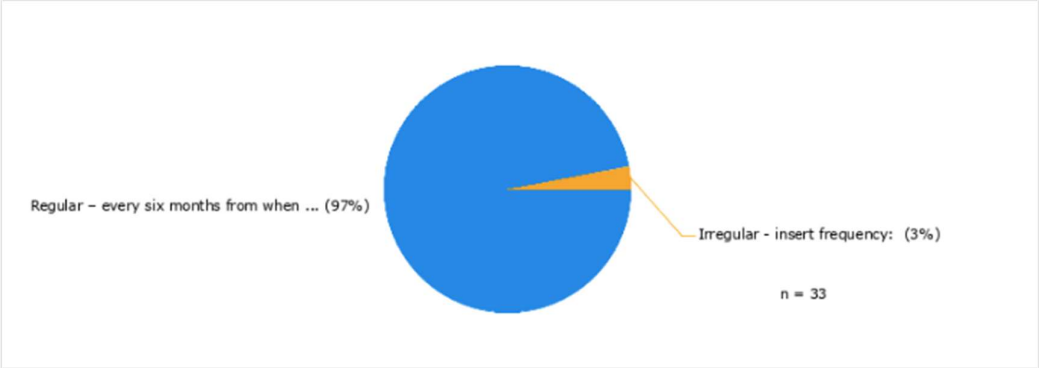

Figure 154: Frequency of reports by social services, educational institutions, and the correctional home

Case study 4

In this case, the court imposed supervision by social services. Social services prepared an individual treatment plan. The plan stated that social services would monitor the child through frequent conversations with the child and their parents. The social worker would also liaise with the child's school to ensure progress in the academic field. The social services plan included the main treatment tasks and ways of achieving them. However, the social services reports sent to the court during the execution of the educational measure were generic. They did not mention the child's fulfilment of their school obligations, progress in achieving other treatment goals, or the content of meetings with the young person and their parents.

According to Article 116 of the draft ZOMSKD, social services, educational institutions, and the correctional home should report to the court about the success of the educational measure every three months. Further, the court can ask for a report more often than that. Also, the court must test whether they need to change or terminate the educational measure every six months. This normative change obliges the court to regularly and thoroughly check the execution of the educational measure. Article 116 of the ZOMSKD also obliges the judge to visit and talk to every young person undergoing a residential educational measure based on their decision once a year. Ideally, the judges' visits to young people in educational institutions and the correctional home would be more frequent. Courts should also regularly contact young people undergoing non-residential educational measures. The specialisation of juvenile criminal courts could contribute to such practices.

Article 117/III of the ZOMSKD explicitly states that if the court decides to change the imposed educational measure to a more severe one, the duration of the milder measure does not count towards the stricter one. This normative solution might seem reasonable when the court changes a non-residential educational measure to a residential one because the two groups of educational measures have substantially different goals. Sometimes, however, not counting the duration of one residential educational measure towards another might not be in the child's best interest. In one of the inspected case files, the court changed committal to an educational institution into committal to a correctional home just before the three-year maximum duration. Consequently, the child spent another three years in a correctional home and resided in an institution for almost six years. It is thus essential to rethink whether the duration of the first-imposed educational measure should not count towards the amended measure, whether it should always count, or whether it would be better to have different provisions for non-residential and residential educational measures. It is believed that the duration of the first-imposed educational measure should always – in residential and non-residential educational measures and the changes between them - count towards the duration of the measure into which it is amended.

Last, Article 94 of the ZOMSKD states that the educational institution releases the juvenile when they receive the final decision of the court that the measure has ended or when the legally allowed duration of the educational measure has passed. This provision is unclear and can create confusing situations where educational institutions or the correctional home will calculate the time lapse differently than the court. A better normative solution would be that the court should always hold a session to terminate any non-residential or residential educational measure and reach a decision to end the measure. After that decision becomes final, the educational institution or correctional home should release the young person, which should be no later than the maximum duration of the educational measure. In parallel, the court should terminate non-residential educational measures no later than their maximum duration and notify social services about the termination.

8.2. Difficulties in the execution of specific criminal sanctions against young people in conflict with the law

8.2.1. Reprimand

According to Articles 76 of the KZ and 15 of the draft ZOMSKD, the court imposes a reprimand when they believe the imposition of the educational measure alone will achieve its purpose, especially when a young person has committed the offence due to recklessness or carelessness. When imposing a reprimand, the court should demonstrate to the young person the harmfulness of their behaviour and warn them that they can impose a more severe penalty should they commit another offence.

Our case file analysis revealed that some courts regularly imposed reprimands, while others did not in the inspected time frame. At the roundtable on 8 December 2022, the judges explained that having the chance to impose a reprimand is necessary. The courts impose reprimands when a young person has committed a criminal offence, the criminal proceedings against them have started, but they have improved their behaviour during the criminal proceedings, and their personal and family circumstances are stable. In the sample, some courts might have encountered such situations while others did not, hence the discrepancies in how many reprimands they imposed.

8.2.2. Instructions and prohibitions

According to Articles 77 of the KZ and 16 of the draft ZOMSKD, the court should impose one or more instructions and prohibitions on a child as an independent educational measure if it deems it will be possible to impact their behaviour through such measures. Based on Article 16/II of the draft ZOMSKD, the court may impose one or more of the following instructions and prohibitions:

1. In-person apology to the injured party.
2. Compensation with the child's resources or by working.
3. Regular school attendance.
4. Vocational training or employment appropriate to the child's skills and abilities.
5. Living with a particular family or elsewhere suitable for the young person's healthy development.
6. Voluntary work.
7. Treatment in an appropriate health care institution, including treatment for alcohol or drug addiction.
8. Educational, vocational, or psychological assistance.
9. Social training programmes.
10. Passing the theoretical part of the driving test of a specific category.
11. Ban from driving a motor vehicle.
12. Restraining order prohibiting the child from communicating with the victim or any other person, including digital communication.
13. Prohibition of associating with certain persons.
14. Prohibition of access to certain places or events.

In addition to the instructions and prohibitions in the KZ, the draft ZOMSKD allows the imposition of treatment for alcohol and drug addiction, restraining orders, and prohibitions to associate with some people and access places. Such an extensive span of instructions and prohibitions might enable a better individualisation of educational measures. However, compulsory drug and alcohol treatment without the child's motivation might not be as successful as expected. Also, young people are more likely to breach restraining orders. Breaches might be more prevalent if the victims that the young offenders are not supposed to approach are from the same school or peer group or if the places they are not allowed to visit are in their community. Courts should thus thoroughly rethink the appropriate instructions and prohibitions according to the child's personality and circumstances.

In some of the inspected case files, it was indicated that although courts imposed specific instructions and prohibitions, social services carried out this educational measure as supervision by social services (*Case study 5*). Social services sometimes started executing the instructions and prohibitions long after the courts imposed them. Further, courts rarely changed the imposed instructions and prohibitions, even if the social services reports showed the young person was not cooperating (*Case study 6*).

Case study 5

In this case, the court imposed instructions and prohibitions (social skills training) for one year. The educational measure that social services carried out was supervision by social services, whereby the child only had meetings with social workers at the social services centre. Social services sent regular reports to the court every three months, stating that the juvenile is still not doing well in school and is spending much time outside with their peers, possibly smoking cannabis. The court did not decide to schedule a panel session or hearing to talk to the young person, ask them about their progress, and possibly change the educational measure. The court terminated the imposed educational measure due to the legally allowed passage of time. Still, it stated that the juvenile has matured, so the social skills training

reached its goals. The court terminated the educational measure one year, five months, and four days after it imposed it, five months and four days after the legally allowed time.

Case study 6

In this case, the court imposed a non-residential educational measure of instructions and prohibitions - regularly attending school and attending social skills training - for one year. Although the court is supposed to monitor the execution of the educational measure every six months, the court asked for a social services report eight months after the instructions and prohibitions were supposed to end. Moreover, the social services report indicated that the child did not finish secondary school, they did not stop using cannabis, and their father threw them out of the family home for six months. The young person occasionally worked in Germany at an unknown workplace. In its decision to terminate the educational measure, the court argued that it was successful as the young person has become more independent, has a job in Germany, and wants further education to get a pay raise. The court's decision to terminate the educational measure became final eleven months and ten days after the maximum time courts can impose the educational measure.

At the roundtable on 8 December 2022, the judges explained that the maximum one-year duration of instructions and prohibitions passes quickly. As it is only possible to substitute instructions and prohibitions with supervision by social services, courts rarely change the measure even if social services notify them that the young person is not complying. More research is needed to determine the precise organisational difficulties social services and courts face in executing and monitoring the imposed instructions and prohibitions.

8.2.3. Supervision by social services

Articles 78 of the KZ and 17 of the ZOMSKD state that if a young person needs professional assistance and supervision to influence their upbringing, re-education, and optimal development more permanently, the court should place them under the supervision of social services. The court can also impose supervision by social services and one or more instructions and prohibitions.

In the examined sample, several difficulties relating to the execution of supervision by social services were encountered. Like in executing instructions and prohibitions, social work centres began with supervision by social services long after the judicial decision imposing such an educational measure has become final. The normative solution offered by Article 90/IV of the draft ZOMSKD, stating that the social work centres must start executing the imposed non-residential educational measures no later than thirty days after receiving the court's decision, is thus welcome. However, the competent authorities must implement such a provision cautiously, considering the organisational difficulties social services in Slovenia face.

Further, the analysis of social services reports has revealed that supervision by social services is not always sufficiently individualised according to the specific young person's circumstances and needs. Perhaps imposing instructions and prohibitions alongside supervision by social services could contribute to better individualising these educational measures. Again, this option needs to be thought through. More specifically, it was also found that instructions and prohibitions are often executed as mere supervision by social services on the ground, as mentioned in section 8.2.2. above. When monitoring the execution of supervision by social services, courts rarely changed the measure to a more severe one if social services reports indicated the young person was not complying with the tasks set out by social services.

At the roundtable on 8 December 2022, judges explained that social workers' meetings with young people as part of supervision by social services are rare and shallow, depending primarily on the willingness and motivation of the individual social worker. While some social workers follow up

on the young person and try to build a relationship to impact their development and desistance positively, others will merely have telephone contact with the child. Such inconsistent practices are unsatisfactory. The normative clarifications offered by Article 98/II of the draft ZOMSKD stating that – when executing supervision by social services – the social worker should pay special attention to the child's upbringing, protection, and supervision through regular contact with the young person are thus welcome. This contact can only be in-person and on a weekly, fortnightly, or monthly basis, depending on how long the measure lasts.

According to Article 17/II of the draft ZOMSKD, social service supervision can last six months to two years. Although sometimes six months is a long enough period to elicit change in a child's behaviour, courts had trouble monitoring the progress of educational measures imposed for a year or less. According to the judges at the roundtable, a year passes quickly. Sometimes, the court cannot organise the hearing to change the educational measure even if the social services reports indicate breaches. Before implementing the changes offered by the draft ZOMSKD concerning supervision by social services, further research must examine how realistic the timelines of educational measures according to the draft ZOMSKD are in practice.

8.2.4. Committal to an educational institution

Under Articles 79 of the KZ and 18 of the draft ZOMSKD, the court imposes committal to an educational institution if the young person needs constant guidance and professional supervision for optimum upbringing, re-education, and development.

Based on the case file analysis, some practical difficulties accompanying the normative changes offered by the draft ZOMSKD are envisioned.

Article 18 of the draft ZOMSKD states that the court imposing committal to an educational institution should – after obtaining the opinion of social services – nominate the specific educational institution where they want to place the child. The nominated educational institution must accept the young person. Although such a normative clarification is welcome, specific educational institutions might sometimes be at capacity. If they are at full capacity and the court still nominates them in its final decision, such a final decision might not be executable. In the sample, the court appointed a concrete institution for physically and mentally disabled youth that did not want to accept the child, which created many problems and will be further discussed in section 8.2.6. of this report. Also, social services seem to be overburdened and understaffed. Further research is needed to establish if they have the resources to take on the additional task of writing opinions for courts on the suitability of educational institutions.

Moreover, directors of educational institutions believed the law should introduce a new educational measure for young people in trouble with the law, committal to an educational institution with accompanying compulsory instructions and prohibitions, especially substance abuse treatment. While this suggestion seems reasonable to better individualise the committal to an educational institution for a young person struggling with drug and/or alcohol addiction, such a measure cannot solve the difficulties of executing such a sanction.

Suppose the new law prescribed this option, and the child did not carry out the drug or alcohol treatment. In that case, the court could change committal to an educational institution to a stricter educational measure, committal to the correctional home. However, suppose drug treatment is part of the young person's individual plan at the educational institution now, according to current legislation, and the young person does not comply. In that case, the educational institution can still suggest that the court changes the educational measure to a more severe one. Also, the educational

and rehabilitative value of compulsory drug or alcohol treatment is questionable. It might be better if more research was conducted on improving the provision of voluntary drug treatment in the community and educational institutions and how to motivate children to comply better.

Some normative solutions in the ZOOMTVI require further attention, especially regarding how educational institutions implement them. Article 20 of the ZOOMTVI gives educational institutions the right to process young people's violence and damages - which can be criminal offences if committed in the community - as disciplinary breaches. Disciplinary proceedings are internal and non-judicial decision-making processes. While this type of problem-solving resembles parenting practices and deals with young people's transgressions more informally, educational institutions house vulnerable young people and operate away from the public gaze. Also, young people do not have the same procedural rights in criminal or disciplinary proceedings. Therefore, more research is needed to examine how effectively, fairly, and transparently educational institutions carry out disciplinary proceedings.

It is also essential to examine how educational institutions process drug tests according to Article 21 of the ZOOMTVI. In the sample, there was some indication that if young people placed in an educational institution want to challenge the results of the internal drug test, they must pay for the additional test themselves. While this is understandable from a public spending perspective, young people in trouble with the law are often a socio-economically vulnerable group that might not have the resources to purchase drug tests to challenge internal results. Since internal reward systems depend on drug test results, it is problematic that most young people in educational institutions cannot challenge them. In one of the inspected case files, a young person successfully challenged the results of an internal drug test, avoiding the loss of rewards.

Similarly, Article 29 of the ZOOMTVI states that the director of the educational institution decides about a young person's complaint if they believe the educational institution breached their rights. The child can appeal against the director's decision. Still, the body that decides about their appeal entails a member from the educational institution where the child resides and two educators from other educational institutions in Slovenia. Although educational institutions probably carry out such proceedings in the child's best interest, more research is needed to establish how young people understand and experience them.

Last, Article 114 of the ZOMSKD allows the correctional home to place young people in isolation when they harm themselves or others. Some directors of educational institutions interviewed as part of LOT 1 believed this provision should also apply to educational institutions. While educational institutions surely deal with children's auto- and hetero-aggression, further research is needed to establish if implementing such a solution fits the nature and organisation of educational institutions in Slovenia.

8.2.5. Committal to a correctional home

Based on Articles 80 of the KZ and 19 of the ZOMSKD, the court places the young person in the correctional home if they need constant supervision and professional guidance to desist from crime, develop, and re-educate themselves. The measure lasts from one to three years.

The case file analysis found that the correctional home is necessary to house serious or persistent young offenders, offering them a structured and secure environment to desist from crime. However, it was impossible to assess how well committal to a correctional home is individualised. The correctional home's reports indicated that the measure is carried out somewhat generically

and does not sufficiently consider a specific child's circumstances and needs. Further research is needed to establish how this educational measure is carried out daily and how young people experience the assistance they receive. Young people in the correctional home are a specific population with multiple and complex needs. The correctional home might thus benefit from staff specialised in dealing with this group of young people in a multidisciplinary way.

The case file analysis showed that drugs were easily accessible at the correctional home. Understandably, even closed institutions like prisons are not immune to the influx of drugs. Nevertheless, it was surprising how the correctional home responded to young people's drug use, especially given that many were regular drug users before arriving at the correctional home. In the sample, 59% of children who received a residential educational measure regularly used drugs, and 19% used drugs occasionally, whereby the child's drug use was unknown in 16%. Only 5% of children, who received residential educational measures, never used drugs (*Figure 155*).

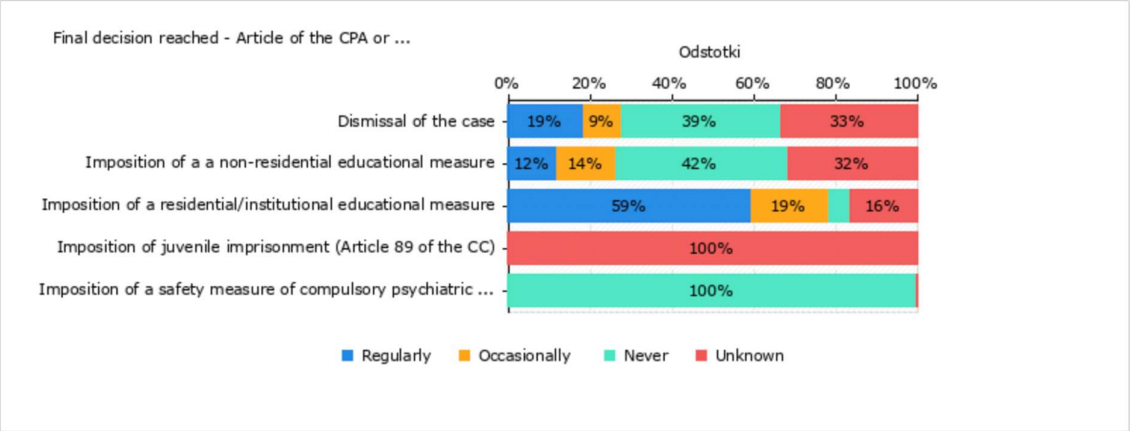

Figure 155: Drug use in young people receiving criminal sanctions and having case dismissed

Despite such statistics and the accessibility of drugs at the correctional home, the correctional home employed a zero-tolerance approach to drug use, at least according to the case file analysis. In the sample, young people whose internal drug tests were positive could not progress to more open regimes or were excluded from internal reward systems. Further research should examine how young people can challenge internal drug tests and whether reward systems are administered fairly and transparently. A rethink of zero-tolerance approaches to drugs in institutional milieus where young people can get hold of drugs and suffer from drug addiction is also encouraged. Sometimes, young people better accept restorative programmes that encourage gradual desistance from drug and alcohol use and allow for relapses. Such approaches would also align with Article 111/VI of the draft ZOMSKD, enabling less disciplinary and more restorative measures to resolve conflict.

Last, some cases of committal to the correctional home in the sample indicated that young people do not receive adequate post-penal support after the measure is terminated, especially compared to young people after the termination of committal to an educational institution. Article 4 of the ZOOMTVI establishes that educational institutions offer post-penal help and assistance to released young people. However, the ZOOMTVI does not apply to the correctional home Radeče. The correctional home Radeče falls under the jurisdiction of the Ministry of Justice, not the Ministry of Education, Science, and Sport, as do educational institutions. While Article 28 of the ZOOMTVI includes a provision giving young people released from an educational institution the right to housing, the KZ, ZKP, ZIKS-1, or ZOMSKD do not entail such a provision for young

people released from the correctional home. Such a legal vacuum breaches young people's equality before the law.

8.2.6. Committal to an institution for physically or mentally disabled youth and safety measures of compulsory psychiatric treatment and confinement in a mental health institution and compulsory psychiatric treatment at liberty

Article 81 of the KZ allows the court to place a young person with a mental or physical disability in an institution for physically and mentally disabled youth instead of putting them in an educational institution or correctional home. Article 20 of the draft ZOMSKD allows the court to place a child with a mental disability in an institution for mentally disabled youth instead of putting them in an educational institution or correctional home. According to the draft ZOMSKD, the court cannot impose this sanction instead of a safety measure of compulsory psychiatric treatment and confinement in a mental health institution anymore, as is the case under Article 81 of the KZ.

The draft ZOMSKD also states that – before deciding whether to impose this sanction or not – the court should obtain the expert opinion of the commission for the guidance of children with special needs on the nature and degree of the young person's mental disorder. The commission must send the court their opinion within one month of their request.

If imposed instead of an educational measure, committal to an institution for physically or mentally disabled youth can last six months to three years. If imposed instead of committal to a correctional home, it can last one to three years.

Article 115 of the draft ZOMSKD also states that the court's final decision must establish in which institution the child will be placed.

As part of the analysis, district courts in Celje, Koper, Ljubljana, and Maribor were asked to provide all the cases where they imposed committal to an institution for physically or mentally disabled youth between 2015 and 2019. None of these district courts imposed the measure in the inspected time frame. Thus, an evidence-informed analysis of whether the changes, as predicted by the draft ZOMSKD, are in the best interest of young people in trouble with the law who suffer from physical and/or mental disabilities cannot be provided.

As part of the analysis, a case where the court changed committal to a correctional home to committal to an institution for physically and mentally disabled youth was inspected. Due to practical difficulties, however, the young person was never transferred to this institution. *Case study 7* below summarises the emotional and behavioural difficulties, disabilities, and mental health problems the young person suffered. It also presents the assessments and safeguards the court employed to examine the child's needs and the reasons why it changed committal to the correctional home to committal to an institution for physically and mentally disabled youth. Last, it focuses on the practical problems that emerged in the execution of the measure.

Case study 7

(1.) Prior institutional involvement of the child and family: *Social services have dealt with the family since the father sought help due to the child's unresponsiveness to parenting practices and upbringing at a very young age. When the child was in the seventh grade of primary school, their behaviour deteriorated, and they became educationally unresponsive and aggressive. Consequently, social services sent them to a crisis centre for adolescents and youth, but they got discharged due to disruptive behaviour. Social services then placed the child in three*

educational institutions. Still, all three institutions discharged the child due to their disruptive behaviour, aggression towards educators and other juveniles, substance abuse, personal hygiene difficulties, etc. Therefore, they sent the child back to stay with their parents. The child's parents were active in finding support, especially drug treatment. However, they were disappointed that all drug treatment was voluntary, even if a young person was below eighteen.

(2.) References to physical, mental development, emotional or behavioural issues, personality disorders or mental health issues: *Chronic substance abuse from the age of twelve; self-harm; adolescent-to-parent violence; bullying victimisation; sexual abuse victimisation in the educational institution and correctional home; several involuntary hospitalisations in mental health institutions since early childhood; officially diagnosed comorbidity of personality disorders (dissociative disorder, hyperkinetic disorder, chronic drug addiction, PTSD) working together to make the juvenile socially dysfunctional.*

(3.) References to mental health assessments and special safeguards taken to protect the child during court procedure: *Assessment by child and adolescent psychiatrist; assessment by an adult psychiatrist; removing the child from the current environment based on Articles 471 and 481 of the ZKP during the main hearing (the child was placed in the correctional home where he was also placed based on the final decision, although it was apparent throughout the procedure that this is not in the child's best interest).*

The court did not nominate a physician, psychiatrist, psychologist, or educator to evaluate the juvenile's medical condition, mental development, or mental properties according to Article 469/IV of the ZKP during the preliminary proceedings. The court nominated the experts during the main hearing.

(4.) Reasons for the imposed educational measure: *Contrary to expert opinions and educators in the correctional home, the court placed the young person in a correctional home. The court justified its decision by stating that the child had complex personality disorders that demanded a highly structured environment. The child abused several substances, including cannabis, daily and in vast quantities, their behaviour was aggressive, and they were involuntarily hospitalised three times. They were dissociated from their family and did not show empathy. The child needed constant control and supervision in an institution as they were not responding to parenting practices.*

(5.) Execution of educational measure: *At the correctional home, the child consistently broke the rules (stealing, not following the schedule, disruptive behaviour, not respecting expectations around personal hygiene, rude behaviour towards educators, etc.). The young person also abused substances and acted out (made animal noises, danced around the courtyard, banged on the floor, made strange faces, etc.). The young person displayed other unacceptable behaviour (urinating around his room, wiping the urine with his clothes, breaking windows, etc.). The child juvenile did not engage in education. They always wanted to be intoxicated and were never reflexive about the harmfulness of their behaviour to themselves and others.*

Consequently, the director of the correctional home suggested the court changes the imposed educational measure. At the hearing regarding the change of the educational measure, the correctional home's educator and psychiatrist established that the child was sexually abused in one of the educational institutions in which they were placed before coming to the correctional home and once more at the correctional home. However, the child's complex personality disorders and substance abuse prevented them from acknowledging and dealing with the abuse. The young person could not function in a group setting like a correctional home. Other detainees consistently bullied them, so the correctional home was a dangerous environment for them. Therefore, the child should be placed in an institution enabling twenty-four-hour support, guidance, and supervision. The institution should ensure the child's safety, manage their poor social functioning, and cater to their complex personality disorders (dissociative and hyperkinetic disorder, drug addiction, PTSD). The institution should allow the young person's gradual progress in becoming independent and developing socially acceptable behavioural patterns. At the hearing to change the educational measure, the

psychiatrist suggested the child be placed in educational institutions 1, 2, or 3, where they had experienced psychiatric staff and a well-trained social services team. The young person's mother confirmed that the child could not stay in the family environment, so an institutional educational measure other than the correctional home would be more appropriate. The court decided the child be placed in an institution for physically or mentally disabled youth according to Article 81 of the KZ. They also ordered the child to be removed from the correctional home and placed in an appropriate social care institution[32] before this decision became final.

Eleven social care institutions refused to accept the young person. They had different reasons for the refusal: they are at capacity; do not have specialised programmes for youth; cannot ensure the child's or other clients' safety in the institution; do not accept young people based on decisions of the criminal court, etc. The correctional home informed the court that they could not transfer the child to an appropriate social care institution. The court's decision was final but did not entail the precise institution where the child should be placed, and none of the social care institutions wanted to accept them anyway. For the same reason, the Ombudsman contacted the court. Based on article 133 of the ZKP, the court decided that the juvenile be placed in the institution for physically or mentally disabled youth, i.e., Training, Work, and Protection Centre (CUDV) Črna na Koroškem based on Article 199 of the ZIKS-1. CUDV Črna na Koroškem appealed the court's decision. They claimed that the child could only be placed in their institution if they have a decision from the Institute of the Republic of Slovenia for Education and Guidance of Children with Special Needs, which identifies the child as a child with a moderate, severe, or profound developmental disability. The young person did not have such an official diagnosis. The Court of Appeal agreed with CUDV Črna na Koroškem, overturned the judgment of the first instance court, and returned the case to the first instance court for a retrial.

During the retrial, the correctional home reported that it is not an appropriate place for the young person as their mental health is deteriorating. Still, the court could not find a suitable institution. An institution that would provide a young person in conflict with the law with social care, mental health treatment, and safety does not exist in Slovenia. At the main hearing, as part of the retrial, the educator from the correctional home reminded the court of the number of times it called for a change in the imposed educational measure as the correctional home was not a suitable place for the specific young person. Despite this, the educator emphasised that the child has progressed throughout their stay at the correctional home. They also stressed this was because the staff at the correctional home gave full attention to the child's special needs. The young person was - for the entire three years he was detained at the correctional home - placed in a room alone and never attended any group activities. They never went home to visit their family as such structured and closed measures were necessary for their well-being. As part of the retrial (and three months before the committal to the correctional home was terminated by law due to the legally allowed passage of time), the court decided that the young person should stay at the correctional home until the educational measure is terminated by law, then the correctional home should release them.

At the time of this judicial decision, the non-litigation division of one of the district courts in Slovenia also dismissed the social services' motion that the child is placed in a social care centre involuntarily based on the Mental Health Act (MHA). We do not know what happened to the child after the correctional home released them. The case file mentioned that the child would return home to their parents. However, their mother was worried they would fall back into previous patterns due to the presence of peers and the availability of drugs in the area.

[32] In the Slovenian system, a social care institution is an institution for people with disabilities. Social care institutions are not educational institutions according to criminal law legislation. In this case, however, the psychiatrist stated in their expert opinion what institutions they believed would be most appropriate to house the specific young person according to their special needs.

Case study 7 was summarised at length to expose some pressing problems of the Slovenian youth justice system and the execution of criminal sanctions for young people in trouble with the law:

- No institution in Slovenia seems appropriate for housing young people who receive an educational measure of committal to an institution for physically or mentally disabled youth. CUDV Črna na Koroškem - the institution designated to house physically or mentally disabled youth - does not seem appropriate for children with complex emotional and behavioural problems, including offending behaviour. CUDV Črna na Koroškem does not have the proper security measures to keep its young and adult clients with physical and/or mental disabilities safe.
- Although not considered in *Case study 7*, no institution in Slovenia can house children when a court imposes a safety measure of compulsory psychiatric treatment and confinement in a mental health institution. Also, children that do not have a psychiatric diagnosis cannot receive such a safety measure, even if they suffer from comorbidity of severe personality disorders.
- An institution for young people in trouble with the law with comorbidity of personality disorders, addictions, etc., that would combine social care, psychological and psychiatric help, and safety for young people at risk of self-harm or harming others does not exist in Slovenia. An expert clinical psychologist in *Case file 7* emphasised that no institution in Slovenia would cater to the young person's specific needs. When emotional difficulties intersect with behavioural issues - especially aggressive behaviour - educational institutions cannot offer individualised support to help children such as the specific child to rehabilitate themselves and be involved in educational processes. The expert emphasised that educational institutions helping these kinds of children need to have complex programmes that would encourage the children in what they are good at, provide them with a safe environment, and help them with their special needs, either emotional or psychiatric.

Further research is needed to establish which institutions in Slovenia are appropriate to house young people who receive an educational measure of committal to an institution for physically or mentally disabled youth. If such institutions exist, the provision in Article 115 of the draft ZOMSKD, stating that courts should nominate concrete institutions where the young person will reside, is manageable. If such institutions do not exist, responsible authorities should establish them.

Similarly, future research should explore if existing educational institutions can accept young people with comorbidity of emotional and behavioural issues, personality disorders, addiction, and/or psychiatric diagnoses. More specifically, Article 13 of the ZOOMTVI states that expert centres (i.e., educational institutions) must establish intensive groups for children and adolescents who, due to their more complex problems, require intensive assistance, structured help, and/or therapeutic treatment. Article 13 of the ZOOMTVI also states that - in an intensive group - the expert centre may provide a higher level of security for children and adolescents through the permanent presence of professionals if established by the centre's director. Suppose educational institutions can structure *ad hoc* multidisciplinary teams of qualified professionals to cater to the needs of young people with comorbidity issues. In that case, the responsible authorities do not need to establish a new institution with this aim. If educational institutions cannot serve such a purpose, then an institution for young people in conflict with the law who have complex needs or suffer from comorbidity issues should be established.

Future research should also clarify which institutions will execute the safety measures of compulsory psychiatric treatment and confinement in a mental health institution and compulsory psychiatric treatment at liberty according to Articles 64, 65, and 72/IV of the KZ or Article 32 of the draft ZOMSKD. The court can impose such measures upon a young person who has committed an offence in a state of insanity or substantially reduced mental capacity if they are at risk of committing a grave offence against life, limb, sexual integrity, or property. Only treatment and care in a healthcare institution can eliminate the risk. The court imposes compulsory psychiatric treatment at liberty if a young offender has committed an offence in a state of insanity if it finds this necessary and sufficient to prevent the offender from committing serious crimes.

Our research did not find a case file where the court imposed a safety measure of compulsory psychiatric treatment and confinement in a mental health institution. A forensic hospital that would house and provide treatment for young offenders who receive such a safety measure does not exist in Slovenia. This situation is worrying, and responsible authorities should establish such an institution as soon as possible.

Last, little is known about how the safety measure of compulsory psychiatric treatment at liberty plays out in practice. The analysis found only one example where the court imposed such a measure. This example revealed many difficulties in executing the measure and problems for young people post-execution (*Case study 8*).

Case study 8

The case file indicated that children with specific mental health issues sometimes do not have their needs met early enough. In this case, the young person was diagnosed with Asperger's syndrome in kindergarten. They were placed in a school for deaf and hard-of-hearing children that was far from equipped to work with children with Asperger's syndrome. The child's father was actively seeking support throughout the child's life. The father described that finding an appropriate special needs school or other institution for the young person has been wholly bureaucratised. Throughout the child's life and during the criminal proceeding, officials considered whether to commit the child to an institution for physically or mentally disabled youth, but this was never seriously pursued. The court then considered imposing a safety measure of compulsory psychiatric treatment and confinement in a mental health institution. However, an institution that would accept young people in conflict with the law who receive such a safety measure does not exist. The court thus imposed a safety measure of psychiatric treatment in the community that can last up to two years. The court decided to impose this measure only because the young person's psychiatrist in the community agreed to execute the measure. Six months before the end of the safety measure, the health institution notified the court that the young person's psychiatrist had retired and the child's mental health had deteriorated. The child became suicidal and wanted to get hit by cars. On several occasions, they went to the police station and threatened police officers with knives, claiming they wanted the officers to shoot them as they wanted to die. Social services sent a motion to the court, suggesting they change the safety measure to compulsory psychiatric treatment and care in a healthcare institution as the child's life was in danger. As a forensic hospital for young people in conflict with the law does not exist, the court ignored the motion without explaining why. The court also did not issue a final decision to terminate the safety measure after two years had passed. It merely notified the Ministry of Justice that the safety measure had ended by law two years after it started. The court sent the information to the Ministry of Justice more than three years after it imposed the safety measure. It is unclear from the case file what happened to the young person after the safety measure ended.

In the inspected case files, no other relevant information regarding the execution and individualisation of sanctions against young people in trouble with the law was found. In the sample, the courts imposed juvenile imprisonment in only two cases between 2015 and 2019. Few

examples of juvenile imprisonment indicate that courts use this sanction as a measure of last resort according to Articles 89 of the KZ and 12 of the draft ZOMSKD.

8.3. Data on the individualisation and execution of criminal sanctions: Summary of findings and recommendations

Summary of findings:

- **Courts usually impose sanctions for the duration allowed in the law.** Sometimes, non-residential and residential educational measures last longer than the legally allowed maximum as courts experience difficulties monitoring the execution of educational measures and holding closing sessions on time. **The specialisation of juvenile criminal departments or courts might contribute to more diligent monitoring of educational measures, including their duration.**
- When different district courts or judges of the same district court run separate procedures, they sometimes simultaneously impose two or more educational measures against the same young person. **When the court decides about two criminal offences in the same proceeding and wants to impose a sanction, they should apply the rules for imposing sanctions 'in a series', adapted to educational measures**. When proceedings run separately, the court that imposed the most severe educational measure or last imposed a sanction of equivalent severity must impose the unified sanction. That court should also monitor the execution of the imposed unified educational measure.
  Young people sometimes abscond from educational institutions or the correctional home. **The time the minor absconds from the educational institution or correctional home should always count towards the duration of the measure**. When a child absconds from an educational institution or a correctional home, **the police can bring them back to the institution.** The educational institution, correctional home, or social services should **inform the court and police** about the young person's absconding from a residential educational measure or lack of cooperation with a non-residential educational measure. The court can order a forced arrest to bring the young person back to the institution or a wanted notice in case of non-residential educational measures. Before the court issues a forced arrest or a wanted notice, and orders the young person is brought back to the institution, however, the judge and court-employed social workers or other specialised professionals should interview the child to explore the reasons behind their absconding. The child should also be adequately informed of their rights to make a complaint in case of violations of their rights. The time the young person absconds from the educational institution or correctional home should always count towards the duration of the measure.
- **Courts rarely change non-residential educational measures due to the young person's non-compliance. In such cases, courts often do not schedule hearings to discuss the non-compliance with the young person and, if necessary, change the imposed educational measure.** Monitoring the execution of educational measures is challenging due to the judges' caseloads and the lapse of the legally allowed maximum duration of an educational measure before the court can schedule a hearing. **If judges dealt only with juvenile criminal cases, they could consult with social services more often and thus commence the change of an educational measure as soon as they found out about the child's breach of the educational measure or their changed circumstances.** This collaboration could be more effective if some social workers dealt only with juvenile criminal cases and communicated with the young offenders and their families regularly to check the execution of the educational measures.

- **Waiting for the decision that changes the educational measure to become final is reasonable from a legal perspective. However, it can be difficult in practice** if the reason for the change from committal to an educational institution to committal to a correctional home is the young person's conflict with other young people in the educational institution and/or their inability to fit in the institutional environment.
- **The courts sometimes did not hold a closing session at the end of the measure's implementation,** especially in supervision by social services or instructions and prohibitions, nor did they issue a final decision to stop the execution of the educational measure formally. Sometimes, the courts merely **informed the Ministry of Justice that the educational measure has ended due to the passage of legally allowed time. The decision to formally end the execution of an educational measure as required by law was often missing at the end of the case file**. The **court should formally terminate the educational measure** if the young person does not require the treatment or assistance they are receiving due to changed circumstances, development, or needs. The court should also terminate the educational measure if the legally allowed duration of the educational measure has lapsed.

  When courts issued a final decision to terminate the educational measure, they often stated the success of the educational measure as the reason for termination instead of saying the measure ended due to the legally allowed passage of time. **Courts should clearly state the reason for the termination of the educational measure in their decisions.**
- **Social services, educational institutions, and the correctional home regularly – every six months – report the progress of the imposed educational measures to the court**.

  The reports on the execution of educational measures are sometimes **generic and not detailed about the specific tasks imposed by the court. The court should regularly and thoroughly check the execution of the educational measure.**

  The judge should **visit and talk to every young person undergoing a residential educational measur**e based on their decision at least once a year. Judges should also **regularly contact young people undergoing non-residential educational measures**. **The specialisation of juvenile criminal courts could contribute to such practices**.
- When courts change the educational measure, it is **essential to rethink whether the duration of the first-imposed educational measure should not count towards the amended measure, should always count, or whether to have different provisions** for non-residential and residential educational measures to prevent a lengthy institutionalisation of children. It is believed **that the duration of the first-imposed educational measure should always** – in residential and non-residential educational measures and the changes between them - **count towards the duration of the measure into which it is amended.**
- **The court should always hold a session to terminate any non-residential or residential educational measure and reach a decision to end the measure**. After that decision becomes final, the educational institution or correctional home should release the young person, which should be no later than the maximum duration of the educational measure. The court should terminate non-residential educational measures no later than their maximum duration and notify social services about the termination.
- **The reprimand is necessary** when a young person has committed a criminal offence, the criminal proceedings against them have started, but they have improved their behaviour during the criminal proceedings, and their personal and family circumstances are stable.
- In addition to the **instructions and prohibitions** in the KZ, the draft ZOMSKD allows the imposition of treatment for alcohol and drug addiction, restraining orders, and prohibitions to associate with some people and access places. Such an extensive span of instructions and prohibitions might enable a better individualisation of educational

measures. However, compulsory drug and alcohol treatment without the child's motivation might not be as successful as expected, and restraining orders might only sometimes work with young people. Courts should thoroughly rethink the appropriate instructions and prohibitions according to the child's personality and circumstances.

Although courts imposed specific instructions and prohibitions, social services sometimes carry out this educational measure as supervision by social services. They often start executing the instructions and prohibitions long after the courts impose them. Courts also rarely change the imposed instructions and prohibitions, even if the social services reports show the young person is not cooperating**. More research is needed to determine the precise organisational difficulties social services and courts face in executing and monitoring the imposed instructions and prohibitions.**

- Social services begin with **supervision by social services** long after the judicial decision imposing such an educational measure has become final. Article 90/IV of the draft ZOMSKD states that the social work centres must start executing the imposed non-residential educational measures no later than thirty days after receiving the court's decision. This provision should be implemented cautiously, considering social services' organisational difficulties.

  Supervision by social services is not always sufficiently individualised according to the specific young person's circumstances and needs. Imposing instructions and prohibitions alongside supervision by social services could contribute to better individualising these educational measures. This option needs to be thought through. Instructions and prohibitions are often executed as mere supervision by social services.

  Courts rarely change supervision by social services to a more severe measure if social services reports indicated the young person was not complying with the tasks set out by social services.

  Sometimes, social workers' meetings with young people as part of supervision by social services are rare and shallow, depending primarily on the willingness and motivation of the individual social worker. While some social workers follow up on the young person and try to build rapport to impact their development and desistance positively, others merely have telephone contact with the child. Such inconsistent practices are unsatisfactory. The social worker's contact with the young person should be in-person and regular.
- In **committal to an educational institution,** further research is needed to establish if – after obtaining the opinion of social services – courts should nominate the specific educational institution where they want to place the child. It is important to clarify if educational institutions will always be able to execute such a final decision and if social services have the resources to take on the additional task of writing opinions for courts on the suitability of educational institutions.

  Some normative solutions in the ZOOMTVI (e.g., disciplinary proceedings, processing internal drug and alcohol tests, decision-making about the young person's complaint due to the breach of their rights, etc.) require further attention, especially regarding how educational institutions implement them. Even if educational institutions carry out such proceedings in the child's best interest, more research is needed to establish how young people understand and experience them.
- **Committal to a correctional home** is a necessary educational measure for serious or persistent young offenders, offering them a structured and secure environment to desist from crime. More research is needed to assess how well committal to a correctional home is individualised. The correctional home might benefit from additional staff specialised in dealing with this group of young people in a multidisciplinary way.

  Drugs are easily accessible at the correctional home. Further research should examine whether reward systems are fair and transparent and whether a zero-tolerance approach to

drugs in institutional milieus where young people can get hold of drugs and suffer from drug addiction is sensible. Sometimes, young people better accept restorative programmes that encourage gradual desistance from drug and alcohol use and allow for relapses.
Adequate post-penal support, including the right to housing in the community after release, should be made available to young people after they are released from the correctional home.

- No institution seems appropriate for housing young people who receive an educational measure of **committal to an institution for physically or mentally disabled youth**.
- No institution can house children when a court imposes a safety measure of **compulsory psychiatric treatment and confinement in a mental health institution**.
- An institution for young people in trouble with the law with **comorbidity** of personality disorders, addictions, etc., that would combine education, social care, psychological and psychiatric help, and safety for young people at risk of self-harm or harming others does not exist. Future research should explore if existing educational institutions can accept young people with comorbidity of emotional and behavioural issues, personality disorders, addiction, and/or psychiatric diagnoses and treat them in intensive groups under Article 13 of the ZOOMVI.
- Courts use **juvenile imprisonment as a measure of last resort.**

Recommendations:

- **Sanctioning multiple offences**

It is recommended that, when the court decides about two criminal offences in the same proceeding and imposes an educational measure on a juvenile, they should apply the rules for imposing sanctions 'in a series', adapted to educational measures.

It is also recommended that, when separate proceedings are held before different judges or courts, the judge/court that imposed the most severe educational measure or last imposed an educational measure of equivalent severity, must impose a unified educational measure That court should also monitor the execution of the imposed unified educational measure.

- **Abscondence**

It is recommended that before the court issues a forced arrest or a wanted notice, and orders the young person is brought back to the institution, the judge and court-employed social workers or other specialised professionals should interview the child to explore the reasons behind their absconding.

It is recommended that complaint mechanisms are established, and that the child is adequately informed about their rights to file such a complaint.

It is furthermore recommended to establish that the time during which the child absconds from the educational institution or correctional home should count towards the duration of the measure.

- **Amending non-residential measures**

It is recommended that specialised judges and social workers be allowed to focus exclusively on juvenile justice cases, in order to ensure a closer contact with the young person, a better monitoring of the execution of non-residential measures, and to enable the modification of measures if the imposed measure proves to be impossible for the young person to execute.

It is recommended that if an educational measure imposed is ineffective or inappropriate for the young person, courts change the educational measure as soon as possible. Upon changing an educational measure, courts should take into account any time elapsed during which the young person has already executed part of the first-imposed measure and amend the foreseen length of the new measure accordingly.

- **Monitoring educational measures**

It is recommended that courts should regularly and thoroughly monitor the execution of educational measures.

It is also recommended that the judge who has decided to impose a residential educational measure on a young person should visit and talk to that young person in the educational facility at least once a year, but preferably more often, depending on the length of the imposed measure. Judges should also regularly contact young people undergoing non-residential educational measures.

- **End of measures**

It is recommended that courts must formally, by holding a session and adopting a decision, terminate any non-residential or residential educational measure for which the legally allowed duration has lapsed, and that they should clearly state the reason for the termination of the measure.

It is recommended that social services and, where relevant, the educational institution or correctional home in which the young person is placed be immediately informed upon a decision to terminate a measure, and that they should end the execution of the measure and, if relevant, release the young person.

It is also recommended that the court should formally terminate the educational measure if the young person does not/no longer require the treatment or assistance they are receiving due to changed circumstances, development, or needs.

- **Treatment for alcohol and drug addiction**

It is recommended for courts, if they are to select from the different measures set forth by the draft ZOMSKD, to thoroughly consider on a case-by-case basis which would be

the most appropriate instructions and prohibitions in the light of the young person's personality and specific circumstances.

It is recommended for the courts to take into account also the expert assessments and the information gathered by social services, including the expression of the young person's own opinion, to impose those measures that are most likely to succeed in having a positive impact on the young person and in serving the aims of juvenile justice.

- **Implementation of measures by social services**

It is recommended for judges to consider imposing instructions and prohibitions alongside supervision by social services, to ensure a better individualisation of these educational measures.

It is recommended that social workers' contact with young persons should be in-person and regular during the execution of their sanctions, to positively impact their development and decrease risks of recidivism.

- **Specific educational institutions and institutional measures**

It is recommended to further examine if, before a committal of a young person to an educational institution and after obtaining the opinion of social services, courts should nominate the specific educational institution where they want the young person to be placed.

For this to be possible, it is also recommended to clarify if educational institutions will always be able to execute such a final decision by a court, and if social services will be granted the necessary resources to take on the additional task of writing opinions for courts on the suitability of educational institutions.

It is recommended to grant further attention to some of the normative solutions set forth in the ZOOMTVI (e.g., disciplinary proceedings, processing internal drug and alcohol tests, decision-making about young persons' complaints regarding breaches of their rights, etc.) and especially to how educational institutions implement such solutions.

Even if educational institutions supposedly carry out such proceedings in the best interest of the child, it is recommended to carry out research to understand how young people understand and experiences them.

It is also recommended to examine thoroughly if reward systems within educational institutions are fair and transparent and whether a zero-tolerance approach to drugs in institutional milieus where young people can get hold of drugs and suffer from drug addiction is sensible, or whether young people better accept restorative programmes that

encourage gradual desistance from drug and alcohol use and allow for relapse without punishment.

- **Post-penal support**

It is recommended to make adequate post-penal support, including the right to housing in the community after release, available to young people after they are released from educational institutions and the correctional home.

- **Children with disabilities, children with psychiatric issues**

It is recommended to explore through research if existing educational institutions can accept young people with comorbidity of emotional and behavioural issues, personality disorders, addiction, and/or psychiatric diagnoses and treat them in intensive groups under Article 13 of the ZOOMTVI.

9. Data related to physical and mental health, mental development, and emotional and behavioural issues[33]

This report section presents how many young people in the examined sample suffered from physical and mental health issues, mental development issues, personality disorders, emotional and behavioural difficulties, and other issues officially identified or described in the case files. It also examines how often the courts assessed if young people experienced problems and adopted protective measures to cater to the children's needs.

As most prosecutorial files lacked social services reports or other sources of information on the child's circumstances and needs, this section is based on the information from the judicial case files only. However, where the judicial case files did not indicate the child's difficulties, this did not necessarily mean that the young person did not suffer from them. Perhaps the court did not detect them, or the analysis did not focus on all the relevant problems young people experience.

9.1. Type of issues

In the judicial sample, 18% of young people suffered from physical health issues, 16% from mental health issues, 17% from mental development issues, 5% had personality disorders, 44% experienced emotional and behavioural difficulties, and 28% had other identified problems (*Figures 156-161*).

[33] To describe children's health issues and other needs, this part of the report uses the terminology that was used in the inspected judicial case files. Sometimes, this terminology is therefore not aligned with the specialist knowledge and sensitivities of experts working with young people in the fields of mental health, psychology, cognitive development, etc.

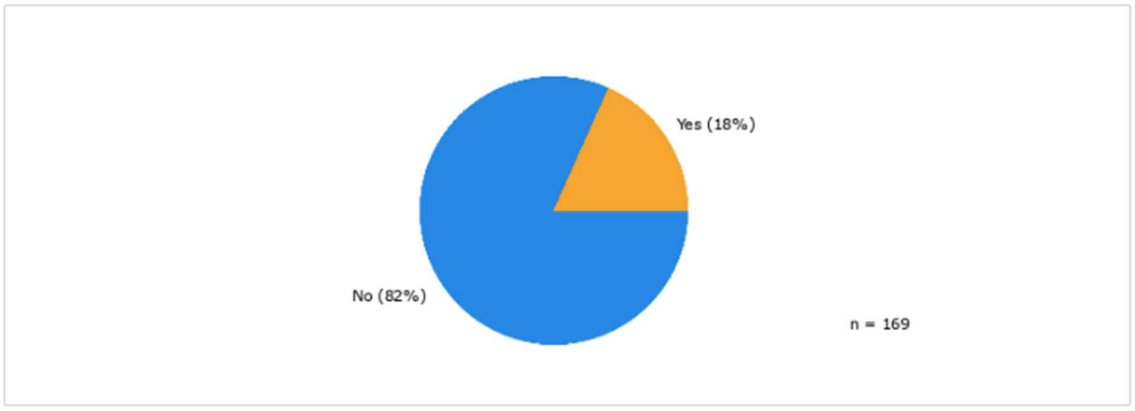

Figure 156: References to physical health issues

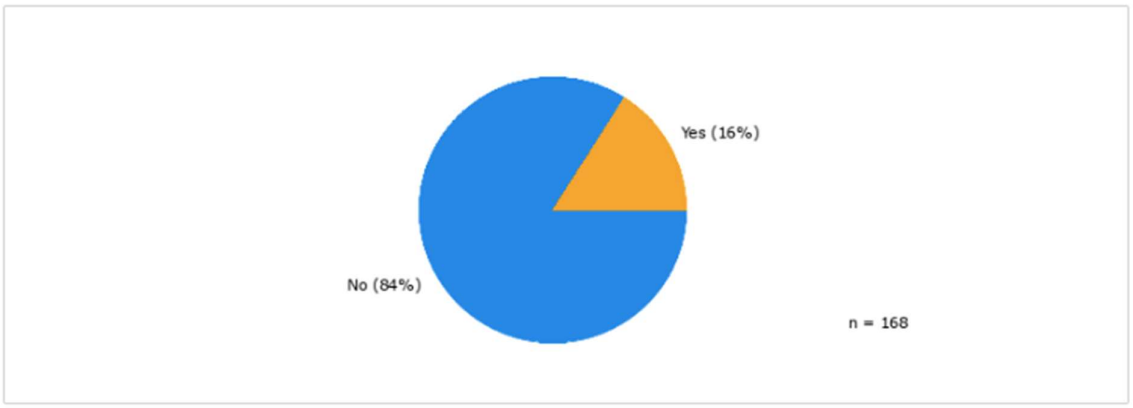

Figure 157: References to mental health issues

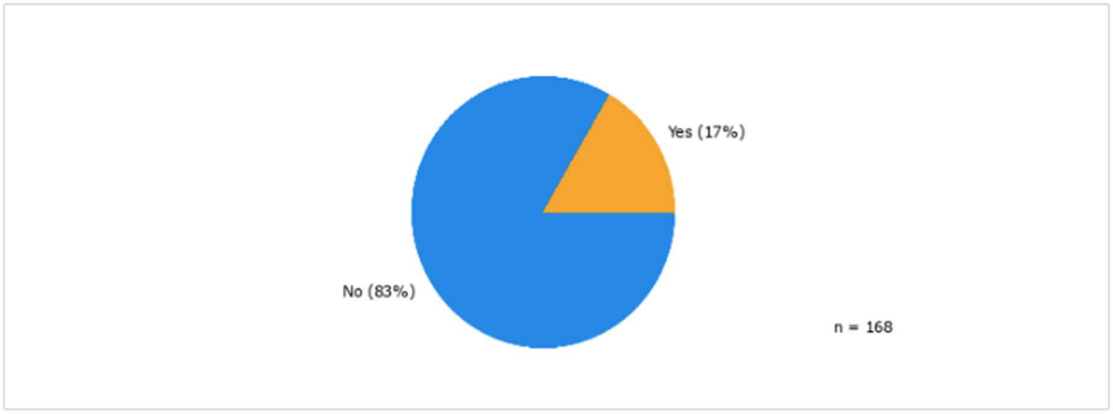

Figure 158: References to mental development issues

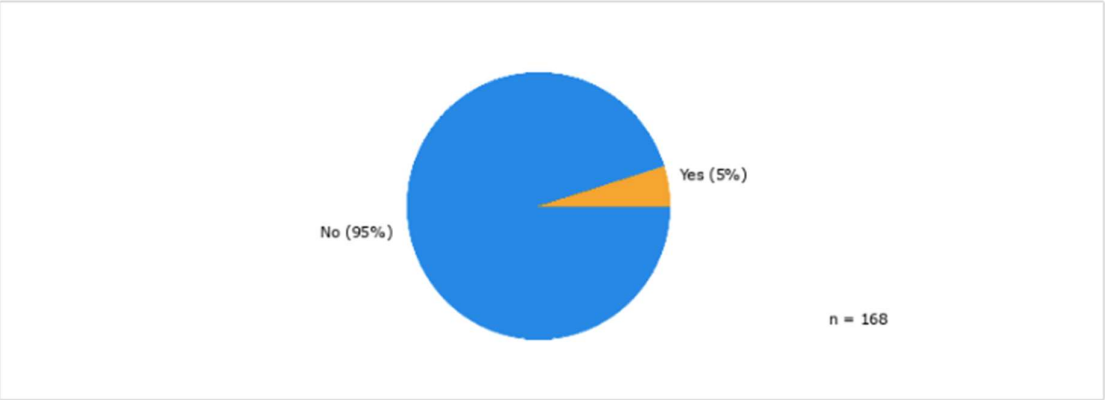

Figure 159: References to personality disorders

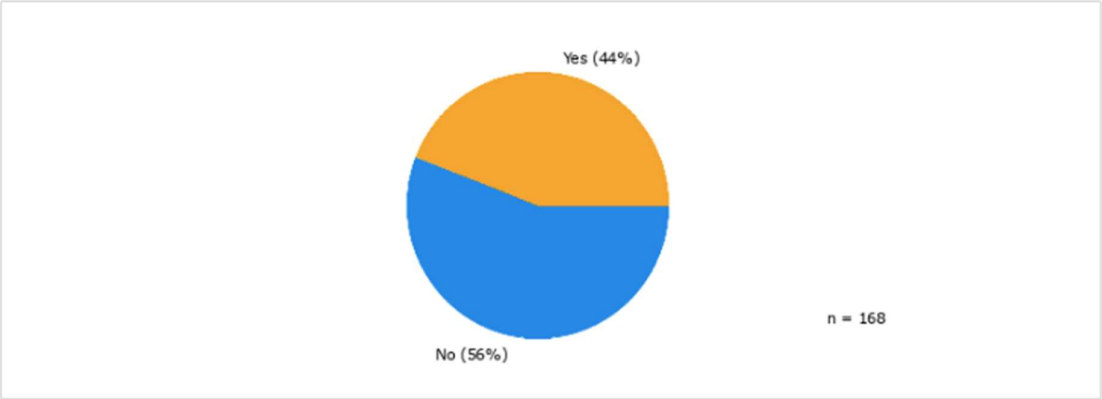

Figure 160: References to emotional and behavioural issues

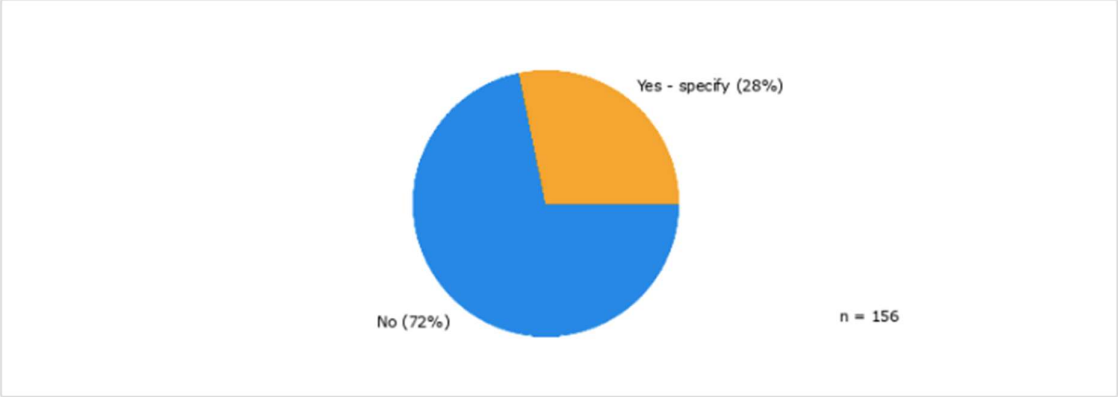

Figure 161: References to other issues

In the sample, the young people experienced the following:

(1.) Physical health issues:

- Hearing impairment
- Asthma and respiratory problems
- Digestive problems
- Epilepsy
- Allergies

- Backache
- Stomach ache
- Chronic tonsilitis
- Head trauma and headaches
- Heart problems
- Iron and haemoglobin deficiency
- Nausea
- Psychosomatic issues

(2.) Mental health issues:

- Eating disorder
- Chronic substance abuse
- Self-harm
- Suicidal tendencies and behaviour
- ADHD

(3.) Mental development issues:

- Below-average intelligence
- Low IQ
- Trouble concentrating
- Developmental coordination disorder (dyspraxia)
- Mild to severe mental retardation

(4.) Personality disorders:

- Lack of empathy and difficulty expressing emotions
- Comorbidity of personality disorders (dissociative disorder, hyperkinetic disorder, chronic drug addiction, PTSD)
- Psychopathic disorder

(5.) Emotional and behavioural issues:

- Anger issues
- Restlessness
- Excessive liveliness
- Suggestibility
- Emotional trauma due to adverse family and/or social circumstances
- Aggressive behaviour
- Inability to resolve conflict in a peaceful way

(6.) Other issues:

- School absenteeism, truanting
- Socialising with peers
- Social and/or psychological issues due to parental neglect (e.g., attachment issues due to father's alcoholism, homelessness, and imprisonment)

- Domestic and/or sexual abuse victimisation
- Bullying victimisation
- Adolescent-to-parent and filial violence
- Special educational needs and learning difficulties
- Substance abuse
- Running away from home
- Gender identity issues
- Institutionalisation from early childhood
- Emotional distress (lack of appetite, insomnia) from being detained with adults in pre-trial detention
- Social issues (e.g., the child's social withdrawal due to the family's poverty)

The categories of young people's difficulties, as identified in the inspected case files, are not clear-cut, and it is not easy to establish causality. There might be a link between some of these issues and the development of offending behaviour in children. Yet, it would be wrong to suggest that the gathered information provides evidence that physical, mental, emotional, and behavioural issues of any kind cause youth crime or that preventing these issues would, in itself, prevent crime. Many factors may lead to a child becoming involved in criminal activity. Some children experience several factors simultaneously, and one group of factors may have been the cause for them to develop another type of difficulty, later leading to crime.

The relationship between youth offending and physical and mental health issues, mental development issues, personality disorders, emotional and behavioural difficulties, and other issues is complex. Many different categories of problems often interplay to push some young people towards offending pathways.

Case studies 9- 20 illustrate the difficulty of determining the precise mechanisms at work or evidence causality. It would be beneficial to further research and understand how the relationship between young people's issues and crime intersects with other forms of structural disadvantage and discrimination. A thorough examination of such interplays is critical since fewer young people in the sample experienced physical and mental health issues, mental development issues, and personality disorders. At the same time, more suffered from emotional and behavioural problems and other, mainly social, difficulties.

Case study 9

The young person lived in a foreign and culturally different country until they were thirteen, having completed seven grades of primary school there. Consequently, they had poor literacy and speech skills in Slovenian, which resulted in poor educational attainment and school absences. The young person did not progress educationally in mainstream provision, ending up in a school for children with special educational needs.

Case study 10

The young person's parents divorced, and the child lived with their father. The young person's father was an alcoholic and neglected them. In primary school, the child was diagnosed with special educational needs and went to a special educational needs primary school. In that school, they displayed persistent disruptive behaviour and were excluded, later engaging in offending behaviour.

Case study 11

The young person's parents divorced, but the family kept on living together due to financial difficulties. The family environment was emotionally very harmful to the child. The child became aggressive and was later diagnosed with ADHD.

Case study 12

When the young person's father committed domestic violence, the child assumed the role of an adult family member to protect their mother and sisters. The young person cared for their sisters when both parents were at work. According to the social pedagogue, the psycho-social strain of domestic abuse and a sense of responsibility toward their siblings during the child's puberty contributed to their behavioural problems.

Case study 13

The young person has been experiencing emotional and behavioural issues since the sixth grade of primary school. They were violent toward schoolmates and verbally aggressive toward teachers. At one point, the child threw their school bag from the class window and sat on the outside window shelf. After the incident, a teacher asked them how they were feeling. The child said everyone at the school should die. The school transferred them to another primary school. They were diagnosed with ADHD and special educational needs. A psychologist and a social pedagogue estimated that the child was mentally less developed. The child was placed in an educational institution based on a social services decision. The school and educational institution described the young person as highly impulsive and having low self-control. The child's mother suspected the young person had Huntington's disease like their father. The condition is hereditary. The young person's parents sought psychological help to cope with their behaviour. The family was also in outstanding debt as they had to repay damages to insurance companies due to the young person's criminal proceedings.

Case study 14

In their expert opinion, the psychologist emphasised that the child had reduced intellectual functioning and deficient social development because of a psychologically unstimulating, oppressive, and threatening living environment. The child experienced feelings of exclusion and not belonging. Their development did not lead to a sense of fulfilment, so they had multiple emotional needs and behavioural difficulties.

Case study 15

The child suffered from emotional difficulties due to adversities and lack of support in their childhood. They have been abusing drugs since the age of seven. They developed mental health issues, including suicidal behaviour.

Case study 16

At the family home, the young person displays anger management problems and violent outbursts, especially adolescent-to-parent violence, including shouting, threats, destroying property, etc. Whenever the young person's parents set a boundary, they threaten the parents with suicide. The child was hospitalised in a mental health clinic several times.

Case study 17

In the third grade of primary school, the child was diagnosed with Wilson's disease, which affects the liver. The child regularly takes medication and attends hospital appointments. The child also has Raymond syndrome, which causes the veins in their wrist to compress and obstruct blood flow, preventing them from entirely using their hands. The young person has reduced intellectual abilities, resulting in learning difficulties, emotional problems, increased restlessness, and attention deficit. However, the child never displayed behavioural issues in school.

Case study 18

After their father's death, the child developed allergies and had pneumonia. They have undiagnosed ADHD and cannot concentrate. They are verbally and physically aggressive toward their mother. They were hospitalised and

treated by a psychologist several times due to their emotional and behavioural problems. The child was diagnosed with mixed behavioural and emotional disorders and the harmful use of cannabinoids.

Case study 19

The child experienced their father's violence against their mother as a six-year-old. Consequently, they suffer from emotional issues, manifested in their auto- and hetero-aggression against their mother, peers, and property. As social services and the correctional home's report indicated, the young person's emotional difficulties developed into severe behavioural issues and offending behaviour. They feared the young person would develop a psychiatric disorder as an adult. The case file indicates that this might have happened as the court sent its final decision to terminate the educational measure to the young person at a psychiatric forensic hospital for adults. Throughout their childhood and due to an unstable family situation, the child moved back and forth between their father or mother's home and several institutions: a crisis centre, three educational institutions, and the correctional home. The case file also indicates that the juvenile's father and brother served prison sentences. The child's mother reported that the child suffered from anxiety, aggression, and physical illnesses from when she divorced their father due to physical and psychological violence against her. The child also suffered from learning difficulties in primary school and often did not attend school.

Case study 20

The child's father is an alcoholic and neglected them while they stayed with the father after their parents' divorce. In primary school, the child was diagnosed with special educational needs and went to a special educational needs primary school. At that school, they engaged in persistent disruptive behaviour. The young person was placed in two educational institutions based on a decision by the social services. When they returned home, they were violent towards their mother and siblings. The young person suffered from substance abuse, regularly consuming cannabis, aphgan, ecstasy, speed, and alcohol. The child had anger management and impulsivity problems. The young person was often described as highly auto aggressive, engaging in drunk driving, traffic accidents, excessive drinking, and drug use, etc.

9.2. Assessment of issues and safeguards taken to protect the child or help them with reintegration and recovery

In the judicial sample, the court assessed the young person's mental health in 14% of cases and engaged in other assessments of the child's issues in 10%. The case files entailed references to special safeguards the court or other institutions took to protect the child with mental health, mental development, and emotional and behavioural issues in 7% of cases. In 7% of cases, the files included references to measures to recover and reintegrate young people suffering from mental health, mental development, and emotional and behavioural issues (*Figures 162-165*).

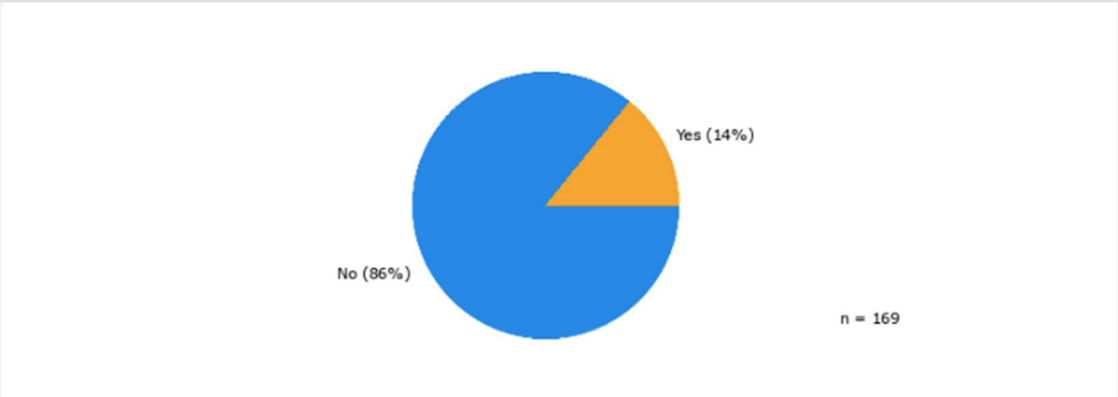

Figure 162: References to mental health assessment

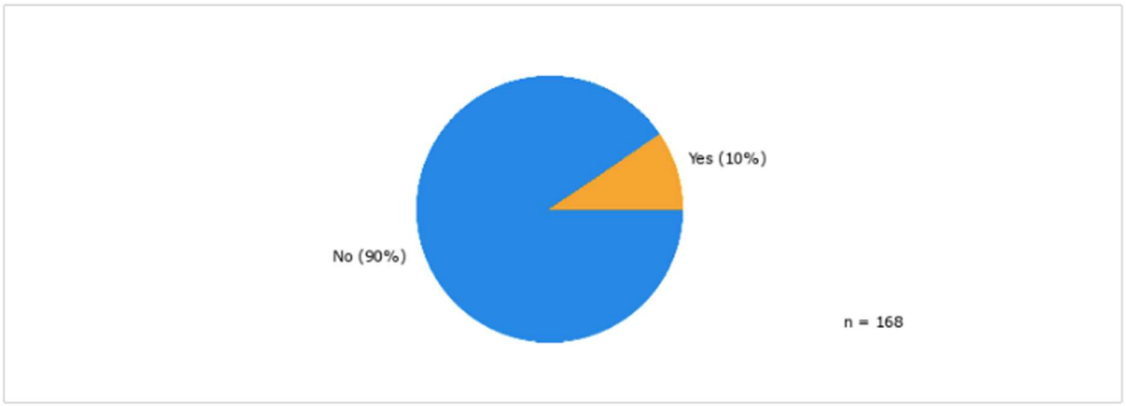

Figure 163: References to other assessment

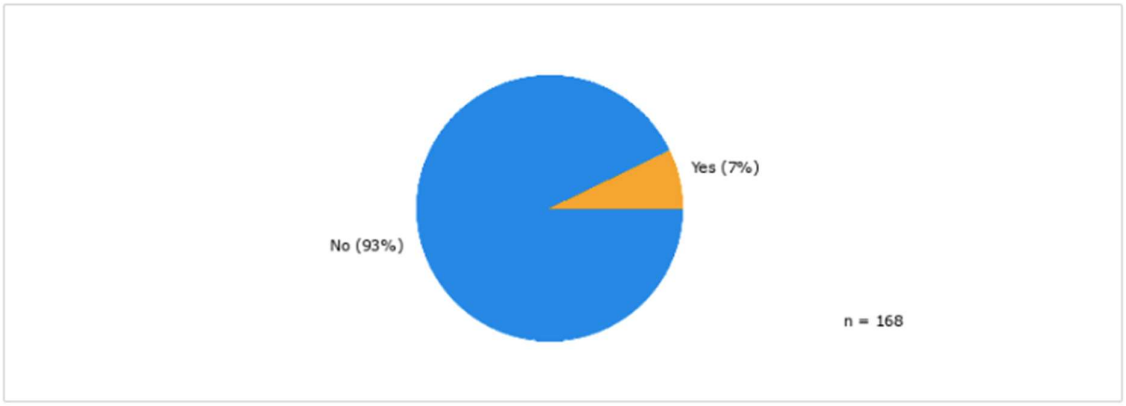

Figure 164: References to special safeguards to protect the child with mental health, mental development, or emotional and behavioural issues

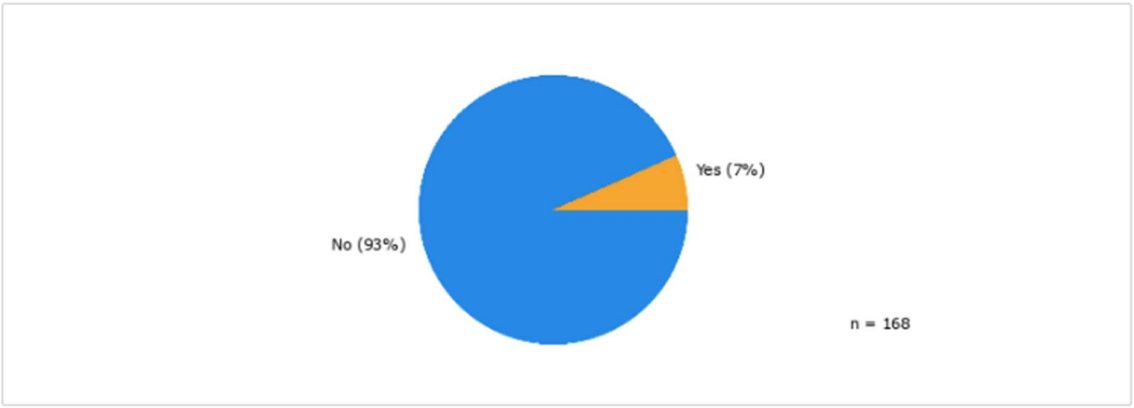

Figure 165: References to measures to recover and reintegrate child with mental health, mental development, and emotional and behavioural issues

In the sample, the case files referred to the following:

(1.) Assessment:

- The child and adolescent and adult psychiatrist's expert opinion regarding mental, behavioural, and emotional capacities

- The clinical psychologist's expert opinion regarding the ability to control impulses, emotions, and cognitive capacities
- The psychologist's expert opinion about the emotional state

(2.) Special safeguards to protect the child:

- Removing the child from their current environment based on articles 471 and 481 of the ZKP
- Support from institutions (school, social services, a counselling centre for children, adolescents, and adults, etc.) due to emotional and behavioural difficulties

(3.) Measures for recovery and reintegration:

- The school offered support for ADHD and violent behaviour during the execution of the educational measure

The case file analysis revealed there were not as many assessments, safeguards, and recovery measures as there were identified issues. Generally, evaluating young people's problems is unsatisfactory and often comes too late in the child's life. When employed, it does not necessarily lead to meaningful and individualised support. The child's physical or mental health issues, mental development problems, personality disorders, emotional and behavioural issues, and other issues might escalate and contribute to their criminal behaviour.

In the future, how to link better educational, social, criminal justice, and mental health institutions must be explored to provide effective early intervention for young people. However, it must also be carefully considered how to organise early intervention, so it does not have labelling effects or propel young people into the system instead of diverting them from it.

As section 7.2. of this report states, establishing a diagnostic centre, according to Article 471 of the ZKP, could contribute to a better assessment of children's problems and needs during criminal proceedings. Also, the relationship between the ZOMSKD or other laws governing the treatment of young people in conflict with the law and the ZOOMTVI must be clarified.

In Article 6, the ZOOMTVI establishes that expert centres offer holistic multidisciplinary assistance to behaviourally challenging children, including those in conflict with the law that receive an institutional educational measure. The ZOOMTVI predicts the following help: (1.) Counselling with the child, the school, and the parents, based on the motions submitted by the school, young person, their parents, or social services; (2) assistance provided by a mobile team or intensive treatment should counselling or the aid of the mobile team be insufficient.

The mobile team could also assist children who have received a non-institutional educational measure, correctional home, or juvenile imprisonment. For clarity and equal support, all young people in conflict with the law affected by mental health, mental development, or emotional and behavioural issues should have equal opportunities for preventive measures, assessment and support during criminal proceedings, and post-penal assistance.

9.3. Data related to physical and mental health, mental development, and emotional and behavioural issues: Summary of findings and recommendations

Summary of findings:

- 18% of young people in the judicial sample suffered from physical health issues, 16% from mental health issues, 17% from mental development issues, 5% had personality disorders, 44% experienced emotional and behavioural difficulties, and 28% had other identified problems.
- The relationship between youth offending and physical and mental health issues, mental development issues, personality disorders, emotional and behavioural difficulties, and other issues is complex. **Many different categories of problems often interplay to push some young people towards offending pathways.**
- **It is difficult to determine the precise mechanisms at work or evidence causality.** It needs to be further researched and understood how the relationship between young people's issues and crime intersects with other forms of structural disadvantage and discrimination.
- The **court assessed** the young person's mental health in 14% of cases and engaged in other assessments of the child's issues in 10%. The court or other institutions adopted **special safeguards to protect the child** with mental health, mental development, and emotional and behavioural issues in 7% of cases. In 7% of cases, they adopted **measures to recover and reintegrate young people** suffering from mental health, mental development, and emotional and behavioural issues. There were not as many assessments, safeguards, and recovery measures as there were identified issues.
- **Evaluating young people's problems is unsatisfactory and often comes too late in the child's life. When employed, it does not necessarily lead to meaningful and individualised support.** The child's physical or mental health issues, mental development problems, personality disorders, emotional and behavioural issues, and other issues might escalate and contribute to their criminal behaviour.
- Further research must explore **how to link better educational, social, criminal justice, and mental health institutions to provide effective early intervention for young people.** In addition, **responsible institutions should establish a diagnostic centre** and **clarify the relationship** between the draft ZOMSKD or other laws governing the treatment of young people in conflict with the law and the ZOOMTVI.

Recommendations:

It is recommended to conduct further research to explore how to better link together educational, social, criminal justice, and mental health institutions to provide effective early intervention for young people with mental health, mental development, emotional and behavioural issues.
In addition, it is recommended for responsible institutions to establish a diagnostic centre and to clarify the relationship between the draft ZOMSKD or other laws governing the treatment of young people in conflict with the law and the ZOOMTVI.

10. Data on recidivism

Section 6.3. of this report presented the data on recidivism in the broad sense of the term. The broad definition of recidivism entails the crimes that young people in the youth justice system committed before the age of criminal liability, those they committed but were diverted at the prosecutorial level, and cases where they received an educational measure or punishment.

This section presents the data gathered at the prosecutorial and judicial level about the young person's recidivism in a narrow sense of the word; cases where an educational measure or punishment was imposed in a final court decision as the child committed a criminal offence.

10.1. Prosecutorial level

At the prosecutorial level, 29% of young people were repeat offenders, having committed and received an educational measure or sanction for at least one prior criminal offence (*Figure 166*). The children in the sample, diverted at the prosecutorial level, committed between one and thirteen prior criminal offences, 3,4 offences on average. The child's age when committing the first offence was unknown in 74% of cases. The child was fourteen and sixteen in 12% and fifteen in 5% (*Figure 157*).

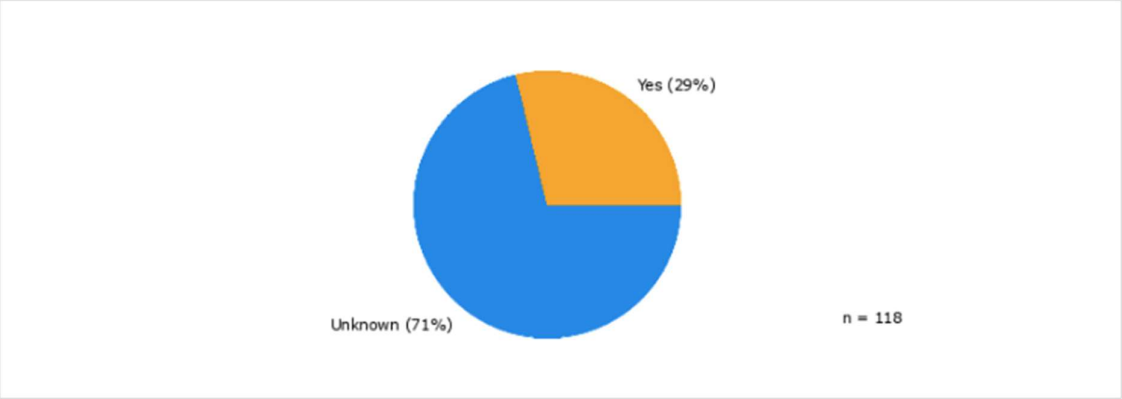

Figure 166: Repeat offenders – prosecutorial level

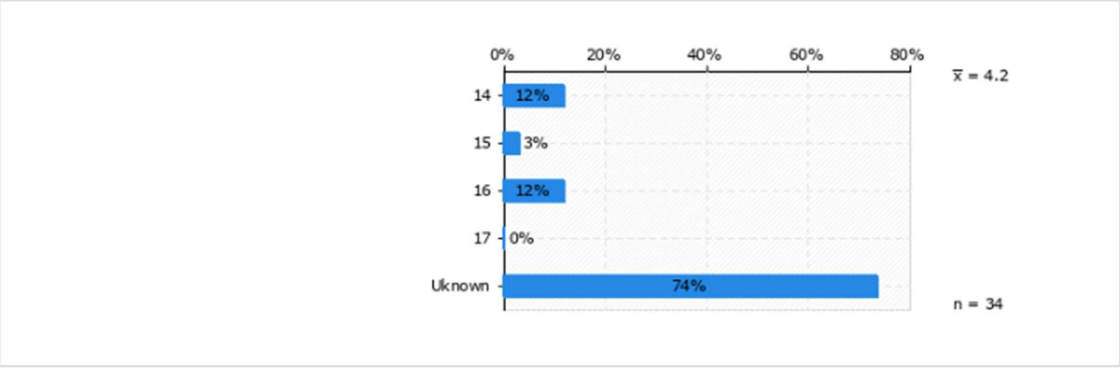

Figure 167: The child's age when committing the first criminal offence – prosecutorial level

In 65% of cases, young offenders who were diverted at the prosecutorial level previously committed property crimes, followed by criminal offences against human rights, against public

order, and other offences (all domestic violence) in 19%, offences against life and limb in 12%, drug-related offences in 8% and traffic offences in 4% of cases (*Figure 168*).

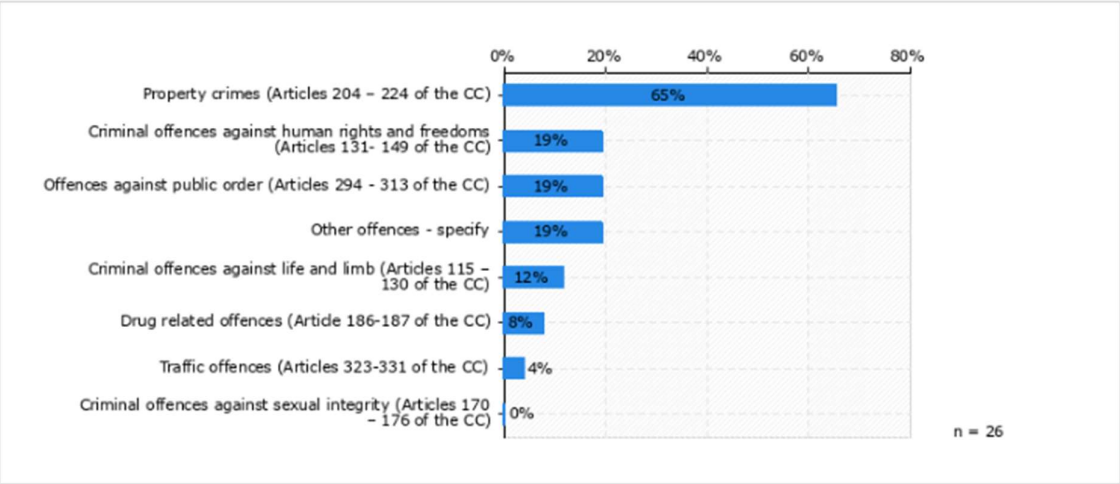

Figure 168: Types of prior criminal offences – prosecutorial level

In 21% of cases, the prior sanctions imposed upon young people at the prosecutorial level were unknown, while the prosecution knew about 79% of the previous sanctions (*Figure 169*). In 38% and 33% of those, young people were committed to the correctional home and educational institutions, followed by supervision of social services in 14%, supervision of social services and accompanying instructions and prohibitions in 10%, and instructions and prohibitions in 5%.

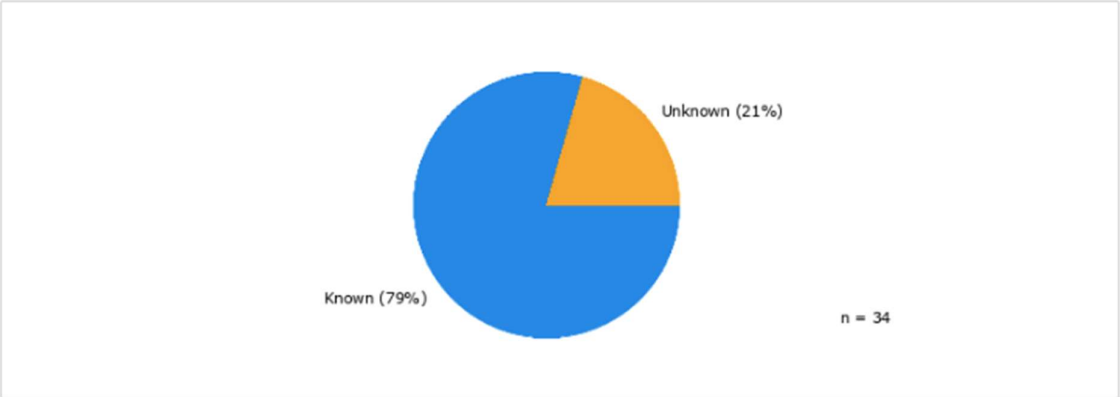

Figure 169: Previously imposed sanctions – prosecutorial level

In the prosecutorial sample, 28 cases were gathered where the prosecution dismissed the criminal complaint against a young person because a sentence or educational measure was already in progress, as stated in section 2.2. of this report. This data matches the number of cases where the child had previously committed an offence, received a criminal sanction, and then the prosecution diverted their case.

More specifically, where a sentence or educational measure is already in progress, the state prosecutor may decide not to initiate a criminal proceeding against a child for another criminal offence. The prosecutor may do so after they have established that – based on the relative gravity of that offence and the sentence or educational measure in progress – the proceedings and the imposition of a criminal sanction would not have a significant effect (Article 466/III of the ZKP).

When a child diverted at the prosecutorial level had previously received a criminal sanction, the court changed that sanction in 15% of cases (*Figure 170*), mostly from a committal to an educational institution to a committal to the correctional home.

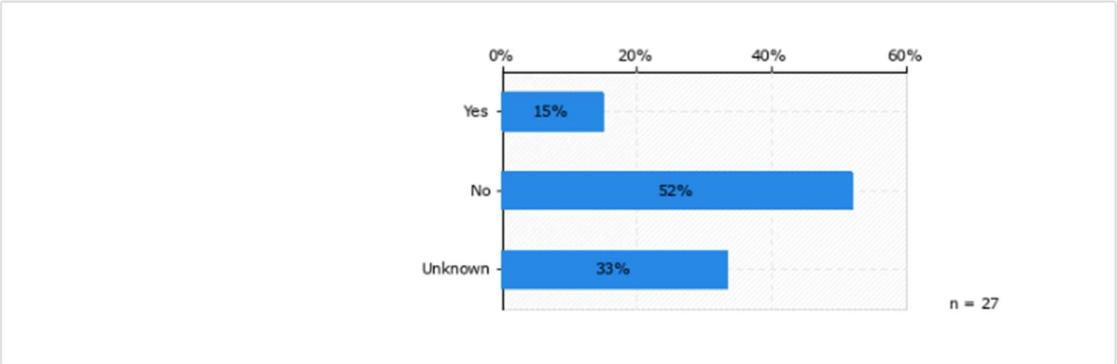

Figure 170: Changes to previously imposed sanctions – prosecutorial level

10.2. Judicial level

At the judicial level, 40% of young people were repeat offenders, having committed and received an educational measure or sanction for at least one prior criminal offence (*Figure 171*). The children in the judicial sample committed between one and twelve prior criminal offences, 4,6 on average. The child's age when committing the first offence was unknown in 53% of cases, fourteen in 15%, fifteen and sixteen in 13%, and seventeen in 6% (*Figure 172).*

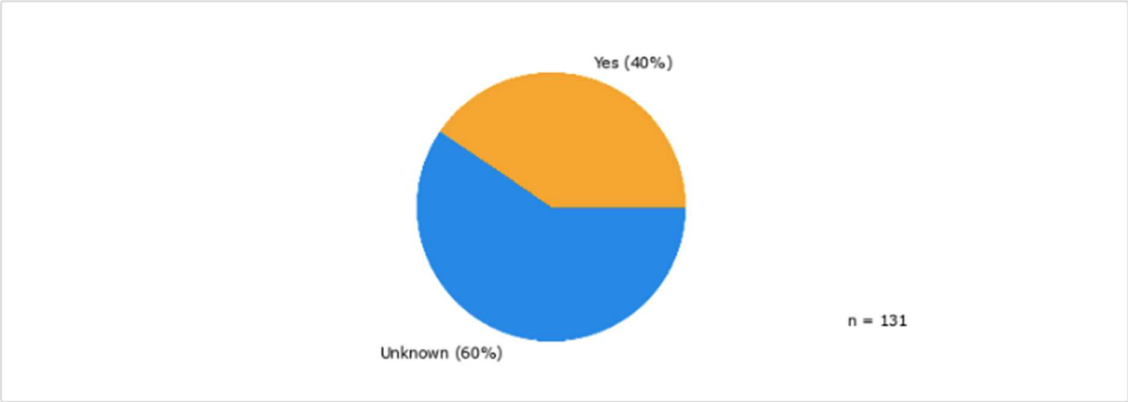

Figure 171: Repeat offenders – judicial level

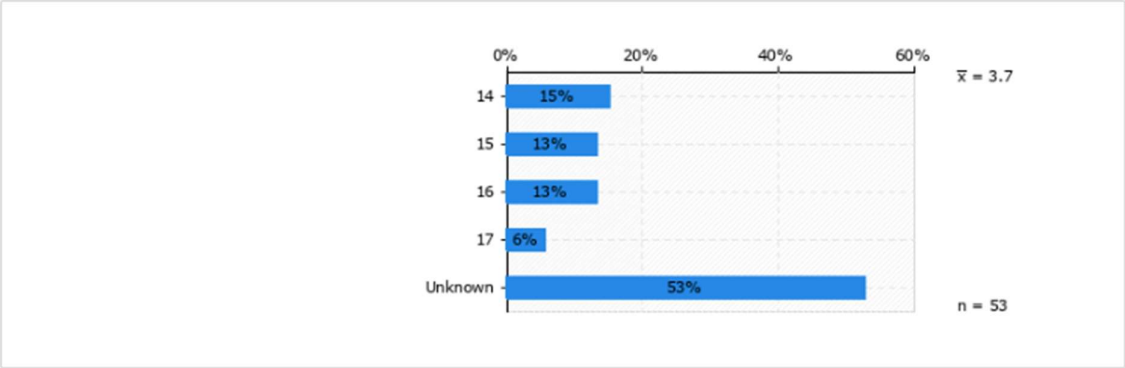

Figure 172: The child's age when committing the first criminal offence – judicial level

In 71% of cases, young offenders at the judicial level previously committed property crimes, followed by criminal offences against public order in 27%, other offences (mostly domestic violence) in 18%, and offences against life and limb, offences against human rights and freedoms, drug-related offences, and traffic offences in 6% of cases (*Figure 173*).

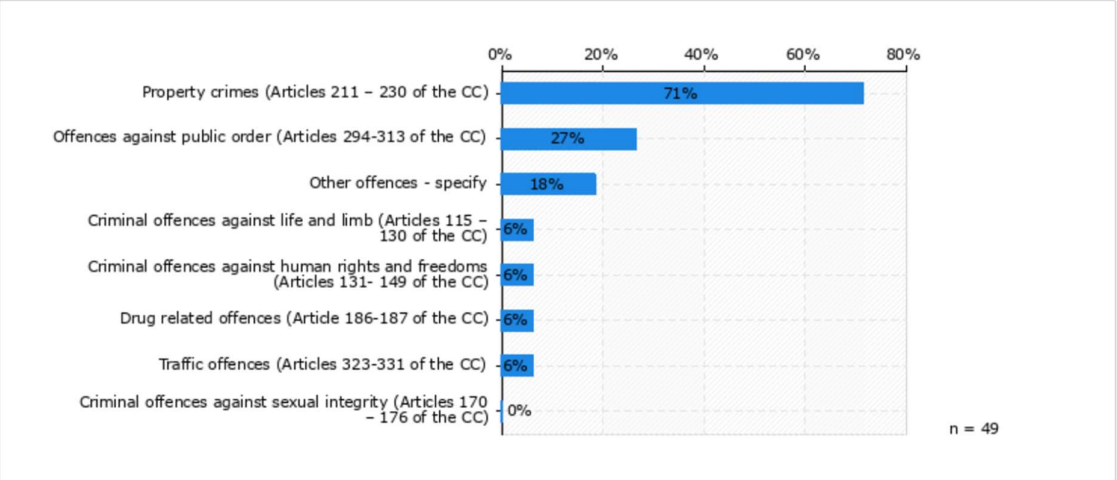

Figure 173: Types of prior criminal offences – judicial level

In only 6% of cases, the prior sanctions imposed upon young people at the judicial level were unknown, while the courts knew about 94% of the previous sanctions (*Figure 174*). In 35% and 34% of those, young people were committed to the correctional home and educational institutions, followed by supervision of social services in 20%, supervision of social services and accompanying instructions and prohibitions in 7%, reprimand in 2%, and conditional release from an educational measure or sentence in 2%.

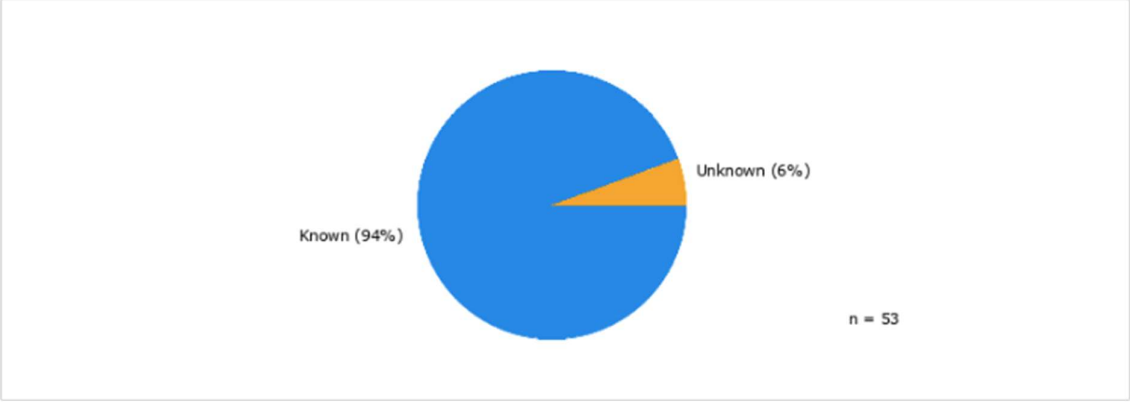

Figure 174: Previously imposed sanctions – judicial level

In the judicial sample, 54 were gathered cases where the court dismissed the case using the expediency principle, due to the minor significance of the offence, or a sentence or educational measure in progress, as stated in section 2.2. of this report. The data on recidivism in this section entails some cases where the courts dismissed cases due to a sentence or educational measure in progress. In others, however, courts imposed unified educational measures using the legal provisions for imposing educational measures 'in a series', as proscribed by Article 85 of the KZ

or imposed an additional educational measure without considering the previously imposed criminal sanction, resulting in the young person being formally subject to two or more educational measures simultaneously, es established in section 8.1.1. of this report.

When a child at the judicial level had previously received a criminal sanction, the court changed that sanction in 19% of cases (*Figure 175*). The changes mainly were from supervision of social services to committal to an educational institution or from committal to an educational institution to committal to the correctional home.

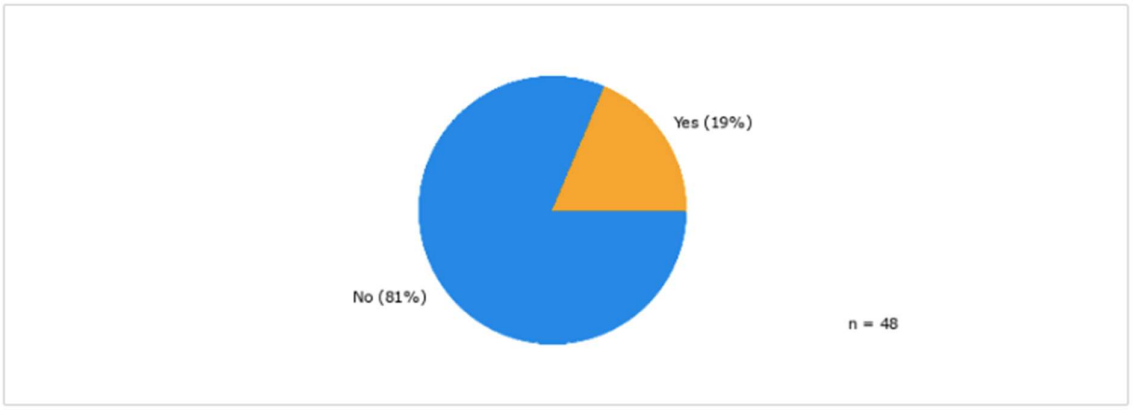

Figure 175: Changes to previously imposed sanctions – judicial level

The recidivism data presented in this chapter should be interpreted cautiously. Sometimes, the information regarding prior offending in the sample was inaccurate as some state prosecutor's offices and courts – or individual prosecutors and judges – did not obtain information about the child's prior offending (i.e., the list of educational measures and sentences they already received). Others obtained data on the young person's previous offending and indicated precisely which educational measure the child previously received in their final decisions. Sometimes, the courts got information about the young person's pending proceedings and considered this data in their decision-making. Therefore, the prosecution and judiciary should establish clear guidelines as to what constitutes prior criminal involvement and how to consider recidivism in prosecutorial decisions about charging the child or dismissing the case and judicial decision-making about what educational measure or penalty to impose.

In case files from each district court, approximately three to four young people occurred in the prosecutorial and judicial files. These children either experienced very complex psycho-social circumstances or did not benefit from prior involvement with the police, prosecution, courts, social services, educational institutions, or both. Further research needs to clearly define recidivism and examine it holistically by looking at how many children under the age of criminal liability commit crimes, enter the youth justice system, and how many young offenders continue to commit crimes as adults. In this task, criminological studies should also explore the effectiveness of specific criminal sanctions against young people. In the inspected case files, some repeat young offenders received non-custodial educational measures that the courts did not monitor, as indicated in *Case study 21*.

Case study 21

The inspected case file was the first in many of the young person's cases in the sample. In the first criminal proceeding against them, the court imposed supervision by social services but never monitored the execution by asking for social

services reports. The young person further committed criminal offences, later ending up in educational institutions and the correctional home.

10.3. Data on recidivism: Summary of findings and recommendations

Summary of findings:

- At the prosecutorial and judicial levels, **29% and 40% of young people were repeat offenders**, having committed and received an educational measure or sanction for at least one prior criminal offence.
- The children in the prosecutorial and judicial samples **committed an average of 3,4 and 4,6 offences**. **Most of them committed property crimes.**
- **Prior sanctions against young people with previous criminal involvement were known in 76% of the prosecutorial and 94% of judicial case files.** The courts changed these sanctions in 15% and 19% of cases. The changes mainly were from supervision of social services to committal to an educational institution or from committal to an educational institution to committal to the correctional home.
- **The prosecution and judiciary should establish clear guidelines as to what constitutes prior criminal involvement and how to consider recidivism** in prosecutorial decisions about charging the child or dismissing the case and judicial decision-making about what educational measure or penalty to impose.
- Further research needs to **clearly define recidivism and examine it holistically** by looking at how many children under the age of criminal liability commit crimes, enter the youth justice system, and how many young offenders continue to commit crimes as adults. In this task, criminological studies should also explore the effectiveness of specific criminal sanctions against young people.

Recommendations:

- **Definition**

  It is recommended that the prosecution and judiciary should establish clear guidelines as to what constitutes prior criminal involvement and how to consider recidivism in prosecutorial decisions about charging the child or dismissing the case, as well as in judicial decision-making about what educational measure or sanction to impose.

  It is also recommended to clearly define recidivism and examine it holistically by looking at how many children under the age of criminal responsibility commit offences, enter the youth justice system, and how many young offenders continue to offend as adults. In this task, criminological studies should also explore the effectiveness of specific criminal sanctions against young people.

11. Full list of recommendations[34]

This section gathers general and specific recommendations for further research and normative changes needed to improve the Slovenian juvenile justice system. It should be read jointly with the Research and Gap Analysis report (Output 1 of the project).

Some of the recommendations are general as many of the more important issues appearing throughout the report – such as the role of social services or the need for specialisation – do not allow for quick one-step solutions and direct normative changes. Other recommendations are more precise and rely on and respond to the solutions already anticipated by the Draft ZOMSKD.

The recommendations are sectioned according to the specific report areas they stem from.

Data on the offence and youth offending

- **Policing tactics**

  Public health approaches to violence or drug use prevention seek to improve the health and safety of young people by addressing the underlying factors that increase the likelihood that they will become victims or perpetrators of violence or drug dealing.

  It is recommended that policing tactics in some parts of the country be further analysed and thought through, preferably substituting surveillance of some groups of young people with a public health approach to violence or drug-related offences.

- **Integration**

  It is recommended that more consideration be given to better integrating young people of marginalised backgrounds in schools and other institutions to provide them with socially acceptable sources of recognition, dignity, and respect to prevent youth offending from becoming a peer acceptance activity.

- **Social services engagement and individualised assessments**

  It is recommended to develop new and more effective ways in which social services can collaborate viably with prosecutors and courts and provide them with information about the child's personal and family circumstances to strengthen the individualisation of measures and sanctions.

Data on the final decision

- **Diversion**

  It is recommended to further encourage and prioritise diversion at the prosecution level. At the same time, it is recommended to systematically record data on recidivism to enable research on and evaluation of the effectiveness of diversion measures.

[34] To be noted that the recommendations listed in this section in the blue boxes are the same as the ones provided in the main body of the text. However, the findings (text outside of the blue boxes) are here summarised and reformulated slightly differently, without changing the substance.

- **Mediation**

It is recommended that mediators working on juvenile criminal cases should be specialised and understand the purpose of criminal proceedings against children, and that the voluntary and non-professional nature of being a mediator should be reconsidered.

- **Deferred prosecution**

It is recommended that, in imposing **community work** as part of deferred prosecution, emphasis should be given to the equality of practices concerning the length of the period of community work and the number of work hours.

It is recommended that, in imposing specific **tasks** as part of deferred prosecution, deadlines should be extended both in the law and in practice to give young people enough time to carry out the task and to allow the social services to organise their work properly.

It is recommended to select **measures** which are most likely to enable the young person's re-education and resocialisation, bearing in mind the young person's specific individual circumstances and needs.

It is recommended that, in imposing **monetary tasks**, such as payment of damages and contributing to the benefit of public institutions or another dedicated budget as part of a diversion measure, more attention should be given to the young person's income or scholarship and the child's socio-economic background.

- **Justifying measures and sanctions and enhancing individualised decisions**

The prosecution's reasoning behind diversion is sometimes not adequately explained in the final decision. In particular, prosecutorial final decisions in diversion cases could be more thorough in referencing the aims of diversion compared to criminal proceedings, the best interest of the child, and other principles of international law on child-friendly justice.

Moreover, further research on the organisation of prosecution in juvenile criminal cases and the functioning of social services in Slovenia is needed to propose clear ways for prosecutors to request information about the young person from their parents or social services or invite the family and the social workers to a meeting. It is still unclear whether legal requirements placed on the prosecution regarding the procedure before they decide to dismiss a case (e.g., a mandatory report from social services, a 'hearing' to which the prosecutor would invite the child, their parents, social workers, and other important people in the child's life, where the case would be discussed before being dismissed) would be beneficial.

It is recommended that all decisions and measures imposed on juveniles should be adequately justified and that the relevant reasons for a certain decision be recorded in all juvenile justice cases. Notably, in their final decisions, it is recommended that prosecutors and judges distinguish between dismissals based on the expediency principle and dismissals due to an educational measure already in place.

It is recommended, in cases where it is considered to be the most conducive path towards a juvenile's re-education and resocialisation, to extend measures such as mediation, deferred prosecution, and dismissal based on the expediency principle to certain criminal offences for which the KZ proscribes the sentence of at least five years of imprisonment.

It is also recommended to extend the existing measures of instructions and prohibitions and to make them more specific to enable a better individualisation of sanctions against young people and adequately consider the best interest of the child.

- **Role of social services**

It is recommended that the role of social services in advising the judiciary about the most appropriate educational measure for a particular young person should be thoroughly thought through in light of the organisational difficulties that social services in Slovenia are currently facing, and that adequate resources should be allocated in order for social services to specialise and carry out a meaningful advisory role in juvenile justice cases.

- **Data collection for transparency, monitoring, and evaluation**

It is recommended that State prosecutor's offices and district courts should gather data on the different categories of dismissals. This data should also be collected at the national level.

Data related to the offender

- **Early intervention**

It is recommended to reflect upon and consider ways to strengthen early intervention measures to prevent the escalation of social and family difficulties which could lead to the development of offending behaviour in youth.

- **Data on offending and recidivism**

It is recommended that prosecutors' offices and courts should keep consistent and up-to-date data about the young person's prior offending behaviour and/or recidivism, in a manner consistent with data protection rules.

Data on the procedure

- **Specialisation and information gathering**

Currently, juvenile justice proceedings tend to be lengthy, often lasting much longer than reasonable in terms of the child's best interest. A thorough but swift one-time expert assessment of the child in more quickly administered judicial proceedings might better uphold the child's rights to a speedy response and have their best interest taken into account as a primary consideration. However, this would only be possible if relevant professionals within social services, prosecutor's offices, and courts were specialised and allowed to deal exclusively with juvenile criminal cases.

The relationship between an expert assessment of the child and the legal reasoning about the appropriateness of criminal sanctions against the child, according to the aims of juvenile criminal procedure, should be clarified. The courts can nominate a second expert if the first expert opinion does not convince them.

It is recommended, in the interests of a good administration of justice and of a juvenile justice system which respects the rights of the child, to enable the specialisation of professionals within social services, prosecutor's offices, and courts and allow them to deal exclusively with juvenile criminal cases.

It is recommended, to guarantee the child's right to a speedy response and to have their best interest considered, to make efforts to accelerate juvenile justice proceedings and to ensure, at the beginning of each juvenile justice case, an expert assessment of the child's personality and development and their social and family situation.

It is also recommended to require courts to explain any decision that departs from the recommendations made in the expert assessment and adequately justify their choice of a different measure or sanction.

- **Social services involvement**

More research is needed to explore and understand social services' active or passive role in judicial proceedings against young people in conflict with the law, as social services should be active in line with Article 458 of the ZKP or Article 43 the draft ZOMSKD. Recommendations and protocols must be developed to define social services reports' number per criminal proceeding, structure, and quality to become a better basis for the court's individualisation of sanctions. The role of court-employed social workers should be thought through so that their interviews with the young person's parents add to the social services reports rather than duplicating them.

Article 72/II of the draft ZOMSKD, stating the court can decide not to interview the child's parents (or potentially obtain a new social services report) if social services had

already interviewed them and the court deems the interviews are not necessary as it has enough information from previous proceedings, should be implemented with caution. While the Article is not problematic in itself, it might work against the child's best interest in light of the duration of judicial proceedings.

It is recommended that protocols be developed to define the involvement of the social services in juvenile justice procedures, notably by clarifying the structure and content of their reports and by establishing quality standards for individual assessments which can serve as a basis for the court's individualisation of measures and sanctions.

It is recommended that Article 72/II of the draft ZOMSKD, stating the court can decide not to interview the child's parents (or potentially obtain a new social services report) if social services had already interviewed them and the court deems the interviews are not necessary as it has enough information from previous proceedings, should be nuanced by adding that such a decision cannot be made if it risks obtaining a social services report that was prepared in a previous criminal proceeding a long time ago, and does not entail the most up-to-date information about the child and their circumstances.

- **Temporary placement during proceedings**

Article 64/I of the draft ZOMSKD states that the child can be temporarily excluded from their home environment and placed under the care of social services, another family, or an educational institution during the judicial proceedings. However, this option might not be in the child's best interest from a legal and developmental perspective.

Article 64/V of the draft ZOMSKD mentions the diagnostic centre as an institution where the court could place the juvenile for up to thirty days if they need a detailed assessment as part of an expert opinion. However, a diagnostic centre does not yet exist in Slovenia.

It is recommended, before adopting and implementing Article 64/1 of the draft ZOMSKD, to carefully consider if courts should be able to place children who may need to be removed from their home environment, but who have not yet received a sanction based on a final judicial decision, in an educational institution or the correctional home.

It is also recommended that the responsible authorities should establish a diagnostic centre and carefully rethink its precise role and responsibilities. The relationship between expert centres in the ZOOMTVI and the future diagnostic centre, as predicted by the ZKP and the draft ZOMSKD, should also be clarified.

- **Pre-trial detention**

The draft ZOMSKD attempts to ensure that pre-trial detention will be used as a last resort in juvenile criminal cases. Article 65/VI of the draft ZOMSKD allows courts to impose juvenile pre-trial detention for a maximum of 6 months rather than two years, as allowed under the current ZKP.

Under Article 432/I of the ZKP, young people are disadvantaged compared to adult offenders when it comes to conditions for pre-trial detention in more and less serious offences. Article 65 of the draft ZOMSKD offers a much-needed amendment, distinguishing the grounds for detention according to the gravity of the offence: Article 65/I states pre-trial detention conditions for offences punishable by imprisonment of more than three years, while Article 65/II states pre-trial detention conditions for offences punishable by imprisonment of three years or less.

The analysed data shows that courts placed 64% of young people in pre-trial detention with adults, and only 18% with other children. In 18% of cases, the information about the young person's placement was unknown. The need for the judge to issue a written decision about detaining the young person with adults after they have obtained the opinion of the prison administration is now part of Article 473 of the ZKP-O and Article 67 of the draft ZOMSKD. This is a welcome and necessary normative change. However, courts should impose fewer juvenile pre-trial detentions in the long run and avoid detaining children together with adults.

Article 66 of the draft ZOMSKD offers more alternatives to pre-trial detention than the current ZKP, representing another welcome normative change. In Article 66/III, the draft ZOMSKD explicitly states that when pre-trial detention is unnecessary, the court can also place the young person in an educational institution as an alternative.

It is recommended to establish a pre-trial detention facility or unit for juveniles only, which respects international standards in terms of deprivation of liberty of children and ensures that children will no longer be detained together with adults.

It is also recommended, before adopting and implementing Article 66/III of the draft ZOMSKD, to carefully examine if educational institutions in Slovenia are adequately equipped to serve as viable alternatives to pre-trial detention, and to consider what other alternatives may exist which do not involve the young person's deprivation of liberty.

- **Regular judicial monitoring during pre-detention**

It is recommended to introduce into the draft ZOMSKD a provision stating that the judge must regularly visit the young person in pre-trial detention.

- **Right to legal representation**

Articles 478/V of the ZKP-O and 78/I of the draft ZOMSKD offer a welcome amendment, requiring the court to invite – rather than merely informing – the prosecutor, juvenile, and their defence lawyer to the panel session or main hearing. According to the ZKP-O, the court cannot hold a panel session or main hearing without the child's lawyer.

If the defence is mandatory, the court has to secure legal representation for the entire criminal proceedings from the beginning of the preliminary proceeding (or even before for some investigative acts) (Article 454 of the ZKP- and Article 41 of the draft ZOMSKD).

Article 41 of the draft ZOMSKD states that if a child is involved in multiple proceedings, they should have the same defence lawyer, preferably a specialised one. If adopted, this would represent a welcome normative change, and courts of different districts should diligently inform one another of criminal proceedings against the same young person. Specialising defence lawyers for young offenders, as predicted by Articles 452b of the ZKP-O and 41 of the draft ZOMSKD, is pivotal for respecting the child's due process right and contributing to their development and rehabilitation.

It is recommended to adopt and implement articles 78/1 and 41 of the draft ZOMSKD and to ensure that courts respect these new legal requirements, guaranteeing legal representation for children from the very start of the proceedings and all through to the end.

It is also recommended that defence lawyers for young offenders receive adequate specialisation to fully respect the child's rights to due process and to legal representation.

It is recommended, if the juvenile is involved in more than one case, that the same defence lawyer be allowed to represent the juvenile across all judicial proceedings in which they are involved, even if such proceedings take place in different districts.

- **Right to be informed and accompanied**

According to Articles 452.c/II of the ZKP-O and 7/III of the draft ZOMSKD, any competent authority – including the police and the prosecution – must inform the child of the charges against them. They should also inform the young person about their rights to be accompanied by a parent or guardian, have a lawyer, and have privacy. The authorities should also tell the child's parents or guardian about the offence they suspect the young person committed.

Articles 452.c/I of the ZKP-O and 7/I of the ZOMSKD explicitly grant young people the right to the presence of their parents or guardians at any stage of the criminal proceedings against them. If the presence of parents or guardians is not in the child's best interest or the authorities cannot contact them, children can nominate another trusted person (e.g., youth or social worker, teacher, older sibling) to accompany them. If the authorities believe the person appointed by the child will not act in the young person's best interest, they nominate a trusted person for the child *ex officio*. This welcome normative change will hopefully contribute to the prosecution respecting the child's right to be heard and have a parent or trusted person present in all proceedings against them, including cases where the charges are dismissed.

Articles 452.c/V of the ZKP-O and 7/III of the draft ZOMSKD instruct the police, prosecution, and court to inform the child, their parents, or guardian about their rights under the ZKP-O or the ZOMSKD.

It is recommended that, in respect of the child's right to information, the relevant authorities should inform the young person about their rights orally and in writing in a language and manner appropriate to the young person's age and level of maturity and development, and indicate this in police, prosecutorial, and judicial case files.

It is also recommended that the relevant authorities should enable the young person and their parents or guardians to effectively exercise the rights set forth in the law – including the child's right to be heard and accompanied by their parents.

- **Differentiating between preliminary proceedings and main hearings**

Article 44 of the draft ZOMSKD states that the judge must run preliminary proceedings. This normative change benefits the young person by enabling them to have regular contact with the same official throughout the judicial proceedings against them.

It is recommended that judges must run preliminary proceedings and courts distinguish adequately between the circumstances in which they need to hold a main hearing and those in which a panel session is sufficient. A main hearing should be held every time the court directly examines evidence about the offence or the young person's circumstances.

- **One judge per young offender**

Article 43/VI of the draft ZOMSKD states that the same juvenile judge should run all criminal proceedings against the young person at the same District Court, which is also beneficial.

It is recommended that the provision currently expressed in Article 43/VI of the draft ZOMSKD be adopted and subsequently effectively implemented in practice.

- **Closing sessions**

It is recommended that courts should always hold a closing session before terminating an educational measure and should issue a final decision to end the execution of an educational measure officially.

- **Appeal procedures**

Article 83 of the draft ZOMSKD, if adopted, would offer a welcome normative change by establishing new rules about inviting young people to an appeal hearing. When the first-instance court imposes a residential educational measure, a safety measure of compulsory psychiatric treatment and care in a psychiatric institution, or juvenile imprisonment, the Court of Appeal must invite the child to their hearing.

It is recommended that the provision currently expressed in Article 83 of the draft ZOMSKD be adopted and subsequently effectively implemented in practice.

- **Specialisation of courts**

It is recommended to amend the Courts Act to allow specialised juvenile criminal departments and judges. Specialised juvenile criminal courts could offer a more viable youth justice system in the long run and guarantee the effective implementation of established international juvenile justice standards.

Data on the individualisation and execution of criminal sanctions

- **Sanctioning multiple offences**

When different district courts or judges of the same district court run separate procedures, they sometimes simultaneously impose two or more educational measures against the same young person.

It is recommended that, when the court decides about two criminal offences in the same proceeding and imposes an educational measure on a juvenile, they should apply the rules for imposing sanctions 'in a series', adapted to educational measures.

It is also recommended that, when separate proceedings are held before different judges or courts, the judge/court that imposed the most severe educational measure or last imposed an educational measure of equivalent severity, must impose a unified educational measure That court should also monitor the execution of the imposed unified educational measure.

- **Abscondence**

Young people sometimes abscond from educational institutions or the correctional home that they are placed in. When a child absconds from an educational institution or a correctional home, the police can bring them back to the institution.

The educational institution, correctional home, or social services should inform the court and police about the young person's absconding from a residential educational measure or lack of cooperation with a non-residential educational measure. The court can order a forced arrest to bring the young person back to the institution or a wanted notice in case of non-residential educational measures.

Before the court issues a forced arrest or a wanted notice, and orders the young person is brought back to the institution, however, the judge and court-employed social workers or other specialised professionals should interview the child to explore the reasons behind their absconding. The child should also be adequately informed of their rights to make a complaint in case of violations of their rights. The time the young person absconds from the educational institution or correctional home should count towards the duration of the measure.

It is recommended that before the court issues a forced arrest or a wanted notice, and orders the young person is brought back to the institution, the judge and court-employed social workers or other specialised professionals should interview the child to explore the reasons behind their absconding.

It is recommended that complaint mechanisms are established, and that the child is adequately informed about their rights to file such a complaint.

It is furthermore recommended to establish that the time during which the child absconds from the educational institution or correctional home should count towards the duration of the measure.

- **Amending non-residential measures**

Courts rarely change non-residential educational measures due to a young person's non-compliance. In non-compliance cases, courts often do not schedule hearings to discuss the non-compliance with the young person and, if necessary, change the imposed educational measure. Monitoring the execution of educational measures is challenging due to the judges' caseloads, and the lapse of the legally allowed maximum duration of an educational measure before the court can schedule a hearing. If judges dealt only with juvenile criminal cases, they could consult with social services more often and thus commence the change of an educational measure as soon as they found out about the child's breach of the educational measure or their changed circumstances. This collaboration could be more effective if some social workers dealt only with juvenile criminal cases and communicated with the young offenders and their families regularly to monitor the execution of the educational measures.

When courts change the educational measure, it is essential to rethink whether the duration of the first-imposed educational measure should not count towards the amended measure. Any time a child has served executing a judicial measure - non-residential or residential – must be taken into account if and when that measure is changed, especially in educational measures to prevent a lengthy institutionalisation of children.

It is recommended that specialised judges and social workers be allowed to focus exclusively on juvenile justice cases, in order to ensure a closer contact with the young person, a better monitoring of the execution of non-residential measures, and to enable the modification of measures if the imposed measure proves to be impossible for the young person to execute.

It is recommended that if an educational measure imposed is ineffective or inappropriate for the young person, courts change the educational measure as soon as possible. Upon changing an educational measure, courts should take into account any time elapsed during which the young person has already executed part of the first-imposed measure, and amend the foreseen length of the new measure accordingly.

- **Monitoring educational measures**

It is recommended that courts should regularly and thoroughly monitor the execution of educational measures.

It is also recommended that the judge who has decided to impose a residential educational measure on a young person should visit and talk to that young person in the educational facility at least once a year, but preferably more often, depending on the length of the imposed measure. Judges should also regularly contact young people undergoing non-residential educational measures.

- **End of measures**

When courts issue a final decision to terminate the educational measure, they often state the success of the educational measure as the reason for termination instead of saying that the measure ended due to the legally allowed passage of time.

It is recommended that courts must formally, by holding a session and adopting a decision, terminate any non-residential or residential educational measure for which the legally allowed duration has lapsed, and that they should clearly state the reason for the termination of the measure.

It is recommended that social services and, where relevant, the educational institution or correctional home in which the young person is placed be immediately informed upon a decision to terminate a measure, and that they should end the execution of the measure and, if relevant, release the young person.

It is also recommended that the court should formally terminate the educational measure if the young person does not/no longer require the treatment or assistance they are receiving due to changed circumstances, development, or needs.

- **Treatment for alcohol and drug addiction**

In addition to the instructions and prohibitions in the KZ, the draft ZOMSKD, if adopted, would allow for the imposition of treatment for alcohol and drug addiction, restraining orders, and prohibitions to associate with some people and access places. This more extensive span of instructions and prohibitions might enable a better individualisation of educational measures. However, compulsory drug and alcohol treatment without the child's motivation might not be as successful as expected, and restraining orders might only sometimes work with young people.

It is recommended for courts, if they are to select from the different measures set forth by the draft ZOMSKD, to thoroughly consider on a case-by-case basis which would be the most appropriate instructions and prohibitions in the light of the young person's personality and specific circumstances.

It is recommended for the courts to take into account also the expert assessments and the information gathered by social services, including the expression of the young person's own opinion, to impose those measures that are most likely to succeed in having a positive impact on the young person and in serving the aims of juvenile justice.

- **Implementation of measures by social services**

Social services tend to begin with the execution of educational measures long after the judicial decision imposing such a measure has become final. Article 90/IV of the draft ZOMSKD states that the social work centres must start executing the imposed non-residential educational measures no later than thirty days after receiving the court's decision. If adopted, and considering the social services' current organisational difficulties., this provision should be implemented cautiously.

Supervision by social services is not always sufficiently individualised according to the specific young person's circumstances and needs. Instructions and prohibitions are currently often executed as mere supervision by social services.

Sometimes, social workers' meetings with young people as part of supervision by social services are rare and shallow, depending primarily on the (lack of) willingness and motivation of the individual social worker. While some social workers follow up on the young person and try to build rapport to impact their development positively, others merely have telephone contact with the child. Such inconsistent practices are unsatisfactory.

It is recommended to judges consider imposing instructions and prohibitions alongside supervision by social services, to ensure a better individualisation of these educational measures.

It is recommended that social workers' contact with young persons should be in-person and regular during the execution of their sanctions, to positively impact their development and decrease risks of recidivism.

- **Specific educational institutions and institutional measures**

It is recommended to further examine if, before committal to an educational institution and after obtaining the opinion of social services, courts should nominate the specific educational institution where they want the young person to be placed.

For this to be possible, it is also recommended to clarify if educational institutions will always be able to execute such a final decision by a court, and if social services will be

granted the necessary resources to take on the additional task of writing opinions for courts on the suitability of educational institutions.

It is recommended to grant further attention to some of the normative solutions set forth in the ZOOMTVI (e.g., disciplinary proceedings, processing internal drug and alcohol tests, decision-making about young persons' complaints regarding breaches of their rights, etc.) and especially to how educational institutions implement such solutions.

Even if educational institutions supposedly carry out such proceedings in the best interest of the child, it is recommended to carry out research to understand how young people understand and experiences them.

It is also recommended to examine thoroughly if reward systems within educational institutions are fair and transparent and whether a zero-tolerance approach to drugs in institutional milieus where young people can get hold of drugs and suffer from drug addiction is sensible, or whether young people better accept restorative programmes that encourage gradual desistance from drug and alcohol use and allow for relapse without punishment.

- **Post-penal support**

It is recommended to make adequate post-penal support, including the right to housing in the community after release, available to young people after they are released from educational institutions and the correctional home.

- **Children with disabilities, children with psychiatric issues**

An institution for young people in conflict with the law with comorbidity of personality disorders, addictions, etc., that would combine education, social care, psychological and psychiatric help, and safety for young people at risk of self-harm or harming others does not currently exist in Slovenia.

It is recommended to explore through research if existing educational institutions can accept young people with comorbidity of emotional and behavioural issues, personality disorders, addiction, and/or psychiatric diagnoses and treat them in intensive groups under Article 13 of the ZOOMTVI.

Data related to physical and mental health, mental development, and emotional and behavioural issues

It is recommended to conduct further research to explore how to better link together educational, social, criminal justice, and mental health institutions to provide effective

early intervention for young people with mental health, mental development, emotional and behavioural issues.

In addition, it is recommended for responsible institutions to establish a diagnostic centre and to clarify the relationship between the draft ZOMSKD or other laws governing the treatment of young people in conflict with the law and the ZOOMTVI.

Data on recidivism

- **Definition**

It is recommended that the prosecution and judiciary should establish clear guidelines as to what constitutes prior criminal involvement and how to consider recidivism in prosecutorial decisions about charging the child or dismissing the case, as well as in judicial decision-making about what educational measure or sanction to impose.

It is also recommended to clearly define recidivism and examine it holistically by looking at how many children under the age of criminal responsibility commit offences, enter the youth justice system, and how many young offenders continue to offend as adults. In this task, criminological studies should also explore the effectiveness of specific criminal sanctions against young people.

References

Arnež, J. (2022) *Negotiating Class in Youth Justice: Professional Practice and Interactions*. London and New York: Routledge.

Arnez, J. and Condry, R. (2021) Criminological Perspectives on School Exclusion and Youth Offending. *Emotional and Behavioural Difficulties*, 26(1), pp. 87-100.

Balažic, M., Ramuš Cvetkovič. I., Skočir, M., Mihelj Plesničar, M., Arnež, J., and Filipčič, K. (2022) *Final Draft Research and Gap Analysis (Lot 1) Report*. Strasbourg: Council of Europe.

Billingham, L. and Irwin-Rogers, K. (2022) *Against Youth Violence: A Social Harm Perspective*. Bristol: Bristol University Press.

Briggs, D. (2010) The World Is Out to Get Me, 'Bruv': Life after School Exclusion. *Safer Communities,* 9(2), pp. 9–19.

Carlen, P., Gleeson, D., and Wardhaugh, J. (1992) *Truancy: The Politics of Compulsory Schooling*. Buckingham: Open University Press.

Code of Misdemeanours-1 (ZP-1) 2016.

Cohen, A. C. (1955) *Delinquent Boys: The Culture of the Gang*. London: Routledge & Kegan Paul.

Constitution of the Republic of Slovenia (URS) 1991.

Council of Europe (2021) *Inception Report Component I: 21SI10 – Improving the Juvenile Justice System and Strengthening the Education and Training of Penitentiary Staff*. Strasbourg: Council of Europe – Children's Rights Division.

Courts Act (ZS) 1994.

Criminal Code (KZ) 1995.

Criminal Procedure Act (ZKP) 1995.

Criminal Procedure Act-O (ZKP-O) 2019.

Enforcement of Criminal Sanctions Act-1 (ZIKS-1) 2000.

Filipčič, K. (2013) 'Juvenile Criminal Law', in Bavcon, L., Šelih, A., Korošec, D., Ambrož, M. and Filipčič, K. (eds.) *Criminal Law*. Ljubljana: Uradni list, pp. 495-544.

Firmin, C. (2020) *Contextual Safeguarding and Child Protection*. London: Routledge.

Halsey, M. and De Vel-Palumbo (2020) *Generations through Prison: Experiences of Intergenerational Incarceration*. London and New York: Routledge.

Heidensohn, F. (1989) *Crime and Society*. Hampshire and London: Macmillan Education.

Horvat, Š. (2004) Zakon o kazenskem postopku s komentarjem. Ljubljana: GV založba.

Intervention for Children and Youth with Emotional and Behavioural Difficulties in Education Act (ZOOMTVI) 2021.

Liability of Minors for Criminal Offences Act (ZOMSKD).

Lloyd, A. (1995) *Doubly Deviant, Doubly Damned: Society's Treatment of Violent Women*. London: Penguin Books.

McAra, L. and McVie, S. (2005) The Usual Suspects?: Street-life, Young People and the Police. *Criminal Justice*, 5(1), pp. 5-36.

McAra, L. and McVie, S. (2007) Youth Justice? The Impact of System Contact on Patterns of Desistance from Offending. *European Journal of Crimino*logy, 4(3), pp. 315-345.

McAra, S. and McVie, L. (2010) Youth Crime and Justice: Key Messages from the Edinburgh Study of Youth Transitions and Crime. Criminology & Criminal Justice, 10(2), pp. 179-209.

McAra, L. and McVie, S. (2012) Negotiated Order: The Groundwork for a Theory of Offending Pathways. *Criminology and Criminal Justice*, 12(4), pp. 347- 375.

McCluskey, G., Cole, T., Daniels, H., Thomson, I., and Tawell, A. (2019) Exclusion from School in Scotland and across the UK: Contrasts and Questions. British Educational Research Journal, 45(6), pp. 1140-1159.

Meiners, J. (2013) Schooling the Carceral State: Challenging the School-to-Prison Pipeline. In: D. Scott (ed.), *Why Prison?*. Cambridge: Cambridge University Press, pp. 261-267.

Sanders, J., Liebenberg, L., and Munford, R. (2020) The Impact of School Exclusion on Later Justice System Involvement: Investigating the Experiences of Male and Female Students. *Educational Review*, 77(3), pp. 386-403.

Skalar, M. (2020) *Poročilo civilne družbe spremljanja izvajanja nacionalne strategije vključevanja Romov v Sloveniji: Prepoznavanje vrzeli v politiki vključevanja Romov*. Budapest: Center for Policy Studies (Central European University).

Smart, C. (1977) *Women, Crime, and Criminology: A Feminist Critique*. London: Routledge.

Šircelj, M. (2003) *Verska, jezikovna in narodna sestava prebivalstva Slovenije: Popisi 1921-2002*. Ljubljana: Statistični urad Republike Slovenije.

United Nations Convention on the Rights of the child (UNCRC) 1989.

Willis, P.E., *Learning to Labour: How Working Class Kids get Working Class Jobs* (1977). Farnborough, Eng.: Saxon House.

Wolf, K.C. and Kupchik, A. (2017) School Suspensions and Adverse Experiences in Adulthood. *Justice Quarterly*, 34(3), pp. 407-430.

Wroe, L. E. (2021) Young People and ‚County Lines': A Contextual and Social Account. *Journal of Children's Services* 16(1), pp. 39–55.