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REPUBLIKA SLOVENIJA
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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 I)

National Research and Gap Analysis (Output 1)

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Acronym	Official Slovenian Name	English Translation
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
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)
ZNPPol	Zakon o nalogah in pooblastilih policije (ZNPPol), Ur. l., št. 15/13	The Police Tasks and Powers Act (2013)
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".
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)
DZ	Družinski zakonik (DZ), Ur. l., št. 15/17	Family Code (2017)
ZNP-1	Zakon o nepravdnem postopku (ZNP-1), Ur. l., št. 16/19	Non-Contentious Civil Procedure Act (2019)
ZZOKPOHO	Zakon o zaščiti otrok v kazenskem postopku in njihovi celostni obravnavi v hiši za otroke (ZZOKPOHO), Ur. l. RS, št. 54/21	Protection of Children in Criminal Procedure and their Comprehensive Treatment in Children's House Act

1. EXECUTIVE SUMMARY

In 2019, the Slovenian Ministry of Justice prepared a draft proposal of the "*Liability of Minors for Criminal Offences Act*"[1] (the draft ZOMSKD). The draft ZOMSKD is intended to address juvenile justice in a comprehensive manner, as prescribed by the Slovenian Criminal Code of 2008. It is based on generally accepted and internationally recognised key principles of the treatment of young people in conflict with the law, such as the best interests of the child, non-discrimination, the right to be heard, and the right to dignity. The draft ZOMSKD covers substantive and procedural criminal provisions as well as the enforcement of criminal sanctions in juvenile justice. Nevertheless, due to encountering multiple challenges over the legislative process, among them uncertainty regarding the treatment of juvenile offenders with special needs, e.g. mental health, mental development, emotional and behavioural issues, the draft ZOMSKD has not yet been adopted.

This report identifies existing challenges and gaps in the national legal and policy framework related to juvenile justice in Slovenia, with a focus on sanctions for juvenile offenders. It provides an analysis of the current state of juvenile offending and juvenile justice, with an aim to further assess the adequacy of the draft ZOMSKD. The report attempts to provide answers to the questions as to whether the draft ZOMSKD reflects existing good practices in Slovenia, and whether it adequately addresses the changes needed in the legal framework. Through the answers to these questions, the report is intended to contribute to a sound basis for the ongoing juvenile justice reform in Slovenia, including through concrete proposals to strengthen new legislation and policies which are in line with European standards and good practices.

The report was composed with regard to and stemming from the Slovenian system and is partially based on interviews and roundtable meetings with relevant Slovenian professionals. It therefore reflects the Slovenian context and takes a national point of view with regard to the identified gaps and needs. This provides an important perspective and gives valuable information regarding what professionals working with young offenders in Slovenia expect and need for the juvenile justice system to work adequately. However, to appreciate the recommendations from a holistic perspective, they should be read in combination with the recommendations made in the other three reports published in the framework of this project. Such an inclusive look at the recommendations stemming from this project will ensure that the Slovenian juvenile justice reform occurs considering:

- the normative and theoretical underpinnings of the Slovenian context, described in this report;
- the international context which bounds Slovenia (as a member State of the EU, the Council of Europe, and through ratification of key international instruments), decribed in the international research and gap analysis report;
- the practical challenges in the Slovenian system, found in the case law analysis report;
- and the comparative solutions found in different systems, described in the comparative study of European standards and promising practices.

[1] Zakon o obravnavanju mladoletnih storilcev kaznivih dejanj (ZOMSKD), EVA: 2018-2030-0046 – predlog, 24. 12. 2019.

Juvenile delinquency in Slovenia

Following an introductory chapter (chapter 2), the report begins by outlining, in chapter 3, the state of the art relative to juvenile delinquency in Slovenia. The chapter presents data showing that juvenile offending has been relatively stable in the past decade when compared with overall rates of offending, while the absolute number of juvenile offenders has halved over that period. While the majority of juvenile offenders belong to the age group 16-18, the report notes that the proportion of juvenile offenders in the younger age group 14-16 has increased in recent years. Regarding gender, the analysis of the data shows that the vast majority of juvenile offenders are males, but that the proportion of female offenders has been increasing and currently accounts for about 20% of the juvenile offender population.

With regard to the types of offences committed by juvenile offenders, the analysis shows that a large majority of offences fall into the category of property crimes. Nevertheless, the proportion of violent crime has risen from about 3% to 8% in the past ten years.

An attempt was made to look into the causes underlying juvenile delinquency in Slovenia, but without comprehensive statistical data no clear conclusions could be drawn. Permissive upbringing, absence of parents, sense of isolation and loneliness were among the causes mentioned by relevant professionals.

While this is a descriptive chapter, there is just one general recommendation in this section:

- There are significant gaps in collecting and providing data relevant for juvenile crime. It is strongly encouraged to develop and keep active and available in one place databates that collect data on juvenile offenders processed by the police, the prosecution, the courts, and the enforcement authorities. Such databases would not only ensure a more transparent system and encourage research and better understanding of juvenile crime, but also be directly useful to decision-makers in the juvenile justice system process as they would encourage more exchange of practices in different regions to ensure equal treatment and tailored responses.

Criminal sanctions

Chapter 4 of the report outlines the legal system of criminal sanctions in Slovenia. It is explained that the purposes of criminal sanctions for juvenile offenders are (re-)education, rehabilitation, and proper personal development of the young person.

Analysis shows, that Slovenia already has a sufficient number of differentiated educational measures and punishments with adequately prescribed lengths to provide appropriate options for the individualisation of criminal sanctions. Nevertheless, it is seen as problematic that measures cannot always be combined and adopted in conjunction, even where this would be in the best interest of the child. For instance, certain instructions, including notably the treatment for substance addiction, would be important to adopt in combination with residential measures in some cases, something which is currently not possible. Moreover, the current legal basis for the committal of juvenile offenders with physical or mental disabilities to a closed institution is unclear and leads to ambiguities.

In addition, the analysis shows that the implementation of the existing legal framework is not entirely satisfactory, and several issues were identified at the practical level. Firstly, the lack of specialised

courts for juvenile offenders results in a practical impossibility to ensure that sanctions against juvenile offenders are individualised and based on an adequate evaluation of the young person's personality, situation and circumstances. Such an evaluation is crucial in order for the most appropriate measures to be adopted.

Secondly, the measure consisting of supervision by social services is problematic due to the infrequent and shallow contacts that social workers are able to have with juvenile offenders, as well as the absence of differentiated programmes and activities for these young persons to take part in.

Finally, one of the most pressing practical issues identified in the report regards the deprivation of liberty of juvenile offenders and the lack of adequate treatment programmes during detention. Without such programmes, the purpose of detention is, de facto, reduced solely to the imprisonment of juvenile offenders. In terms of the young person's chances of re-education and rehabilitation, this may result in more harm than benefits, and is incompatible with the stated aims of sanctions in the Slovenian juvenile justice system. Considering the small absolute numbers of juvenile offenders sentenced to detention in Slovenia, this may pose an even bigger challenge than in comparative countries, but still a challenge that needs to be addressed.

The provisions of the draft ZOMSKD do not significantly differ from the current legislation, but have the merit of broadening the possibilities for individualised sanctions and of clarifying the legal basis for the committal of juvenile offenders with mental disabilities to an institution. While the currently existing legislation does not require significant amendments in terms of the types of sanctions that can be imposed on juvenile offenders, they do point out that the new law should foresee the possibility of combining instructions – for instance regarding treatment for substance addiction – in combination with residential measures and detention.

A series of recommendations were made in chapter 4 relating to criminal sanctions, namely:

- The purposes of sanctions for juvenile offenders, namely (re-)education, rehabilitation and the proper development of the young person, should be underscored in any new legislation that is adopted.
- In order for the stated purposes of sanctions to be fulfilled, individualisation of sanctions is strongly needed. This can only be achieved through an adequate assessment of each young person's personal situation and circumstances, including any potential mental health or mental development difficulties, as well as specific emotional or behavioural needs. If the underlying reasons for a juvenile offender's behaviour can be understood, the most appropriate measures or sanctions can be adopted, hence increasing the chances of a successful reintegration and reducing the risk of reoffending. While in this context, absolute priority needs to be given to the individualisation of sanctions, it is important to ensure that the principle of equality is still respected, through making sure courts decide on cases knowing what measures are typically used in similar cases.
- Courts should duly monitor the implementation of imposed sanctions and, if needed, promptly replace them with other, more appropriate measures based on the juvenile offender's potential difficulties, needs, or (lack of) progress.
- Challenges relating to both the decision and the execution of sanctions stem from the absence of adequate specialisation, and any new legislation should foresee courts, judges and

prosecutors which are specialised in juvenile justice and given a specific mandate to work in a holistic manner on cases involving juvenile offenders.

- The supervision of juvenile offenders against whom a criminal sanction has been imposed has proven problematic. In order to be meaningful, such supervision should be regular, involving a continued dialogue between the juvenile offender, specialised social services, and the judge who decided upon the sanction.
- The existing difficulties in terms of supervision by social services stem from systemic challenges that reach far beyond the social services involvement with the criminal justice system. With regard to dealing with juvenile offenders, some of them could potentially be resolved by:
    - amending the Catalogue so that more frequent contacts and more diverse and individualised activities with juvenile offenders could be prescribed;
    - conducting training courses for social workers to promote more thorough and individualised contacts with juveniles;
    - hiring more social workers or possibly cooperating with (volunteer) assistants, on the condition that they receive prior training.
- A number of non-residential sanctions are already foreseen in the existing legal framework and could be better used under a new legal framework, for instance as follows:
    - By foreseeing an appropriate individual assessment of each juvenile offender, in which the young person's situation, circumstances and needs are taken into account. That way, the court can choose between the diverse options the most appropriate sanction for each individual case, bearing in mind that the purpose of the sanction should be to maximise the young person's chances of (re-)education, rehabilitation and proposer personal development;
    - Establishing that the lightest possible sanction appropriate after considering the individualisation of the measure, should always be imposed. This means that the often criticised reprimand should still remain a viable option in the system for cases when no heavier sanction is considered necessary and should consist of a firm and clear notice of the juvenile offender's wrongdoing;
    - Enhancing the use of instructions and prohibitions as forms of sanctions which could correspond to the juvenile offender's individual situation and benefit their rehabilitation, rather than imposing sanctions that involve the deprivation of liberty unless those are considered absolutely necessary.
- Residential sanctions are also regulated by the already existing legal framework, but would need to be accompanied by a more firm and individualised treatment plan for juvenile offenders. For instance, the new legislation could foresee:
    - that the identification of a juvenile offender's specific psychosocial characteristics or needs is carried out immediately by the social services or by a designated diagnostic centre which should be clearly established by law, to ensure the most effective sanction or measure can be adopted in each case. Each time an inadequate sanction is adopted, valuable time is lost in the young person's development phase, potentially making their rehabilitation more difficult. Currently such diagnostic centres are non-existent;
    - that certain instructions may be imposed in conjunction with residential sanctions. That way, institutions for juvenile offenders can implement intensive and targeted

treatment programmes for the most problematic residents, and also address the noticeable problem related to alcohol and drug addiction within residential facilities.

- The committal of juvenile offenders with physical or mental disabilities to an institution is currently ambiguous and its legal aspects should be more clearly defined in any new legislation and delimited from other legal options. The draft ZOMSKD foresees amendments to this measure, notably by limiting it to juvenile offenders with mental disabilities (excluding physical disabilities) and by foreseeing a more clearly defined legal regime, which is considered welcome. Importantly, the ZOMSKD foresees that a Committee for the guidance of children with special needs shall provide the court with an expert opinion within one month, and the imposition of this measure may substitute only another residential sanction. It is recommended to follow the amendments foreseen by the ZOMSKD in this regard.
- Juvenile prison should remain in the legislation and be strictly reserved for the most serious cases. It should be imposed as a measure of last resort only, when all other measures have proven inefficient or the circumstances are exceptionally grave. Moreover, juvenile prison today represents an unsatisfactory sanction with regard to the purposes of sanctions for juvenile offenders, and could be improved for instance by:
    - establishing educational and recreational programmes as well as sophisticated treatment programmes for juvenile offenders placed in juvenile prison in order to facilitate their (re-)education and rehabilitation;
    - maintaining the prescribed minimum term of 6 months, to ensure that the purpose of juvenile prison can be guaranteed and that prison sentences are only passed in cases where courts absolutely cannot imagine other measures to be successfull.
- Provisions concerning the committal to an educational institution should be harmonised with Article 8/II of the ZOOMTVI, to establish whether it is the court or the social work center in charge to select the appropriate educational institution for the juvenile.

Criminal procedure

Chapter 5 of the report is dedicated to the criminal procedure in Slovenian juvenile justice. It is observed that the existing legislative framework regulating criminal proceedings against juvenile offenders is based on standard criminal proceedings against adults, with the addition of certain specialised provisions noting the particularities of juvenile delinquency and reflecting international standards. The last amendment adopted in this regard can be found in the ZKP-O[2], which transposed the Directive EU 2016/800 of the European Parliament and the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings into Slovenian criminal legislation. This law introduced important changes, including the legal presumption regarding the legally relevant age, professionals involved in criminal proceedings against juveniles acquiring additional knowledge in the field of juvenile delinquency, the possibility of conducting a hearing of a juvenile offender with the assistance of a pedagogue or other expert, provisions aimed at considering the juvenile's age, maturity and other personal circumstances, the obligation to include juveniles in pre-trial detention in relevant educational or other programmes (if possible) and to enable them to spend at least 3 hours per day outside. Thanks to these amendments, the authors conclude that the Slovenian legal framework regarding criminal procedure for juvenile offenders is mostly adequate.

[2] Zakon o spremembah in dopolnitvah Zakona o kazenskem postopku (Uradni list RS, št. 200/20).

At the same time, the authors identify several problematic issues relating to criminal procedures against juvenile offenders at the practical level.

The first issue identified in the report concerns diversion measures for juvenile offenders. There seems to be both a lack of enforceable substantive provisions that would enable prosecutors to decide more easily between mediation and deferred prosecution, and severe regional differences in if and how prosecutors make such decisions.

Statistics presented in the report show a decrease in the use of mediation as an alternative to criminal proceedings, which appears to be due to an extremely low number of mediators specialising in juvenile justice, an occurrence that stems from the systemic role granted to mediators in the criminal justice system.

Another problematic issue is the absence of an institution which could qualify and be used as a diagnostic centre, despite such diagnostic centres being explicitly mentioned in the currently existing legislation. Referring juvenile offenders to a diagnostic centre could help better define their individual situation and specific needs, and hence better adapt the measures or criminal sanctions imposed on each individual person.

On a positive note, the report shows that there appears to exist a great interest among professionals working in contact with juvenile offenders to acquire additional knowledge in this area, for instance through professional trainings.

The draft ZOMSKD contains all the provisions introduced by the ZKP-O and goes further in some aspects. Nevertheless, it falls short in resolving some of the problematic issues identified in the report. For example, the draft ZOMSKD provides that mediators in juvenile cases are to be chosen among professors, teachers and other persons with experience in working with young people, but fails to include provisions aimed at solving the factual lack of such specialised mediators. These issues, admittedly fall within the remit of a different normative instrument, but still need to be considered when amending the juvenile criminal justice system.

Furthermore, the draft ZOMSKD provides no additional criteria for prosecutors to decide between mediation and deferred prosecution and does not ensure that prosecutors are equipped with sufficient knowledge for making such a decision. Again, this may be resolved through different mechanisms, but should nevertheless be kept in mind when reforming the system.

With regard to pre-trial detention, the provisions included in the draft ZOMSKD are considered adequate. However, in terms of detention in general, a significant risk exists that juvenile offenders are detained together with adults as a result of the problem of small absolute numbers of juvenile offenders in Slovenian prisons. Additional safeguards in order to mitigate such risks are needed, especially when considering the two equally dire alternatives: juvenile offenders placed with adult offenders or juvenile offenders placed in de-facto isolation due to their small number.

The need for professionals working on juvenile justice to acquire additional knowledge could be further improved by adding social workers to the list of professional groups in need of such knowledge, as well as by ensuring that educational activities such as professional trainings are part of regular work obligations and are, as such, appropriately compensated. In relation to the specialisation of professionals, the report also shows a certain tension between the idea of guaranteeing that a child is

always represented by a specialised attorney and the right to choose one's own attorney (who may or may not be specialised).

Lastly, an important issue identified in the report relates to the length of the proceedings involving juvenile offenders, which are often excessive. Neither the current legal framework nor the draft ZOMSKD contain sufficient provisions for tackling this issue, and it is crucial that a new law includes sufficient safeguards on this matter.

Regarding chapter 5 and the criminal procedure, the following key recommendations were made:

- While criminal proceedings against juveniles are in general considered adequately regulated in the legal framework, lengthy proceedings for juvenile offenders was repeatedly pointed out as a serious issue in need of improvement. Any new legislation should include clear provisions relating to the need for swift proceedings in cases that involve young persons under 18 years of age. This could partly be addressed and ensured through a stronger systemic specialisation of juvenile courts and personnel.
- Diversion procedures already exist in the legal framework, but significant regional differences have been noted in their implementation, which must be addressed. The draft ZOMSKD prescribes the priority of diversion procedures over regular criminal proceedings. This would enable a stronger focus on the aims of juvenile justice to rehabilitate and resocialise juvenile offenders and would be beneficial for these young persons. Therefore, it is recommended that the priority of diversion procedures should be included in any new legislation and a more unified approach to diversion is adopted by the prosecution service.
- Any new legislation also needs to provide more substantive guidance for prosecutors' decisions to choose mediation and deferment of prosecution for juvenile offenders whenever possible.
- New legislation should also include clear provisions to ensure that measures are passed that promote a sufficient mass of specialised mediators on juvenile justice is trained and available, so that the prosecutors are not factually precluded from referring a case to mediation even when this would be in the best interest of the child.
- More in general, the specialisation of professionals involved in the juvenile justice system is needed and professional trainings to acquire specific additional knowledge should be made mandatory, including for social workers working with juvenile offenders. Considering such specialisation should include both systemic specialisation (the organisation of the courts, prosecution etc.) and knowledge-based specialisation (including training of professionals dealing with juvenile offenders on pressing issues, e.g. diversion criteria, mediation process).
- ZOMSKD must establish special safeguards to ensure that juveniles are not placed in detention with adults as a means of combating overcrowding in prisons, but only when such placement is in the best interest of the child and is duly justified as such. However, any such instance must be reasoned and only applicable a form of last resort – precedence is to be given to possibilities of ensuring the juvenile has daily contact with other children, even if under controlled forms;
- The draft ZOMSKD regulates the right to an attorney appropriately. However, even before the adoption of a new law, judges could and should make better use of the already existing legal framework (notably provision of 454(1) ZKP) and appoint an attorney to ensure that juvenile offenders are fully informed of their rights and understand the proceedings.

- Special consideration should be granted to the issue of juvenile offenders sentenced to juvenile prison. The small number of juvenile offenders sentenced to such a measure poses a systemic problem that needs to be addressed; it is absolutely necessary for specialised educational and similar programmes to still be formulated and carried out, which needs to be included in any normative changes. It is necessary to rething the balancing between the potential isolation of juvenile offenders and their coming in contact with adult offenders and adopt mitigating strategies.

Enforcement of criminal sanctions

In the last chapter of the report (chapter 6), the enforcement of criminal sanctions imposed on juvenile offenders is addressed. The existing problems arise rather at the practical level, with regard to implementation.

The report concludes, that lack of satisfactory implementation of the legal framework is a consequence of lacking resources and lacking expertise. In particular, the lack of specialised professionals in the juvenile justice system leads to a poor enforcement of criminal sanctions against juvenile offenders. In addition, the abovementioned absence of diagnostic centres as well as the lack of individualised sentences, appropriate for the personality, situation and circumstances of the young person, negatively affect the chances of a successful enforcement of adopted sanctions.

The report shows how the understanding of sanctions often differs between professionals, resulting in a different treatment of juvenile offenders depending, for instance, on their location. Moreover, the fact that young persons can be placed in the same educational institutions both as a criminal and as a family law (i.e. protection) measure complicates things further. Lacking knowledge and preparedness in such institutions may lead to poor handling of young persons with complex behavioural issues, which may be detrimental rather than beneficial to their rehabilitation.

It is suggested, that such problems could be avoided or minimised if juvenile offenders were better evaluated, for instance in diagnostic centres, and if sanctions were adopted in a more individualised manner, and with adequate follow up. In addition, it is suggested that "post-penal" treatment could be improved. For instance, the recently adopted ZOOMTVI[3] provides that young persons placed in educational institutions can be accommodated in a juvenile apartment after the end of a placement measure. Such an option is not given to the juvenile offenders placed in correctional homes.

The report sets forth that the draft ZOMSKD could be improved by providing more guidance on how to handle juvenile offenders with strong behavioural issues and/or physical or mental disabilities, as well as by broadening the range of services offered after a sanction has been served, including by providing the possibility for a young person to reside in a juvenile apartment once a sanction involving the deprivation of liberty comes to an end.

Importantly, the draft ZOMSKD provides the option to change an institutional measure if it proves unsuccessful. However, it fails to ensure that such a change is done promptly, and a provision aimed at speeding up the process of changing a measure should be included in the draft. More focus could,

[3] Zakon o obravnavi otrok in mladostnikov s čustvenimi in vedenjskimi težavami in motnjami v vzgoji in izobraževanju (ZOOMTVI), Ur. l. RS, št. 200/20.

moreover, be put into encouraging juvenile offenders in detention to attend educational and other programmes for the purpose of improving resocialisation and minimising recidivism.

Lastly, the report underscores that judicial supervision of the enforcement of institutional measures often has been shown to have extremely positive effects on juvenile offenders, who appreciate and are encouraged by the judge visiting them. Providing for more regular visits by the judge who has decided upon the sanction would therefore be an interesting measure to promote. For this to be possible, the abovementioned lack of specialised courts or judges, who work solely on juvenile justice cases, should first be resolved.

Chapter 6 on the enforcement of criminal sanctions concludes with some recommendations:

- One of the main findings of this chapter is that the majority of issues relating to the enforcement of criminal sanctions for juvenile offenders do not arise at the legislative level, but at the practical level. Therefore, what is foreseen by the draft ZOMSKD is considered to be adequate and significant changes are not recommended. Nevertheless, a number of practical aspects would need to be addressed, namely:
    - the lack of resources and specialised experts in the enforcement of criminal sanctions;
    - the inconsistencies concerning the moment in which the enforcement of an institutional measure begins, which may also affect the duration of a sanction and cause legal uncertainty;
    - the lack of guidance on the treatment of juvenile offenders with serious behavioural issues (sometimes in combination with mental or physical disabilities) who are placed into educational institutions;
    - the lack of clarity as to when and how to use disciplinary measures.
- To avoid difficulties to reintegrate into society following the end of a sanction against a juvenile offender, and to reduce the risks of recidivism, it is suggested that any new legislation could establish that all juvenile offenders, including those who have served a sentence in a correctional home (who are currently excluded from this option), are offered the opportunity to be placed in special apartments after the end of their measure.
- Any new legislation should foresee provisions that strengthen the modalities by which a sanction or measure against a juvenile offender can be exchanged for another if it becomes clear that the imposed sanction is unsuccessful or inappropriate given the needs of the young person. Such changes should be enacted promptly, before it is too late, and require continued supervision and monitoring of the implementation of sanctions against juvenile offenders.
- The draft ZOMSKD establishes mandatory judicial supervision of institutional measures by foreseeing judges' physical visits to juvenile offenders in institutions once per year. Given the positive effects that have been noted of such visits, such a provision must remain in any new legislation and could, if adequate resources are made available, be extended to more than one visit per year.
- Lastly, juvenile prison, which is a measure of last resort only, must follow the same aim and have the same purpose as other sanctions against juvenile offenders, namely the rehabilitation and resocialisation of the juvenile offender, and the minimisation of the risks of recidivism. Therefore, any new legislation should emphasise the importance of enabling and encouraging juvenile offenders to participate in educational and other relevant programmes, and make such programmes available at all times.

2. INTRODUCTION

2.1 Background and aims of the report

In Slovenia, criminal law has traditionally been codified in a uniform legal act, encompassing all potential offenders and all criminal offences. However, a change in the Criminal Code (KZ-1)[4] in 2008 introduced a new system where certain groups of offenders were excluded from the general provisions and supposed to be regulated separately. Juvenile justice is one such group (the other relates to corporate entities as offenders).

Regardless of Article 5/II of KZ-1, the new system has not been implemented in Slovenia so far, meaning that there is no single, uniform legal act governing the field of juvenile criminal justice. Currently, provisions governing this field are included in general laws that govern the criminal justice system: the Criminal Code KZ[5] and the Criminal Code KZ-1, which encompass *substantive* criminal legislation; the Criminal Procedure Act (ZKP[6]), which contains *procedural* criminal legislation; and the Enforcement of Criminal Sanctions Act (ZIKS-1[7]), which determines how criminal sanctions are enforced. The Police Tasks and Powers Act (ZNPPol[8]) contains mostly technical and administrative additions regarding police powers and proceedings, that are primarily regulated in ZKP.

In 2019, the Ministry of Justice prepared a draft proposal of the "*Liability of Minors for Criminal Offences Act*"[9] (draft ZOMSKD).[10] The draft ZOMSKD presented a specialised and uniform act that addressed juvenile delinquency in a comprehensive manner as prescribed by KZ-1. It was based on generally accepted and internationally recognised fundamental principles of the treatment of young people in conflict with the law, such as the best interests of the child, non-discrimination, the right to be heard, and the right to dignity.[11] Apart from entailing basic principles and general provisions, the draft ZOMSKD also covered substantive and procedural criminal provisions, and the enforcement of criminal sanctions in juvenile justice. Nevertheless, due to encountering multiple challenges over the legislative process, among them uncertainty regarding the treatment of juvenile offenders with special needs, e.g. mental health, mental development, emotional and behavioural issues, the draft ZOMSKD has not yet been adopted.[12]

In order to prepare a sound basis for the reform of juvenile justice in Slovenia through new legislation and policies that shall be in line with European standards and good practices, a study has been commissioned for the Ministry of Justice (MoJ) by the Council of Europe (CoE) and the European Commission (EC). This report is the first output in the study, and its overarching aim is to identify existing challenges and gaps of the existing national legal and policy framework related to juvenile justice in Slovenia (with a focus on sanctions regarding juvenile offenders).

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[4] Kazenski zakonik (the KZ-1), Ur. l., št. 55/08.
[5] Kazenski zakonik (the KZ), Ur. l., št. 63/94 - this is the old Criminal Code (prior to the changes of 2008), which only remains enforced in the provisions that govern juvenile criminal responsibility and sanctions for juvenile offenders.
[6] Zakon o kazenskem postopku (ZKP), Ur. l., št. 63/94.
[7] Zakon o izvrševanju kazenskih sankcij (ZIKS-1), Ur. l., št. 22/00.
[8] Zakon o nalogah in pooblastilih policije (ZNPPol), Ur. l., št. 15/13.
[9] Zakon o obravnavanju mladoletnih storilcev kaznivih dejanj (ZOMSKD), EVA: 2018-2030-0046 – predlog, 24. 12. 2019.
[10] Ministrstvo za pravosodje.
[11] Zakon o obravnavanju mladoletnih storilcev kaznivih dejanj (ZOMSKD), EVA: 2018-2030-0046 – predlog, 19. 4. 2019, pg. 3.
[12] Inception Report – *Component I*, pg. 3.

The project focuses on the analysis of the current state of juvenile delinquency and legislation with an aim to further assess the adequacy of the draft ZOMSKD. Since the draft ZOMSKD pertains to juvenile offenders, the study does not encompass broader aspects of juvenile justice system, such as child victims and witnesses of crime.

More specifically, this report aims to:

(1.) Identify the current trends and challenges of juvenile delinquency in Slovenia;

(2.) Detect the shortcomings of the legislation;

(3.) Propose improvements in the legislation and policies in light of the new draft ZOMSKD.

2.2 Methodology

In order to attain these aims, a mixed-methods approach was used. The analysis combines a theoretical (literature review, analysis of the normative framework) and an empirical approach, which included quantitative data collection (a statistical overview of data pertaining to criminal justice) and qualitative methods (roundtable discussions with stakeholders, semi-structured interviews with stakeholders).

As regards the theoretical part, a thorough overview of all available academic literature in Slovenia on the broad topic of juvenile justice was done. In Slovenia, the field has been sporadically addressed by different authors but has not consistently been monitored and developed, with very limited studies carried out in recent years, particularly child-focused and child-friendly studies that would systematically integrate children's voices and perspectives.

The report was prepared mainly on the basis of sources from the fields of law and criminology, while documentation from other disciplines was only marginally taken into account. In this sense, one of the limitations of this report is constituted by a reduced capacity to elaborate recommendations on the implementation of sanctions as well as on the development of more child-friendly procedures in the Slovenian juvenile justice system.

Moreover, the normative framework in which juvenile justice in Slovenia is currently set was thoroughly analysed. As evident in the analysis below, all the significant statutes pertaining to juvenile justice as well as other, more marginally relevant regulations were included.

The empirical part of the research started with a thorough analysis of all available statistical data pertaining to juvenile justice. The data is not collected and collated uniformly, thus requiring a combination of multiple sources to have a clearer picture of juvenile delinquency in general and the system's response to juvenile delinquency in particular. On the one hand, combining various sources may lead to inconsistencies in the overview of juvenile crime presented below. On the other hand, the picture is richer by painting it using various sources, and any potential inconsistencies are highlighted below.

The qualitative part of the research was launched with a roundtable discussion where different stakeholders in areas relevant to the juvenile justice system shared their opinions on priority issues. The roundtable was attended by the following stakeholders:

- **Viktorija Erpič** – Director of the Radeče Correctional Home,[13]
- **Barbara Jenkole Žigante** – Supreme State Prosecutor,
- **Mirjam Kline** – Supreme State Prosecutor,
- **Deja Kozjek** – Judge at the High Court of Ljubljana,[14]
- **Borut Marolt** – Director of the Residential and counselling Centre Logatec,[15]
- **Simona Mikec** – Assistant director at Centre for Social work in Ljubljana, Ljubljana Bežigrad unit,[16]
- **Dalja Pečovnik** – Director of the Centre for Training, Work and Care Črna na Koroškem,[17]
- **Janja Plevnik** – Secretary at the Ministry of Justice,[18]
- **Zoran Stankić Rupnik** – Attorney in Ljubljana,
- **Ivan Šelih** – Deputy Ombudsman,[19]
- **Robert Tekavec** – Head of the Juvenile Crime Section at the General Police Directorate.[20]

As a follow-up to the roundtable, multiple semi-structured interviews with different stakeholders were organised, attempting to include all professional groups involved in juvenile justice in Slovenia. While the number of people actively involved in juvenile criminal justice in Slovenia is relatively small, due to time and budgetary constraints, it was not possible to interview them all. However, the objective was to include the views of professionals from different sectors to ensure a comphrehensive approach.

Due to logistical and time constraints, children were not directly consulted. This represents one of the main limitations of the study.

Semi-structured interviews were held with:

- a judge at the High Court,
- an attorney,
- a prosecutor
- two directors of Educational centres,
- a representative and employee of the Correctional home Radeče,
- a representative of a Training, Work and Protection Centre Črna na Koroškem,
- a representative of a Juvenile Prison,
- a representative of the Ombudsman,
- a representative of the Police,
- a clinical psychologist,
- a social worker and mediator,
- a social worker.

[13] Prevzgojni dom Radeče.
[14] Višje sodišče v Ljubljani.
[15] Zavod za vzgojo in izobraževanje Logatec.
[16] Center za socialno delo Ljubljana, Enota Ljubljana Bežigrad.
[17] Center za usposabljanje, delo in varstvo Črna na Koroškem.
[18] Ministrstvo za pravosodje.
[19] Varuh človekovih pravic.
[20] Oddelek za mladoletniško kriminaliteto, Generalna policijska uprava.

After the roundtable and after each interview, the comments and responses from the various participants were consolidated and analysed using a thematic approach as agreed in the Methodology to this Report.

2.3 Structure of the report

The Report is divided into four thematic sections, each focusing on one specific area of criminal justice.

The first section relates to juvenile delinquency in Slovenia in general where its structure, functioning and general characteristics are presented on the basis of the collected data from the last 20 years. The objective of this section is to understand better existing trends and changes of juvenile delinquency in particular in specific times of changes in the Slovenian legal framework.

The following three sections are structured around the draft ZOMSKD, which addresses:

- Sanctions for juvenile offenders looking at the existing provisions and their implementation in practice; to note that these have not changed significantly in the past decade and are therefore analysed in light of the existing modern European juvenile justice system and the way these are applied in practice;
- Procedures: the report will provide a general overview of the way they are structured at the legislative level and of existing gaps in practice;
- Enforcement of criminal sanctions.

The Report provides a comprehensive overview of the juvenile justice system in Slovenia on the basis of these three sections, which are interconnected. Each thematic section is analysed on the basis of the existing legislation, the gaps identified in practice, possible responses offered in the draft ZOMSKD, gaps in the ZOMSKD, and suggestions for future improvements.

3. JUVENILE DELINQUENCY IN SLOVENIA

3.1 Trends in juvenile crime over the period of 1995-2021

The percentage of juvenile crime in Slovenia is relatively low and it is decreasing. According to the analysed data (Tables 1, 2, 3 and Figure 1 below) concerning juvenile delinquency in Slovenia, these are the trends of juvenile crime over the period 1995-2021:

- Slovenia has been experiencing a steady decline in recorded juvenile crime after its independence in 1991 onwards.
- The number of juveniles involved in registered criminal activities has more than halved from 2.108 in 2004 to 830 in 2020 (Table 3).
- The number of juveniles involved in registered crimes had dropped from 3095 in 2004 to 1218 in 2020 (Table 2).
- The two trends above are not a reflection of an overall drop in crime in Slovenia as the share of crime committed by juveniles has also dropped from 3.9% in 2004 to 2.2% in 2020 (Table 1).

The volume of juvenile offending has been stable in the past decade. At the same time, the number of juvenile offenders has halved from 2.258 in 2010 to 1.218 in 2020. The proportion of juvenile crime remains stable, despite the fact that the number of juveniles committing criminal offences has halved. This is due to the fact that overall crime in Slovenia has been decreasing over that same period. In 2005, the police registered 84,379 total crimes, while in 2021, only 44,257.[21]

Year	Percentage of offenders under 18 years of age	Percentage of offences committed by persons under 18 years of age
1995	22,8%	11,7%
1996	20,0%	11,5%
1997	15,3%	8,8%
1998	15,7%	7,6%
1999	16,9%	7,6%
2000	15,7%	7,2%
2001	13,7%	5,8%
2002	11,9%	5,5%
2003	11,4%	4,3%
2004	10,3%	3,9%
2005	9,3%	3,4%

[21] Policija.si, annual reports

2006	8,7%	2,8%
2007	8,6%	2,9%
2008	8,4%	2,9%
2009	8,0%	2,6%
2010	7,2%	2,4%
2011	6,9%	2,3%
2012	6,5%	2,0%
2013	5,9%	2,2%
2014	5,7%	2,2%
2015	5,2%	1,9%
2016	5,1%	2,1%
2017	5,8%	2,3%
2018	5,8%	2,3%
2019	5,5%	2,5%
2020	5,2%	2,2%

Table 1: Percentage of juvenile crime in Slovenia (Source: Police data).

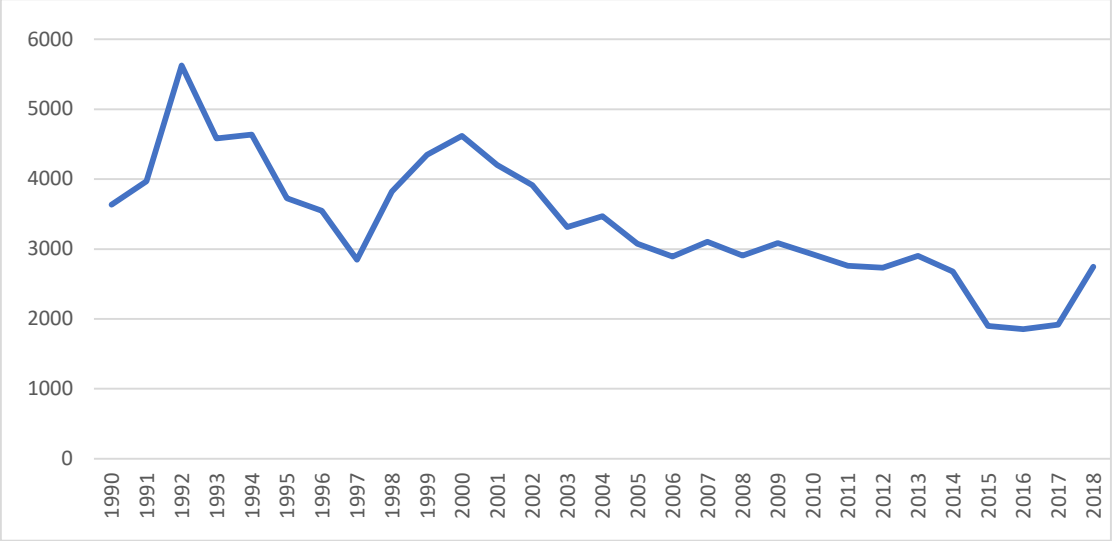

Figure 1: The number of criminal charges against juveniles – per 100.000 juveniles (Source: Police data).

Figure 1 clearly pictures the drop in the number of criminal charges against juvenile offenders in proportion to the general population of young people. Even when the drop in the general population is taken into account, it seems safe to conclude that juvenile crime is, in fact, in decline.

3.2 Age groups of juvenile offenders

The age of criminal responsibility in Slovenia is set at 14 and has remained unchanged since the mid-20th century. Children under the age of 14, who commit an act that could be deemed a criminal

offence, may only be dealt with by Centres for social work despite the severity of the committed offence and their level of maturity.

No institution systematically collects data on offenders under the age of 14. Police data also often do not give a true picture of the situation because institutions (e.g. schools) do not usually report offenders under the age of 14 to the police as they believe that no criminal proceedings will be initiated. Centers for social work do not keep such records either, because it is not important for them that a child has committed a criminal offence as their mandate concerns children's well being and development.

Minors deemed to be criminally responsible are grouped into age groups in the Criminal code: "younger minors" (aged 14 up to 16) and "older minors" (aged 16 up to 18). The main difference between the two categories is the sanctions applicable to both groups.

The majority of juvenile offenders belong to the group of older minors. The proportion of younger minors, who may only be sentenced with educational measures, is smaller but has been increasing in recent years, especially the number of 14-year-old offenders (Table 3).

The recorded number of children who commit a crime while not yet criminally responsible (children under the age of 14) has fallen drastically over the last two decades (Figure 3). This trend is due to significant differences in reporting, as the police are rarely informed of these offences.

	14-year-olds		**15-year-olds**		**16-year-olds**		**17-year-olds**		Total
	Number	%	number	%	number	%	Number	%	
2000	295	**13.6%**	485	**22.4%**	784	**36.2%**	792	**36.6%**	2164
2001	282	**13,8%**	486	**23,8%**	667	**32,6%**	781	**38,2%**	2044
2002	301	**14,5%**	487	**23,5%**	645	**31,2%**	782	**37,8%**	2069
2003	342	**14,5%**	604	**25,5%**	753	**31,9%**	815	**34,5%**	2364
2004	296	**14,0%**	520	**24,7%**	714	**33,9%**	719	**34,1%**	2108
2005	298	**16,6%**	399	**22,2%**	591	**32,9%**	623	**34,7%**	1796
2006	257	**14,9%**	430	**24,9%**	535	**31,0%**	627	**36,3%**	1725
2007	251	**15,2%**	371	**22,4%**	550	**33,2%**	606	**36,6%**	1656
2008	242	**15,2%**	362	**22,8%**	502	**31,6%**	578	**36,4%**	1589
2009	264	**16,0%**	437	**26,5%**	522	**31,7%**	523	**31,7%**	1649
2010	264	**17,3%**	362	**23,7%**	499	**32,6%**	509	**33,3%**	1529
2011	250	**18,0%**	357	**25,7%**	440	**31,6%**	432	**31,1%**	1391
2012	203	**14,6%**	357	**25,7%**	440	**31,6%**	432	**31,1%**	1391
2013	163	**14,1%**	274	**23,8%**	391	**33,9%**	428	**37,1%**	1153

2014	158	**14,3%**	269	**24,3%**	357	**32,3%**	402	**36,4%**	1105
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
2020	172	**20,7%**	207	**24,9%**	252	**30,4%**	268	**32,3%**	830

Table 2: Age structure of juvenile offenders (Source: Police data).[22]

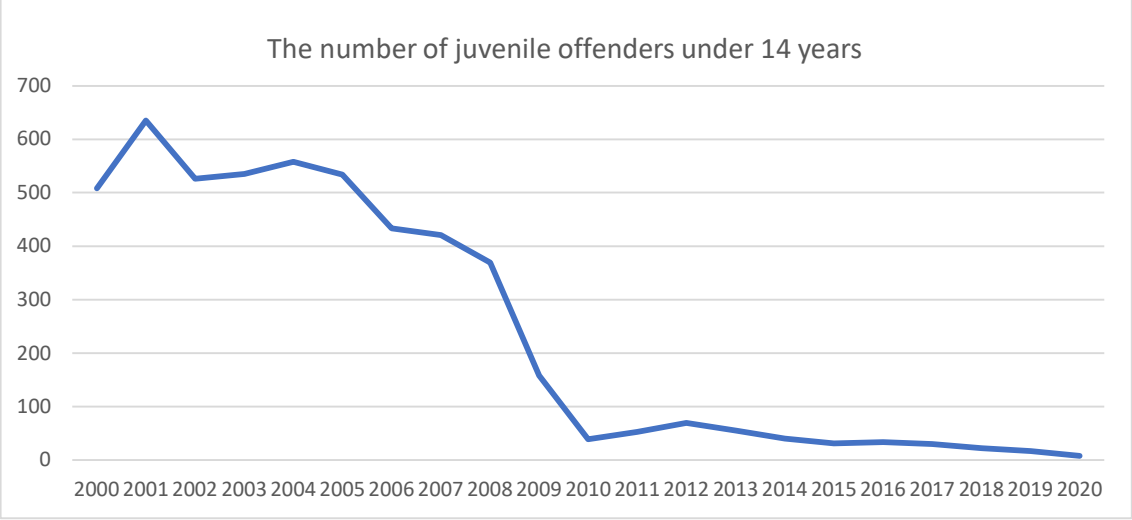

Figure 2: The number of juvenile offenders under 14 years (Source: Police data).

3.3 Gender structure of juvenile offenders

(Juvenile) crime has, to a very considerable extent, traditionally been a male phenomenon. In 2000, females contributed only 8,7% of all juvenile offenders. However, after 2000, the proportion of female juvenile offenders involved in criminal activities began to increase. Over the last decade, the proportion of female juvenile offenders has remained relatively stable at around 20% (Table 4).

	Male		Female		Total
	Number	%	Number	%	

[22] The data were obtained from police records. The fact that there are discrepancies indicates shortcomings in police data collection. However, as these discrepancies are in our judgement not significant, trends can be clearly observed despite them.

2000	1977	**91,4%**	188	**8,7%**	2164
2001	1859	**90,9%**	186	**9,1%**	2044
2002	1835	**88,7%**	235	**11,4%**	2069
2003	2022	**85,5%**	342	**14,5%**	2364
2004	1770	**84,0%**	338	**16,0%**	2108
2005	1542	**85,9%**	255	**14,2%**	1796
2006	1454	**84,3%**	271	**15,7%**	1725
2007	1425	**86,1%**	231	**13,9%**	1656
2008	1277	**80,4%**	312	**19,6%**	1589
2009	1259	**76,3%**	390	**23,7%**	1649
2010	1157	**75,7%**	372	**24,3%**	1529
2011	1084	**77,9%**	307	**22,1%**	1391
2012	1002	**77,1%**	298	**22,9%**	1300
2013	873	**75,7%**	280	**24,3%**	1153
2014	847	**76,7%**	258	**23,3%**	1105
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
2020	671	**80,8%**	160	**19,3%**	830

Table 3: Gender structure of juvenile offenders (Source: Police data).

3.4 Types of offences committed by juvenile offenders

Among the offences that the juvenile offenders commit, the vast majority fall into the category of property crimes, a proportion that had been dropping since 2004, but gained momentum after 2012 and then began to decrease again in 2017.

On the other hand, drug-related crimes have been on a rise. Moreover, the proportion as well as the absolute number of violent crimes had been dropping in the first years of new millennium (1.8% in 2014) but then began to rise again and now amounts to about 8.2% of all juvenile crime in 2020.

The types of criminal offences committed by juveniles change slightly from year to year, but the main categories remain unchanged.

Year	Property crimes[23]	Violent crimes[24]	Drug related crimes[25]	Total
2000	78,9%	2,2%	5,0%	3628
2001	69,0%	2,4%	7,0%	3513
2002	71,3%	1,7%	7,5%	3765
2003	69,3%	1,6%	4,7%	3606
2004	70,0%	2,1%	4,4%	3095
2005	71,1%	1,9%	2,4%	2707
2006	68,1%	1,6%	3,3%	2711
2007	62,2%	2,3%	2,6%	2529
2008	57,2%	2,3%	3,3%	2420
2009	63,1%	3,7%	4,1%	2420
2010	62,9%	3,1%	5,0%	2258
2011	63,7%	3,3%	5,8%	2079
2012	67,3%	3,4%	5,0%	2026
2013	72,7%	1,5%	4,8%	2108
2014	70,1%	1,8%	7,3%	1941
2015	66,2%	3,8%	7,9%	1359
2016	61,9%	3,8%	6,1%	1319
2017	60,2%	4,5%	11,3%	1359
2018	60,2%	5,5%	8,8%	1337
2019	54,6%	7,0%	8,9%	1419
2020	55,6%	8,2%	7,9%	1218

Table 4: Types of offences committed by juveniles (Source: Police data).

[23] Property crimes: larceny, grand larceny, concealment, robbery, fraud, damaging another's object

[24] Violent crimes: homicide, bodily harm, rape and other forms of sexual violence.

[25] Drug related crimes: unlawful manufacture and trade of narcotic drugs (Art. 196 CC), rendering opportunity for consumption of drugs (Art. 197 CC). Possession of drugs for personal use is not a crime – it is a misdemeanour dealt with by the court in a special procedure. According to Slovenian law, misdemeanours are petty offences, such as traffic offences or graffiti, penalized under the Code of Misdemeanours with a fine. Some educational measures can also be imposed in the case of misdemeanours.

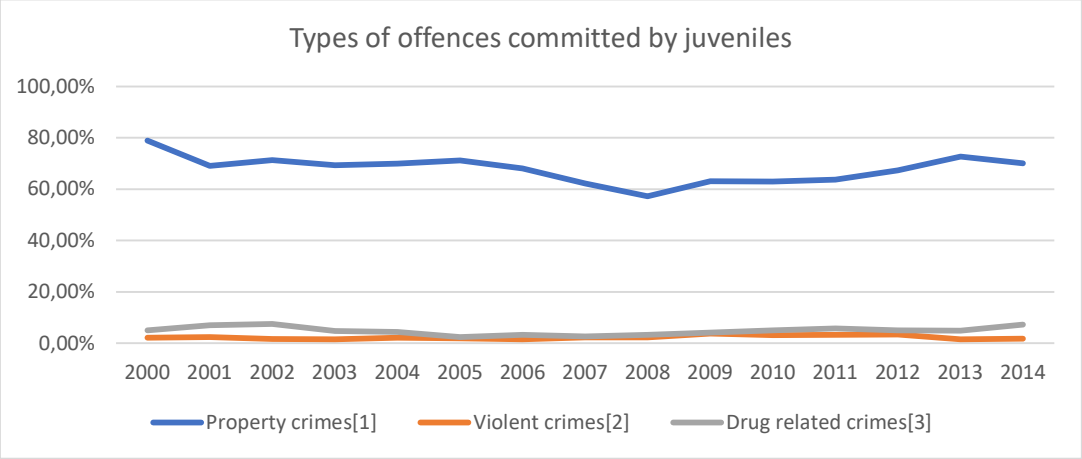

Figure 3: Types of offences committed by juveniles (Source: Police data).

3.5 Causes of juvenile delinquency in Slovenia

This section is not a comprehensive review of the causes of delinquency. In fact, there is no basis for such an overview, as no studies on the causes of juvenile crime have been conducted in Slovenia in recent years. However, during the interviews with the stakeholders some main aspects emerged and while this being a very limited research method, a brief overview is still relevant for a better understanding of the other findings in this report.

In accordance with the analysis of the statistical data, interviewees generally agreed that severe and violent crime, including different forms of sexual violence, is on a high rise and took over from property crimes (e.g. thefts, robberies) which used to stand as the majority of juvenile crimes. Furthermore, interviewees noted that violence has, to a significant extent, moved online in recent years. Online violence has developed different characteristics and has become harder to identify.

Interviewees also stated that the features of juvenile offenders have considerably changed and generally agreed that the motives for juvenile delinquency today are different from 10 years ago. Many saw different upbringing and parenting approaches as the reasons for these changes. Parenting is no longer as authoritarian as it was decades ago, but rather has become permissive, resulting in narcissistic children, who are unresponsive to authority. Many interviewees said that today's juveniles are difficult to deal with, especially because they are not afraid of anyone. At the same time, adolescents are emotionally very alienated from their parents and often feel lonely.

The clinical psychologist saw the reasons for juvenile delinquency in a trend of permissive upbringing. In her view, today's parents have themselves been brought up by indulgent parents and are therefore unable to set boundaries for their children and to reproach them if necessary.

The attorney argued that today a substantial number of juvenile offenders come from relatively wealthy families rather than from low-income households, as it was the case in the past. He also noted that the vast majority of juveniles commit offences out of hopelessness or distress.

The judge observed that many parents do not have enough time to devote to their children. The judge maintained that many parents lacked empathy, and that the reasons for children's deviant behaviour can also lay in the disappearance of traditional family roles.

Similarly, the prosecutor noted that children are particularly driven to delinquency by the absence of their parents and the resulting sense of isolation and loneliness. The criminal investigator particularly emphasised the changes linked to the migration of crime to online settings and noted that the seriousness of the crimes is increasing as a result of permissive upbringing and a lack of acceptance of responsibility by juvenile offenders.

3.6 Recommendations

- There are significant gaps in collecting and providing data relevant for juvenile crime. It is strongly encouraged to develop and keep active and available in one place databates that collect data on juvenile offenders processed by the police, the prosecution, the courts, and the enforcement authorities. Such databases would not only ensure a more transparent system and encourage research and better understanding of juvenile crime, but also be directly useful to decision-makers in the juvenile justice system process as they would encourage more exchange of practices in different regions to ensure equal treatment and tailored responses..

4. CRIMINAL SANCTIONS

4.1 Evolution of substantive criminal juvenile legislation in Slovenia

After gaining independence from Yugoslavia, Slovenia adopted its first Constitution[26] in 1991 and subsequently a new criminal legislation: the KZ and the ZKP. Both laws were adopted in 1994 and entered into force in 1995. There were, however, no major changes in criminal justice as the newly adopted laws largely transposed the existing rules into the new system. In 2008 a new criminal code – the KZ-1 was adopted, replacing the KZ.

The fundamental rights of children are enshrined in Article 56 of the Constitution of the Republic of Slovenia: "Children shall enjoy special protection and care; they shall enjoy human rights and fundamental freedoms consistent with their age and maturity. Children shall be granted special protection from economic, social, physical, psychological, or other exploitation and abuse"[27]

According to the above-mentioned constitutional provision as well as Article 3 of the Convention on the Rights of the Child (CRC),[28] the principle of the best interests of the child applies to the entire legislative corpus concerning children, including procedural and substantive criminal legislation.

Following a continental legal tradition, the KZ presented a single legal act regulating substantive criminal law in a uniform manner. It was divided into two parts: (1) the General Part, which regulated 'substantive aspects of criminal law, such as jurisdiction, criminal responsibility, legal insanity, culpability, criminal sanctions etc., (2) the Special Part, which provided a catalogue of criminal offences. The General Part also included special criminal substantive legislation applying to juvenile offenders, namely provisions regarding educational measures and sentences for juvenile offenders, the legal consequences of a criminal conviction, provisions on the enforcement of criminal sanctions, and the statute of limitations.

With the adoption of the new and currently valid Criminal Code (the KZ-1) in 2008 provisions regarding juvenile offenders were excluded entirely from the General Part of the KZ-1. Article 5/II of the KZ-1 stipulates that a separate criminal law act shall determine the criminal liability of minors.[29]

However, no separate act on the criminal liability of minors was adopted to give effect to Article 5/II of the KZ-1. This left the Slovenian criminal legislation without substantive criminal provisions concerning the treatment of juvenile offenders – according to Articles 1/II and 4/I the KZ-1, provisions of the KZ-1 apply only to adult offenders. An interim solution was determined in Article 375 of the KZ-1: certain provisions of the derogated KZ relating to juvenile offenders are to be used until an act regulating juvenile perpetrators enters into force. As a result, an unusual nomotechnic situation ensued: juvenile justice cases had to be regulated complementary by provisions of the KZ in as far as concerned juvenile legislation, and by provisions of the KZ-1 of the General and Special Parts on all the juvenile justice matters which were not covered in KZ. Such a legal regime fell under the scrutiny of

[26] Ustava Republike Slovenije (URS), Ur. l., št. 33/91-I.
[27] Unofficial translation
[28] The Republic of Slovenia is a state party to the CRC.
[29] But an interim solution on the use of provisions of previous Criminal Code of 1994 for juvenile offenders is stated in the Criminal Code, as explained below.

the Supreme Court of the Republic of Slovenia[30] as well as the Constitutional Court of the Republic of Slovenia.[31] They both held that the use of provisions in the described manner was valid[32]

Since the adoption of the KZ in 1994, its provisions concerning juvenile offenders were only slightly amended in 1999 by: (1) adding a provision for imposing a fine in fixed amounts with defined minimum and maximum sums;[33] (2) marginally reviewing the conditions for imposing juvenile prison, to the effect that a juvenile prison sentence could thereafter be imposed for criminal offences with a prescribed sentence of five years or higher (rather than a prescribed sentence of *more than five years,* as it was originally the case); and (3) the maximum juvenile prison sentence of ten years could hereinafter be imposed only for criminal offences for which the maximum prescribed sentence is thirty years (previously the maximum sentence could be imposed for criminal offences with a maximum prescribed prison sentence of twenty years).[34] These amendments can be considered merely editorial in nature, since the general maximum prison sentence that could be imposed on adult offenders changed from twenty to thirty years.[35]

As of today, no special criminal legislation on juvenile justice has been adopted, and relevant provisions of the KZ concerning juvenile offenders are still in force. The adoption of a new special criminal act on the treatment of juvenile offenders, as predicted by the KZ-1, would therefore be desirable not merely from a nomotechnical point of view, but also for the establishment of the necessary re-educational aspects typical of a legislation regulating the substantive, procedural, and executive criminal law specifically covering the treatment of juvenile offenders (Bavcon *et al* 2013: 509).

4.1 Aspects of criminal sanctioning in Slovenia

4.1.1 Normative and theoretical aspects

In Slovenia, the recognised aims of sanctioning are:

- general prevention;
- special prevention;
- retribution;
- reintegration and rehabilitation[36].

Up to 2017, Slovenian criminal legislation did not contain a specific provision that would define the general purposes of sanctioning. Since then, Article 45.a the KZ-1[37] explicitly stipulates that:

"*By punishing under the provisions of this Code, the State protects fundamental values and principles of the legal order, establishes awareness among the offender and others of the unacceptability of the*

[30] Vrhovno sodišče Republike Slovenije; Principled legal opinion VS RS 1/2009, 11. 5. 2009.
[31] Ustavno sodišče Republike Slovenie; Constitutional Court decision U-I-73/09, 2 July 2009.
[32] *for further reading see:* Šepec, 2021: 131-133, Filipčič & M. Plesničar, 2017: 397-398.
[33] Article 9 Act Amending the Criminal Code of the Republic of Slovenia (KZ-A).
[34] Article 10 Act Amending the Criminal Code of the Republic of Slovenia (KZ-A).
[35] Article 3 Act Amending the Criminal Code of the Republic of Slovenia (KZ-A).
[36] Bavcon *et al.,* 2013 p. 383.
[37] Implemented by the Act Amending the Criminal Code (the KZ-1E).

commission of criminal offences, and, above all, while respecting the human dignity and personality of the offender, enables the offender, through an appropriate sanction, to be reintegrated with dignity into the common social environment."

As Ambrož and Plesničar explain, the stated provision is predominantly utilitarian, with an emphasis put on the positive special prevention as the leading purpose of punishment.[38]

However, the purposes of sanctioning in cases of juvenile offenders are fundamentally different. Šelih states that juveniles are young people that are still in the process of developing, so their personalities are perceptive to adjustment and change. Bele emphasises that criminal sanctions for juvenile offenders are imposed and executed in a uniquelife period in which a person is maturing. In this time period, the goal should therefore be to positively influence a juvenile and to do so in a timely manner (Bele, 2001: 426). Accordingly, measures imposed on them need to be different than those imposed on adult offenders (Bavcon *et al* 2013: 367). The general orientation of the Slovenian juvenile justice system is, therefore, that of assistance, education, supervision, and guidance (Bavcon *et al* 2013: 500, 505, 531), rather than punishment. Such a standpoint has been accepted as early as 1959 with the amendment of the Criminal Code of the Socialist Federative Republic of Yugoslavia (KZ SFRJ).[39] It has remained virtually unchanged since the adoption of the KZ (Bavcon *et al* 2013: 508). This clearly indicates that juvenile justice aims to assist and re-educate juvenile offenders rather than punish them. Such an approach to dealing with juvenile offenders has never been questioned by the expert community or the general public, nor was an amendment ever proposed.

Article 73 the KZ stipulates that:

"*The purpose of educational measures and sentences imposed on juvenile perpetrators shall be to ensure their* ***education, re-education*** *and* ***harmonious development development*** *so as to provide custody, assistance, supervision, vocational education and support in helping them to develop a responsible personality.*" [Emphasis added by authors].

The purpose of sanctioning juvenile offenders is therefore described by Filipčič and Plesničar as "*entirely rehabilitative in nature*". A commission of a criminal offence by a juvenile is perceived as a consequence of their "*distress and personality issues*«.[40] Filipčič and Plesničar also emphasise that the gravity and nature of the criminal offence are not at the forefront of the court's reasoning when determining a sanction. In a juvenile criminal law case, the court will primarily decide based on the needs of the juvenile in relation to education and re-education goals.[41]

4.1.2 Practical aspects

In practice, sanctioning of adult offenders in Slovenia had been traditionally considered relatively lax in the past decades. However, after Slovenia gained independence in 1991 and especially in the late 1990s, a more punitive turn has been observed (Petrovec & Muršič, 2011: 443-444, Flander & Meško, 2016: 4).

[38] Ambrož and Plesničar 2021, pp. 681, 686
[39] Article 68 KZ SFRJ.
[40] Filipčič and Plesničar 2017, pp. 403
[41] Filipčič, 2006, pp. 407-408, Filipčič and Plesničar 2017, p. 403

The sanctioning of juvenile offenders in Slovenia has been historically based on a welfare approach with an emphasis on resocialisation. By contrast, the punitive aspect of sanctioning juvenile offenders was virtually non-existent.[42] Notwithstanding the recent general trends of a more punitively oriented (adult) criminal justice system, the courts adhered to the established welfare-oriented aspects and stayed mostly rehabilitative regarding the sanctioning of juveniles.[43] Interestingly, however, empirical studies conducted in 2005[44] and 2010 found that 60% of the surveyed juvenile offenders placed in the Correctional Home Radeče and about 71% of the surveyed staff considered the primary aim of the placement of a juvenile in the Correctional Home Radeče as punitive. The aim of re-education scored second with about 47% of surveyed juvenile offenders and about 66% of the staff. It should be noted, however, that half of the surveyed staff were correctional officers, who are more likely to understand their role of enforcingt educational measures in a punitive way, and thus differently from educators.[45] Also, this conclusion cannot be generalized to the total population of juvenile offenders since placement in the Correctional home Radeče is the most punitive of all educational measures. Indeed, Radeče is a closed institution where correctional officers (guards) are always present, and juveniles placed there are completely removed from their family environment. As a consequence, the punitive perspective observed in the studies from 2005 and 2010 is certainly more likely to be present in the correctional home Radeče than in cases where juvenile offenders are subject to other residential or non-residential educational measures. Given the lack of recent studies on this matter, the need and opportunity for more comprehensive child-focused researches is evident, in particular to explore juveniles' perception and experiences and provide further insights into effective approaches and multidisciplinary measures to be taken.

Statistical data (*see Table 5 below*) indicates a slight increase in the number of residential measures imposed between 2008 and 2014. However, this does not indicate a more punitive approach to the sanctioning of juvenile offenders in itself.[46] Filipčič and Plesničar have noted that to conclude that the system has adopted a more punitive approach would be premature due to lack of empirical research. They further explained that such an increase might be the result of a higher incidence of juveniles with drug- or alcohol-related problems who, as a consequence, required a longer and more intensive treatment.[47]

Moreover, while the number of juveniles and juvenile offences has constantly been decreasing since 1995, the number of violent- and drug-related crimes has been increasing since 2009 (see *Tables 1, 2 above*). An increase in the number of imposed residential educational measures and juvenile prison could therefore be attributed to the rise of serious crimes which demand stricter sanctions and less diversion measures from criminal prosecution than in less serious cases.[48] However, following an increase of imposed residential educational measures and juvenile prison senteces in the period between 2011-2014, the use of lenient measures has become popular again as it was before 2008. All in all, recent statistics do not confirm a punitive turn in the practices of Slovenian courts in dealing with juvenile offenders.

[42] Filipčič & Prelić, 2011, pp. 450-451.
[43] Filipčič, 2006, p. 412.
[44] Brglez *et al*, 2006, pp. 140, 160.
[45] Filipčič *et al*, 2010, p. 15.
[46] Filipčič & Plesničar, 2017, p. 407.
[47] *Ibid*.
[48] *Ibid*.

4.1.3 The stakeholders' views

Most of the interviewees[49] agreed that the generally accepted aims of sanctioning juvenile offenders are education and re-education. The representative of the Ombudsman for Human Rights also emphasised that it would be beneficial to define the objectives of sanctioning in their statute since this would present a guideline for sanctioning in practice. The prosecutor agreed with the educational and re-educational aims of sanctioning to avoid recidivism but pointed out that retribution and general prevention might be appropriate goals to follow in the sanctioning of more serious juvenile offences. One of the directors of an educational institution agreed that the emphasis should be on encouraging positive behaviour, however, punishment should not always be excluded. The director of another educational institution asserted that a juvenile should receive a punishment proportionate to the offence they committed. According to them, it is the responsibility of society as a whole to ensure that juveniles acknowledge their wrongdoings. Permissive ideology prevents the achievement of this objective. They pointed out that the Slovenian welfare-oriented juvenile justice system may be effective for most educationally-responsive juvenile offenders, but it is ineffective in treating the most problematic individuals, even if they only constitute a small portion of the juveniles

The representative of the police agreed that the fundamental aim of sanctioning juvenile offenders is that of education. However, education does not always suffice, especially in cases of juveniles with complex emotional and behavioural issues or disorders. They emphasised that the imposition of a criminal sanction is also important from the perspective of the victim; the victim should feel are visible, heard and protected.

4.1.4 Conclusions

Based on the theoretical viewpoints and the generally declining numbers of juvenile delinquency in recent years, it is evident that the purpose of sanctioning juveniles should remain that of education, re-education, and harmonious personal development of the juvenile. Such a provision should remain in the new draft ZOMSKD.

The existence of some difficult cases cannot be denied and these might require a different approach due to the particular personality traits of each juvenile, including complex emotional and behavioural issues, and/or needs. However, a small number of difficult cases (according to a director of an educational institution: 7 in 20 years) should not constitute the reason for amending the general aim of sanctioning juvenile offenders, nor would such a change help this small group of offenders with their different difficulties. Their issues would be best addressed by individualised measures imposed by courts that were supplied with detailed information to allow a comprehensive understanding of the underlying reasons for their criminal behaviour. Based on such an understanding, the courts can meticulously select and individualise every measure, and the sanction can then be executed according to the offender's recognised traits and needs, including with more punitive ones if needed.

[49] The judge, the attorney, the prosecutor, the representative of the Ombudsman, the representative of juvenile prison, the presentative of the Police.

The courts should also dutifully monitor the impact of the sanctions they impose on juvenile offenders and review them on a regular basis and substitute them with more appropriate ones based on the progress made by the juvenile and his changing needs.[50]

According to the interviewed stakeholders, many problems are related to the lack of individualised sanctions. Indeed, the execution of sanctions results particularly complicated due to the absence of specialised courts for juvenile offenders. As a consequence, judges that deal with juvenile cases also deal with several other adult cases. Due to the lack of specialised courts, judges may not have the time and resources to get to know the risks and needs of every juvenile offender as much as they should. As a consequence, they are also prevented from monitoring the execution of the educational measure in every single case. The specialisation of judges (which is further discussed in the section covering the criminal procedure) and other people dealing with juvenile offenders, as well as a different organisation/specialisation of the courts could lead to a better individualisation of criminal sanctions against juvenile offenders.

4.3 Criminal sanctions in Slovenia for juvenile offenders

4.3.1 Overview

The Slovenian system of criminal sanctions for adult offenders follows a concept of a so-called *trialism* of criminal sanctions. They are divided in three major groups: punishments, admonitory sanctions and safety measures.[51]

Criminal sanctions for juvenile offenders follow a similar pattern of the *trialistic* structure, albeit with important differences. The principal sanctions for juveniles are educational measures, which are further divided into non-residential measures and residential measures. The second group of sanctions against juvenile offenders are punishments (imprisonment and fine) which may only be imposed in exceptional cases. The third group are safety measures – all of the safety measures against adult offenders can be imposed against a juvenile offender, except for the prohibition on pursuing a profession.[52] Admonitory sanctions cannot be imposed against juvenile offenders.

The sanctions for juvenile offenders are further divided as follows:

- educational measures[53]:
    - reprimand[54]
    - instructions and prohibitions[55]:
        - make a personal apology to the injured party
        - reach a settlement with the injured party by means of payment, work or otherwise in order to recover the damages caused in the course of committing the offence
        - regularly attend school

[50] Article 83 KZ.
[51] Article 3/I KZ-1.
[52] Article 72/IV KZ.
[53] Article 74 KZ.
[54] Article 76 KZ.
[55] Article 77 KZ.

        - take up a form of vocational education or to take up a form of employment suitable to the offender's knowledge, skills and inclinations
        - live with a specified family or in a certain institution or elsewhere
        - perform community service or work for humanitarian organizations
        - submit oneself to treatment in an appropriate health institution
        - attend sessions of educational, vocational, psychological or other consultation
        - attend a social training course
        - pass an examination on the traffic regulations
        - prohibition to operate a motor vehicle
    - supervision by social services[56]
    - committal to an educational institution[57]
    - committal to a correctional home[58]
    - committal to an institution for physically or mentally handicapped youth[59]
- punishments:
    - fine[60]
    - juvenile prison[61]
    - ban on driving a motor vehicle[62]
    - expulsion of a foreigner from the country[63]
- safety measures:
    - compulsory psychiatric treatment and confinement in a mental health institution
    - compulsory psychiatric treatment without confinement
    - restraining order or prohibition on communicating with the victim of a criminal offence
    - suspension of a driving licence
    - confiscation of goods.

[56] Article 78 KZ.
[57] Article 79 KZ.
[58] Article 80 KZ.
[59] Article 81 KZ.
[60] Article 88 KZ.
[61] Article 89 KZ.
[62] Article 48 KZ.
[63] Article 48.a KZ.

Year	**Total sanctions imposed**	**Non-residential educational mesaures %**			
		Reprimand	Instructions and prohibitions	Supervision by social services	**Total non-residential educational measures %**
1995	**499**	58.1	2.8	29.3	**90.2**
1996	**500**	53.4	9.6	29.8	**92.2**
1997	**617**	42.8	16.2	33.5	**92.5**
1998	**636**	35.2	15.4	39.5	**90.1**
1999	**706**	33.6	18.4	40.4	**92.4**
2000	**591**	29.5	22.7	40.8	**93.0**
2001	**571**	29.3	18.2	47.3	**94.8**
2002	**728**	29.8	14.6	49.9	**94.3**
2003	**568**	30.1	13.4	48.4	**91.9**
2004	**615**	23.9	15.4	53.3	**92.6**
2005	**498**	20.3	17.7	52.8	**90.8**
2006	**511**	20.0	13.9	56.0	**89.9**
2007	**459**	17.4	19.0	53.2	**89.6**
2008	**489**	16.4	25.0	47.0	**88.4**
2009	**418**	14.1	24.9	50.7	**89.7**
2010	**330**	19.4	24.2	48.5	**92.1**
2011	**369**	14.4	25.7	46.1	**86.2**
2012	**398**	12.6	30.4	44.7	**87.7**
2013	**437**	17.4	20.4	46.5	84.9
2014	**319**	10.3	13.2	63.0	**87.9**
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**
2020	**193**	13.0	18.7	60.1	**91.8**

Table-5A: Types of sanctions imposed on juvenile offenders in % (Source: Statistical Office).

Year	Total sanctions imposed	Residential educational measures %				Punishments	
		commitment to an **educational institution** %	commitment to a **correctional home** %	commitment to an **institution for physically or mentally disabled youth %**	**Total residential educational measures %**	**Juvenile prison %**	**Fine %**
1995	**499**	-	-	-	**8.2**	**1.4**	**0.2**
1996	**500**	-	-	-	**5.6**	**0.6**	**1.0**
1997	**617**	-	-	-	**5.8**	**0.2**	**1.5**
1998	**636**	-	-	-	**7.9**	**0.1**	**1.9**
1999	**706**	-	-	-	**5.1**	**0.5**	**1.8**
2000	**591**	-	-	-	**4.6**	**1.5**	**0.8**
2001	**571**	-	-	-	**3.5**	**0.9**	**0.9**
2002	**728**	-	-	-	**4.0**	**0.8**	**1.0**
2003	**568**	-	-	-	**6.7**	**0.7**	**0.7**
2004	**615**	-	-	-	**4.7**	**1.3**	**0.8**
2005	**498**	-	-	-	**6.8**	**1.6**	**0.6**
2006	**511**	5.1	0.6	0.0	**5.7**	**2.1**	**1.7**
2007	**459**	5.5	0.8	0.0	**6.3**	**2.8**	**1.3**
2008	**489**	6.3	2.0	1.5	**9.8**	**1.2**	**0.6**
2009	**418**	6.7	1.4	0.2	**8.4**	**0.7**	**0.2**
2010	**330**	5.2	0.6	0.0	**5.8**	**0.6**	**0.6**
2011	**369**	9.2	3.5	0.5	**13.3**	**0.3**	**0.3**
2012	**398**	9.8	1.3	0.3	**11.3**	**1.0**	**0.0**
2013	**437**	10.5	2.7	0.5	**13.7**	**1.1**	**0.2**
2014	**319**	8.1	2.9	0.6	**11.6**	**0.3**	**0.0**
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**
2020	**193**	6.2	2.1	0.0	**8.3**	**0.0**	**0.0**

Table 5b: Types of sanctions imposed on juvenile offenders in % (Source: Statistical Office).

4.3.2 Statistics

The available statistical data show that over the past three decades, the courts imposed an educational measure in approximately 98% of all juvenile criminal cases. Also, courts are generally less inclined to impose residential educational measures (apart from the slight deviation in the period of 2008-2014 as described above). The data shows that since 2015 non-residential educational measures that are executed in the juvenile offender's existing social and familial environment account for more than 90% of all sanctions imposed by the courts.

Among the three types of non-residential educational measures, reprimands (the mildest sanction of the group) have the longest tradition. However, as observed by Filipčič and Plesničar,[64] since 1995 their use by the courts has decreased following the introduction of potentially more effective alternatives. According to judges, reprimands had been imposed due to the absence of other adequate non-residential educational measures. The declining number of imposed reprimands since 1995 might related to the fact therefore that the KZ adopted in 1995 extended the list of existing non-residential educational measures with a new measure – *instructions and prohibitions*, which includes 11 different options for the courts to choose from leading to

- The substantial decrease of the number of imposed reprimands;
- The noticeable quick and steady rise of the use of a new educational measure (instructions and prohibitions). They represent one-fifth of all the imposed sanctions;
- The increase of the use of the measure of supervision by social services, which is often combined with some concrete instructions or prohibitions.

4.3.3 Individualisation of criminal sanctions against juvenile offenders

Normative and theoretical aspects

Age is the first and pivotal criterion to determine the appropriate sanction for minors committing a criminal offence. There are three different legal statuses regarding the offender's age at the time of the commission of a criminal offence:[65]

- younger minors: 14 to 16 – only educational and safety measures can be imposed;
- older minors: 16 to 18 – all criminal sanctions for juvenile offenders can be imposed;
- young adults: committed the offence at the age of 18 or more, but were not yet 21 by the end of the trial – supervision by social services or a residential educational measure may be imposed if the court considers that such a sanction would be more appropriate than prison according to the circumstances of the case. [66]

If the court determines that imposing an educational measure against the juvenile is enough (as is statistically in the vast majority of cases), it has to select the most one. The court does this on the basis of the juveniles' age, their level of maturity, mental development, psychological characteristics, inclinations, their motives for committing the offence, their former education, environment and living conditions, the gravity and nature of their offence, whether an educational measure or a punishment had previously been imposed on them, as well as any other relevant circumstances.[67] Following the

[64] Filipčič and Plesničar, 2017, p. 405.
[65] Children under the age of 14 are not criminally responsible. No criminal procedure is possible and sanctions shall not be imposed on them. Article 71 KZ.
[66] Article 94 KZ.
[67] Article 75 KZ.

purpose of education, re-education, and proper personal development, the juvenile offender's personal characteristics are of primary importance in the selection of the most appropriate educational measure, whereas the circumstances of the offence are of secondary importance. This rule differs from the general rules on sentencing adult offenders, where the gravity of the offence and the offender's culpability are of principal importance in determining the sentence's type and/or length.[68] It should also be noted that when choosing the right criminal sanction for the juvenile offender, the court can consider other relevant circumstances, even those not listed in the KZ, which is only meant to give examples. Apart from these provisions, there are no further, more detailed formal rules or guidelines on how the court should consider and weigh the circumstances of the concrete case before imposing a sanction against a juvenile.

Determining the appropriate sanction against a minor is entirely at the discretion of the court. The court is not bound by the prosecutorial proposal of the sanction, albeit a prosecutorial recommendation is the general course of action. However, in rare instances, the criminal procedure against a minor is conducted without the prosecutor's request for prosecution. This may occur (1) if the prosecutor did not request initiation of the proceedings and the court thereafter initiated the proceedings on behalf of the injured party;[69] or (2) if the prosecutor withdrew the motion. In these instances, the court may not impose a punishment but only an educational measure.[70]

Another distinctive feature of sanctioning juvenile offenders is the so-called "*secondary individualisation.*" In cases where an educational measure of supervision by social services or a residential educational measure is imposed, the court may terminate the execution of the measure or replace it with another educational measure. It may do so if circumstances arise during its enforcement that did not exist or were not known to the court at the time of the judgment. A court may also terminate or replace the imposed educational measure with a different measure in relation to the juvenile's progress and positive results with regards to the education, re-education, or training of the imposed measure.[71] In cases where more than one year has passed since the issuing of the judgment, but the educational measure has not yet been executed, the court may re-evaluate if the measure is still to be executed or may replace it with a different educational measure altogether.[72] Such regulation clearly shows the importance given to the needs of juvenile offenders, the prupose of education and re-education and the relevance of the sanction.. Although the court can change the educational measure imposed, it is important to identify to the extent possible the most appropriate measure as the time needed to achieve the goals of educational measures on a particular juvenile offender is relatively short.[73]

A fine may be imposed only on older minors and merely for certain criminal offences, whereby the juvenile offender has to be able to pay the fine with his/her own income. Such cases are therefore limited today. Apart from the provision that the court shall consider the purposes of educational measures,[74] there are no further formal rules or criteria on how the court should determine the

[68] Article 49 KZ-1.
[69] Article 465/III ZKP.
[70] Article 483/I ZKP.
[71] Article 83 KZ.
[72] Article 84 KZ.
[73] Bele, 2001, p. 434.
[74] Article 88/I KZ.

amount of the fine. It is generally accepted that the imposition of a fine can have educational effects in some cases.[75]

Sentences of imprisonment may be imposed only on older minors and exceptionally.[76] This can occur when the juvenile offender has committed a serious criminal offence and when – based on the nature and gravity of the offence and the high degree of the minor's criminal responsibility – imposing an educational measure would not be reasonable.[77] When determining the length of the prison sentence, the court should assess all the mitigating and aggravating circumstances but also consider the degree of maturity of the juvenile offender and the time it deems necessary to achieve their education, reform, and vocational training. Therefore, the length of the sentence is determined not only by the gravity of the offence but also by the degree of the offender's culpability, as would be the case with adult offenders. On the contrary, in parallel with educational measures, the aims of education, re-education and training are also pursued.

The stakeholders' views

The interviews conducted have shown that courts predominantly rely on the reports prepared by the Social Work Centres when gathering information about the juvenile offender and their personal, familial, and social circumstances. Sometimes, courts also rely on secondary sources, most often a hearing conducted with the offender's parents and information provided by the offender.[78]

The interviewed judge explained that the quality of reports issued by Social Work Centres were mixed and depended on which individual social worker prepared them. Furthermore, the judge felt they usually follow the proposition for a sanction against the minor as suggested in the reports as they do not have specialised knowledge in psychology and/or social work that would enable them to choose a different sanction. They felt that the specialisation of judges in the field of juvenile delinquency is therefore vital.

According to the judge, the court considers all known circumstances of the case and the juvenile's life when imposing a sanction, whereby one of the most important factors is related to the family dynamics. The parents' wishes and proposals regarding the sanctions are taken into account to some extent, but not if the parents are too rigorous or too lenient, especially in cases when parents are over-protective towards the offender. The offender's personal circumstances - school commitments, extracurricular activities, hobbies, and peers - are also examined. However, juvenile offenders are often reluctant to explain who their friends are and what they do in their spare time, and thus provide generalised answers.

Moreover, the judge felt it would be beneficial for the courts to know more about the programmes carried out for juveniles by specific educational institutions or NGOs. With more understanding on that issue, they could individualise better educational measures, and address the juvenile offender to the institution that would most suit their needs to ensure that it will be beneficial.

The interviewed prosecutor also emphasized the importance of the quality of the Social Work Centres' reports and examining the offenders' family and social environmentin criminal proceedings against minors. In70% of cases – the prosecution agrees with the sanction proposed by the social services in their reports. In the remaining 30% of cases, the prosecution proposes a stricter sanctionusually, if it

[75] Bele, 2001, p. 479
[76] Article 72/III KZ.
[77] Article 89/I KZ.
[78] A judge, a prosecutor, an attorney, a social worker, a director of an educational institution.

considers that the parents are being over-protective towards their child. They also consider that the cooperation with social services is vital in such cases. In most cases, however, the prosecution follows the offenders' constructive requests. For example, if the offender wishes to purse a specific educational course, they will propose that the offender can be referred to an institution which offers such programme. According to the prosecutor, the imposition of the sanction is not as important as the monitoring of the imposed sanction by the court and the social services in a short follow-up period. The monitoring of a sanction should be conducted more frequently and with more engaged involvement of social workers.

The interviewed attorney assessed the individualisation of sanctions against minors as generally adequate. When proposing a sanction, the attorney should not just follow the offender's wishes but should also take into account their specific needs. The attorney spoke about cases of appeals against the sanction imposed by the court against the direct wishes of the offender if they estimated that was in the best interest of the child. The attorney considered it is their duty, together with the court's, to impose the most appropriate sanction. An attorney should also explain to the offender why a specific sanction would be most beneficial for them, thereby increasing the chances that the juvenile offender will accept the sanction which may then have a greater effect on their re-education and development**.** The cooperation between the court, the prosecution, and the defence regarding the imposition of the most appropriate sanction against the minor is of utmost importance. According to the interviewed attorney, this cooperation was much better when judges were specialised to deal only with juvenile offenders and has gotten worse since judges are no longer specialised.

The interviewed social worker stressed that some social workers conduct only one discussion with the juvenile offender, which they considersufficient. According to them, the Catalogue of the public powers, statutory tasks and services provided by Social Work Centres (hereinafter the Catalogue),[79] should thus explicitly state that a single discussion does not suffice. As part of their work with the juvenile, the social worker should explain to them the educational measure they will propose in the report and why. Together with the juvenile offender, they should also visit the educational institution in case social services would advocate for a residential educational measure.

A director of an educational institution stressed the importance of the role of Social Work Centres which should take the necessary time to prepare detailed and well-informed reports their reports. These are often too limited. Due care should also be taken when addressing groups of children of "educationally and therapeutically unresponsive children". If their difficulties, complex needs, and disorders are not sufficiently recognised by social services and schools early on, the sanctions that are imposed against these children by the courts are likely to be inefficient.

The interviewed director of the educational institution for young people with physical and/or mental disabilities explained these juveniles often do not receive the treatment they need. The need for early identification of such disorders should be emphasised more across all institutions, especially schools and Social Work Centres. There is also no clear guidance for the courts to help them individualise the educational measures imposed against juvenile offenders with such disorders.

The representative of the juvenile prison confirmed that a juvenile prison sentence should be used as a last resort.

[79] Katalog javnih pooblastil, nalog po zakonu in storitev, ki jih izvajajo CSD – *the Catalogue is a regulation that prescribes legal powers and tasks of social workers, including in the criminal procedure.*

Moreover, the directors of educational institutions, the correctional home, the institution for young people with physical and/or mental disabilities, and the juvenile prison emphasised the need for judges to visit their institutions more often and monitor the juvenile offenders' behaviour and development. According to them, this worked much better when judges specialised in dealinin cases involving with juvenile offenders only.

The representative of the police evaluated the current legislation as generally very positive but emphasised that the laws could be accompanied by an appropriate educational and penal policy, directing the stakeholders in their work with juvenile offenders, especially repeat offenders. The general aim of criminal proceedings against minors is educational and has to stay this way. However, with some minors, the imposition of stricter educational measures and/or sanctions early on might help prevent reoffending. Moreover, they emphasised that educational institutions are not sufficiently staffed for a truly individualised treatment of juvenile offenders.

The interviewed judge and attorney also stated that when determining the appropriate sanction, recidivism is usually considered an aggravating circumstance, whereas the prosecutor thought this depended on the circumstances of every case. The representative of the Ombudsman proposed stricter sentencing for repeat offenders as well.

According to the judge, prosecutor, and attorney, the juvenile's alcohol and drug addiction generally does not present an aggravating circumstance when imposing a sanction against them. The minor's drug and/or alcohol misuse usually suggests the court will impose specific instructions and/or prohibitions as part of a non-residential educational measure. However, the prosecutor and a director of an educational institution expressed that the treatment of addiction should not be voluntary and could sometimes be imposed without the juvenile's consent. The judge also believed it was not unreasonable to impose a residential educational measure to break the juvenile's contact with peers that are a negative influence.

The director of the educational institution also suggested to introduce a new educational measure - Committal to an educational institution with instructions and prohibitions. This new measure would enable a better individualisation of a residential educational measure for juveniles with specific needs. For example, a juvenile that suffers from drug addiction could be placed in an educational institution and required to attend a specialised rehabilitation programme outside the educational institution once a week; if they failed to attend, the judge could impose a stricter measure, e.g. committal to the juvenile detention centre Radeče.

Conclusions

On a normative level, the individualisation of criminal sanctions against minors is generally appropriate. The juvenile offender's age, personal, social, and familial conditions, as well as their needs are the most important factors in the choice (and, in the case of juvenile prison, the length) of the sanction imposed against them to achieve their education, re-education, and personal development. To reach this aim, the court can also terminate or amend the imposed sanction if new or previously unknown circumstances regarding the juvenile offender's development arise or become known. Amendments to current criminal legislation regarding the individualisation of criminal sanctions for juvenile offenders are therefore not required.

However, there are a number of improvements possible with regard to sanctioning. Firstly, from a procedural and organisational viewpoint, the specialisation of judges in the field of juvenile delinquency would provide them with additional knowledge regarding the juvenile's psyche and/or behavioural patterns and enable them to better recognise the juvenile's distinctive needs. Such

enhanced knowledge and understanding could contribute to the individualisation of the imposed sanctions. The idea of specialised juvenile judges and divisions within district courts that would deal exclusively with juvenile delinquency would therefore be beneficial.

Furthermore, judges should become better informed about the programmes that specific educational institutions and/or NGOs might offer to juvenile offenders. This would enable the judges to impose a criminal sanction that would best fit the particular juvenile offender's wishes and needs.

Moreover, most difficulties linked to the individualisation of sanctions against juvenile offenders are practical. First, courts sometimes do not have the information needed for a comprehensive assessment of the juvenile offender's family and social status, as well as their emotional, behavioural, and other special needs. This might be due to the inadequacy of some reports sent to the courts by Social Work Centres. Several stakeholders have stated that some social workers do not investigate sufficiently the facts of the case and the socio-familial circumstances surrounding the minor. According to section 1.4.4 of the Catalogue (Treatment of a juvenile in a criminal procedure or in a misdemeanour procedure), a single discussion of the social worker with the juvenile offender and their parents is prescribed and therefore mandatory. Conducting further discussions or a visit to their home is only optional. The Catalogue should therefore entail a more specific provision, prescribing the steps that need to be taken by social workers in each case (i.e. more discussions, mandatory home visits) as well as a framework for their reports.

The research has also shown that a diagnostic centre as predicted in Article 471 of the ZKP has not existed since the ZKP was adopted and came into force in 1995, so the roles prescribed by the ZKP for the diagnostic centre were never carried out. In 2020, the Act on the Intervention for Children and Youth with Emotional and Behavioural disorders in Education (ZOOMTVI)[80] was adopted and prescribed the establishment of expert centres. It is thus important to clarify if expert centres as predicted and regulated by the ZOOMTVI could become responsible for the tasks of the diagnostic centre from Article 471 of the ZKP.

Based on the findings of this research, there also exists a narrow group of "*highly problematic*" and educationally unresponsive juvenile offenders. However, to deal with these offenders appropriately and promptly, their emotional and behavioural difficulties should be addressed by schools and other institutions early on, so they can be appropriately treated and/or punished. However, it is important to emphasise that a response does not solely lies with criminal law – a holistic and multidisciplinary approach is necessary to include also education, health and social affairs. To ensure the individualisation of the sanction, it is pivotal that thespecific characteristics of juveniles are assessed and acknowledged as early as possible in criminal procedures. This will ensure that the judge conducts the procedure accordingly and experts are appointed also in a timely manner. This is a necessary prerequisite to the individualisation of sanctions in such cases.

It is considered that except for the issue of thespecialisation of judges, the other above-mentioned issues are of a practical nature and do not entail changes to the criminal legislation concerning the individualisation of sanctions.

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

4.3.4 Educational measures

Non-residential measures

Non-residential educational measures are imposed when the juvenile offender's attention needs to be drawn to their behaviour and when their education, reform and proper development in their existing environment need to be ensured through measures lasting a shorter time and involving appropriate professional guardianship.[81] Therefore, the primary purpose of non-residential measures is to give a warning and provide the juvenile offender with additional expert assistance in cases when the court adjudicates that removing the juvenile offender from their current home environment is not necessary. The facility where the educational measure is executed has to report on the conduct of the juvenile offender to the court every 6 months.[82]

Non-residential measures are by far, the most common educational measure; they are imposed in more than 90% cases. In more than half of these cases, social services' supervision is imposed, followed by instructions and prohibitions covering about a fifth, with reprimands in last place, being imposed in about only one tenth of cases (see *Table 5 above*). The presented statistics reflect the apparent assessment of Slovenian courts that most juvenile offenders may be successfully resocialised and rehabilitated without the need to remove them from their home.

Reprimand[83]

Reprimands are the mildest of the non-residential measures. Theyare imposed if the court considers that it would be enough to achieve the purposes of educational measures. Its purpose is twofold: the court has to present to the juvenile offender the harmfulness and wrongfulness of their behaviour and warn them that in the case of committing a new criminal offence, a stricter sanction may be imposed.[84]

Until 1997 reprimand was the most commonly imposed sanction and concerned more than half of imposed sanctions. Since then, its numbers have been persistently decreasing, falling to about 10% in the last years – some on account of instructions and prohibitions, but mainly due to a more commonly imposed sanction of supervision of social services. Such a change in sanctioning policy may be ascribed partly to the fact that instructions and prohibitions were only introduced in Slovenian legislation with the adoption of the KZ in 1995, and partly to the fact that the courts have shifted their stances towards asserting more expert control and assistance to juvenile offenders.

Instructions and prohibitions[85]

Instructions and prohibitions are the most diverse measures, as they can offer a more individualised approach to sanctioning. It includes 11 options from which the court can choose. They range from one-time measures (such as a juvenile offender's personal apology or settlement with the victim) to measures where specific expectations will be regularly monitored (such as regular attendance of school, attendance of social training programmes or treatment in a health institution) and which may last up to 1 year. The court may impose one or several instructions and prohibitions as an independent educational measure if it considers that these will sufficiently influence the juvenile offender and their behaviour. The court may also combine them with the educational measure of social services'

[81] Article 74/2 KZ.
[82] Article 489/I ZKP.
[83] Article 76 KZ.
[84] Bele, 2001, p. 438.
[85] Article 77 KZ.

supervision.[86] It is important to note that the KZ states that the court shall generally consider the offender's willingness to co-operate when determining appropriate instructions and prohibitions. It was recognised that the chance of success of educational measures shall be greater if the juvenile accepts the imposed measure or (at least) consents to it. This is all the more relevant since it is executed in a free environment where the juvenile offender's readiness to fulfil the imposed obligation is greater than in a supervised institutional environment.[87] Furthermore, the court may modify or terminate the execution of imposed instructions and prohibitions if this facilitates the achievement of the purposes of educational measures. If the juvenile offender does not comply with the imposed instructions and prohibitions, the court may replace them with the educational measure of supervision by the social services.

In addition to their vast adaptability to deal with several and specific juvenile offenders' needs and issues as well as their flexibility in the way they are executed and imposed, restorative justice measures have also been promoted and welcomed (for example, community service or work for humanitarian organisations). These include sanctions that focus on victims' remedies via the reconciliation between the juvenile offender and the victim where the offender is asked to apologise to the victim and by means of financial or other forms of compensation for the damages caused to the victim.[88]

It is important to note that Social Work Centres, which are responsible for the execution community service or other related forms of work mentioned above do not have the capacity in terms of human resources to do so properly. Social workers have explained on various occasions that they are overloaded with other matters.[89] This issue was again noted in the study from 2010, where it was observed that community service was seldomly executed on the grounds that Social Work Centres did not possess sufficient financial means to do so. Consequentially, courts rarely opted to impose this task.[90] As late as 2015, some Social Work Centres still failed to organise community service due to persistent financial issues.[91] More recent data on this issue is not available.

Supervision by social services[92]

This measure may be imposed under two conditions: if the juvenile offender is in need of professional assistance and supervision and if a more continuous support to their education, re-education or proper development is required. The measure may last for a minimum of 1 year and a maximum of 3 years. During the execution of this measure, the juvenile offender continues to live at their current residence while an advisor, in most cases a social worker, is appointed. This advisor is responsible for the juvenile offender's education, his/her employment, the need to remove him or her from a harmful environment, ay required health treatment and general arrangements of the conditions in which the juvenile lives. As already mentioned, this measure may be combined with one or more instructions or prohibitions. It presents an integral and continual supervision over all aspects of a juvenile offender's life, thus being the most intensive measure that can still be executed in the juvenile's home environment. Since 1998 it is also the most commonly imposed educational measure, in 2020 it was imposed in about 60% of cases.

[86] Article 78/IV KZ.
[87] Bavcon *et al*., 2013, p. 517.
[88] Filipčič, 2015, p. 858.
[89] Filipčič *et al*, 2006, p. 96.
[90] Filipčič *et al*. 2010, pp. 8, 10.
[91] Filipčič, 2015 p. 871.
[92] Article 78 KZ.

A study from 2006 has shown that in the majority of cases, contacts between advisors and juvenile offenders were conducted at advisors' offices, seldomly at juveniles' homes and rarely anywhere else – advisors considered that this measure should have been conducted at the offices, at various associations, organisations or during activities, occasionally at the juveniles' home and rarely or never at school, work, on the street, in a pub or anywhere else where the juveniles are spending their time. Furthermore, the frequency of contacts was once per month or even less. Intensity of cooperation with the juvenile's family was low, namely in the fields of interpersonal relationships, education and problem solving. In most cases an individual plan of work was not made. An improvement of the execution of this measure was therefore proposed, namely a more profound and frequent cooperation between advisors, juvenile offenders and their families, developing more activities and programs for juvenile offenders, a greater cooperation between institutions working in the field of juvenile delinquency, constant professional education for advisors, continuous evaluation and monitoring of the measure and by introducing assistants – be it volunteers or public workers, that would assist juveniles with their schoolwork, employment and accompany them at their leisure activities.[93] In a study from 2010 occurrences where the advisor was not appointed were observed, since according to some interpretations, advisors' work was not defined as a public mandate.[94] To note, that the analysis provided here is indeed based on data and information found that dates back to a decade ago. No thorough analysis has been made recently but from the interviews held with the different professionals, it does not seem that much has changed.

Residential measures

Residential measures may be imposed on juvenile offenders who require continuous educational, re-educational or medical measures and a total or partial exclusion from their current environment from the age of 14. Institutional measures are to be imposed as a last resort only and may, within the statutory limits, last only for as long as is necessary to achieve the purpose of the educational measures.[95] Accordingly, when a residential measure is imposed, the court does not determine its length but decides on its termination later,[96] when it adjudicates whether its purpose has been achieved. The facility where the educational measure is executed has to report on the conduct of the juvenile offender to the court every 6 months.[97] According to Bele, a juvenile offender's exclusion from their environment may be somewhat ambiguous regarding the perspective of education: a more intensive educational treatment of the juvenile is indeed made possible, however the juvenile offender is prevented from personally developing in an environment and conditions in which they will have to live as an adult. Filipčič emphasises that the juvenile should only be excluded from their home environment for the shortest possible time.[98]

Statistics show the courts seem to adhere to the "*last resort*" principle when imposing residential measures: in the last 5 years they were imposed in approximately 7,6 % of all cases, and most juvenile offenders were placed in an educational institution.

[93] Svetin Jakopič, 2006, pp. 46-47, 51, 52, 61, 63-64, 66.
[94] Filipčič *et al*. 2010, p. 8.
[95] Article 74/III KZ.
[96] Articles 79/II, 80/III, 81/III KZ.
[97] Article 489/I ZKP.
[98] Filipčič *et al*, 2010, p.12.

Committal to an educational institution[99]

The court imposes this measure when a juvenile offender's education and reform require permanent guidance and the supervision of a professional educator. It may be imposed for a minimum of 6 months and not longer than 3 years.

It is important to note that educational institutions are not penal institutions, correction officers are not present. Children and adolescents are placed there on different legal grounds: on the basis of family legislation (Family code (DZ[100]) and Non-Contentious Civil Procedure Act (ZNP-1[101])) in civil (family) procedures and on the basis of criminal legislation in criminal procedures.[102]

Accordingly educational institutions fall under the jurisdiction of the Ministry of Education, Science and Sport.[103]

Until the adoption of ZOOMTVI in 2020 there were 4 institutions that executed this measure:

- Educational institution Planina,[104]
- Residential and counselling Centre Logatec,
- Educational institution Slivnica pri Mariboru
- Educational institution Višnja Gora
- Elementary school Veržej.

ZOOMTVI has changed this and provides for the placement of a juneile offender in one of the 4 'Expert Centres' (residential institution – this is the closest translation from Slovenian) depending on the need of the juvenile.

Prior to the ZOOMTVI, the main criterion of selection used was the organisation of the institution and the educational programmes available that would most suit the juvenile offender's requirements, whereas geographical factors were not relevant. However, with the adoption of ZOOMTVI, the juvenile offender should be assigned to an Expert centre in the area of their residence. Only in case of a good cause, a different Expert centre may be designated.[105]

Expert centres as prescribed in the ZOOMTVI provide children or adolescents with emotional and behavioural problems with continuous assistance (which begins with counselling by professionals working in a kindergarten, staff of school, parents or even a person that may be relevant to a child or adolescent. Assistance from the mobile team is also provided.)[106] When the court orders committal to an educational institution, the Social Work Centre appoints a coordinating expert centre, which has to provide placement for the juvenile. It is possible to place a child in another Center, if the coordinating Expert centre recommends it. The Coordinating Expert centre would then notify the court and Social Work Centre on that.[107]

Filipčič questions the reasonability of the maximum prescribed term of placement which is of 3 years (which is the same as the prescribed maximum for placement in the correctional home) since a

[99] Article 79 KZ.
[100] Družinski zakonik (DZ), Ur. l., št. 15/17.
[101] Zakon o nepravdnem postopku (ZNP-1), Ur. l., št. 16/19.
[102] Article 8/I ZOOMTVI.
[103] Ministrstvo za izobraževanje, znanost in šport.
[104] Vzgojni zavod Planina.
[105] Article 8/II ZOOMTVI.
[106] Article 6 ZOOMTVI.
[107] Article 8/II, III ZOOMTVI.

juvenile placed in an educational institution does not require such intense help and supervision as a juvenile placed in a correctional home. She suggests that it would be more appropriate to shorten this maximum time. She also considers that the institution should report to the court more frequently than every 6 months.[108]

In recent years, there were cases where educational institutions have rejected the placement of juvenile offenders as they claimed that special programmes which were required for the child were unavailable at their institutions.[109]

Committal to a correctional home

Juvenile offenders are placed in a correctional home if they require more effective re-educational measures. When determining whether this measure is appropriate, the court should consider particularly the nature and gravity of the criminal offence and whether educational measures or punishments were imposed previously on the juvenile offender. It may be imposed for a minimum of 1 year and not longer than 3 years.[110]

There is currently only one correctional home in Slovenia – Radeče Correctional Home. It is a closed institution where only juvenile offenders are admitted. The facility is monitored by correctional officers and is under the jurisdiction of the Ministry of Justice. It can thus be said that the Correctional home is a penal institution, as is also reflected by its link to the Prison Administration, under whose scrutiny it falls.

The focus of this measure is re-education. It is the only educational measure where the KZ explicitly prescribes that the nature and gravity of the offence and the juvenile offenders' possible recidivism are pivotal factors when deciding on this measure. It can be said that it is the strictest educational measure and is consequentially mostly imposed on severely educationally distressed juveniles and recidivists.[111] It should nevertheless be emphasised that regardless of the prescribed factors concerning its determination, the court should not automatically impose this measure just because a juvenile committed a more serious offence or in a case recidivism-. In consideration of all residential measures, this one should be considered as a measure of last resort.[112]

In the last 5 years, this measure was used in less than 2,5% cases.

Committal to an institution for children and young people with physical and mental disabilities

This measure may be imposed only on juvenile offenders who are affected by physical or mental disabilities. Its purpose is to provide such individuals with training, treatment or care in specialised institutions. It may be imposed in cases where the court would otherwise impose a committal to an educational institution or a correctional home, but not in cases of other educational measures.

Furthermore, the court may substitute the imposition of a safety measure of compulsory psychiatric treatment and detention in a health institution with this measure, if the necessary treatment and detention of the offender can be provided in such institution and the purposes of the safety measure in question can thereby be achieved.[113] However, this is possible only if the juvenile offender committed the criminal offence in a state of insanity or diminished responsibility and if other

[108] Filipčič *et al*, 2010, p. 12.
[109] Filipčič & Plesničar, 2017, p. 407.
[110] Article 80 KZ.
[111] Bavcon *et al.* 2013, p. 523.
[112] Bele, 2001, pp. 458-459.
[113] Article 81 KZ.

conditions for imposing such a safety measure are met.[114] In accordance with its rehabilitative purpose, the minimal term of placement is not prescribed, whereas the maximum term is 3 years. According to Bele, even in cases when this educational measure substitutes the mentioned safety measure, notwithstanding the prescribed maximum term of 5 years of the stated safety measure,[115] the maximum term of placement in an institution for children and young people with physical and mental disabilities may still not exceed 3 years.[116]

There is currently no institution in Slovenia that would treat such juveniles exclusively; instead, they are placed in an educational institution that implements appropriate programmes. Currently, this is only the Centre for Training, Work and Care Črna na Koroškem.

According to Filipčič, the described legal regime is controversial. She argues that this measure is in fact taken (instead of the placement in an educational institution or a correctional home), specifically for a certain category of juvenile offenders (i.e. those with mental or physical disabilities). It would therefore be more appropriate to define this situation more clearly in legal terms. Furthermore, the legal nature of imposing this measure on juvenile offenders who are affected by several mental disabilities combined is even more contentious since this educational measure is rather imposed for safety purposes and therefore stands as a method of execution of safety measures instead.[117]

In the last 5 years this measure was imposed in very few cases and was therefore statistically perceivable.

4.3.5 Punishments

Punishments for juvenile offenders are considered as an education measure (education, re-education and proper personal development) regardless of the perceived punitive nature.[118] They also have a preventive role to a greater extent than educational measures. Although these aspects are not explicitly stated in the KZ, it stems from the nature of the punishment which presents a stronger influence on a juvenile offender as well as on other juveniles not to commit (another) offence.[119]

Punishments may be imposed only on older minors. Statistics show that punishments are imposed very seldomly, on average not exceeding 0,5% in last years.

Fine

The court may impose a fine on an older juvenile offender (16-18 years of age) under two conditions: if they have committed a criminal offence for which the prescribed sentence of imprisonment is up to 5 years or a fine can be prescribed, and if the juvenile offender is capable of paying the fine (he/she had an income). The KZ specifically states that when imposing a fine, the court should consider the purposes of educational measures. In case of a default of payment, a fine cannot be substituted with

[114] *See* Article 70a KZ-1.
[115] Article 70.a/III KZ-1.
[116] Bele, 2001, pp. 461-462.
[117] Filipčič *et al*, 2010, p. 11.
[118] Article 73 KZ.
[119] Bavcon *et al.,* 2013, pp. 531-532.

prison (as is the case regarding adult offenders[120]), but only with a non-residential educational measure.[121]

Historically, fines have very rarely been imposed, never reaching 2% and have never been imposed in the last 5 years.

As described in the mentioned Study from 2010, both conditions to impose a fine are controversial. Authors claim that it does not seem reasonable to impose a fine, which is a lighter sanction than juvenile prison, for criminal offences where juvenile prison cannot be imposed, whereas a fine cannot be imposed in cases of more serious offences, for which educational measures as well juvenile prison may however be imposed. Secondly, the notion of juvenile's "*own income*" is not clearly defined. Furthermore, the substitution of a fine with an educational measure is not well thought through: by the time that such a measure is eventually be imposed, the juvenile offender would generally reach adulthood, thus making the imposition of an educational measure no longer adequate. According to the reasons written above, as well as its minimum used, it is proposed recommended to remove this measure from the KZ.[122]

Juvenile prison

Juvenile prison is the strictest criminal sanction and may be imposed only on older minors under two conditions: in cases of criminal offences for which the prescribed sentence is imprisonment of 5 years or higher (objective component) and if regarding the nature and gravity of the crime and high degree of criminal responsibility (subjective component), an imposition of educational measures would not be reasonable[123]. Juvenile prison should only be imposed in exceptional cases. Since 1995 it was never imposed in more than 3% of cases, whereas in recent 5 years it was used on average in about 0,5% of cases. In 2019 and 2020 it reached a record as it was not used once. For the year 2020 such statistics might be attributed to the COVID-19 situation.

It should be noted that the term "*criminal responsibility*" will be determined by the court's assessment of not only the juvenile offender's mental capacity and culpability (as the general prerequisites of criminal responsibility[124]), but should also include careful considerations of the juvenile's specific life period during which the criminal offence was committed – puberty and adolescence, by putting emphasis on the juvenile's psychological development. Whereas "*high degree*" should denote higher understanding that they are committing a crime and skills to commit those crimes, accompanied by an intense level of intent or negligence.[125] Accordingly, juvenile prison is to be considered as a subsidiary sanction, imposed only in cases where the court determines that imposition of an educational measure in perspective to the above-described circumstances would not be appropriate.[126]

Juvenile prison sentence should not exceed 5 years. Only in cases of criminal offences where a 30-year prison sentence is prescribed, a maximum sentence of 10 years may be imposed. An intriguing feature of the juvenile prison is its minimum term – the imposed sentence may not be shorter than 6 months.

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[120] Article 87 KZ-1.
[121] Article 88 KZ.
[122] Filipčič *et al*, 2010, p. 18.
[123] Article 89/I. KZ & Bele, 2001, p. 484.
[124] Article 15 KZ. *It should be noted that the currently valid the KZ-1 no longer includes the term "criminal responsibility" – mental capacity is thereafter a prerequisite of culpability (Article 24 the KZ-1).*
[125] Bavcon *et al.,* 2013 p. 533.
[126] Bele, 2001, p. 484.

This may seemingly indicate a sign of a more repressive response of the State towards juvenile offenders, since the minimum prescribed term for adult offenders is 1 month.[127] However, such a prescribed minimum term presents a reflection of the educational purpose of juvenile prison, based on the observation that educational programmes cannot be successful in a shorter time period.[128] It should be noted however, that this argument is valid only in the event, if the juvenile offender actually participates in such programmes, which may not always be case, since participation in the programmes in juvenile prison is on a voluntary basis.

Another attribute that differentiates the imposition of juvenile prison from the imposition of educational measures is that the court specifically determines the length of the juvenile prison sentence. As already described above, the court determines the length of the sentence, beside assessing all the mitigating and aggravating circumstances, also in accordance with the degree of maturity of the offender and the time that is necessary for his/her education and vocational training.[129] Bele emphasizes that the courts should base the criteria of 'necessary time' on the individual pedagogical planning. When determining the length of the sentence, the court should also consider whether it would be objectively possible to influence the juvenile offender's behaviour.[130]

It may thus be stated that at the legislative and theoretical level of the regulation addressing juvenile imprisonnement, a strong emphasis is put on re-education and resocialisation. However, practice is different– more damage may be done to the development of juvenile offenders if their treatment in prison is not conducted according to their specific and individual needs. Foreign studies have shown severe negative consequences of the imprisonnement of juveniles in particular where there are no appropriate educational and recreational programmes and especially when children were not separated from adult offenders. Higher risks of suicides, victimisation and assaults were observed, with important negative impact on their psychosocial development and their transition into adulthood. As a consequence, this also clearly affects the opportunity to reintegrate successfully the community thereby creating more risks of re-offending,[131] - some authors even branding juvenile incarceration as a threat to paediatric and public health.[132]

4.3.6 Stakeholders' views

The interviewees[133] mostly agreed that the current range of sanctions for juvenile offenders is sufficient. They evaluated the legislative regime of non-residential measures as generally positive, since it offers a reasonably wide range of measures that can address various needs of juvenile offenders.

[127] Article 46/I. KZ-1.
[128] Filipčič & Prelić, 2011, p. 452.
[129] Article 90 KZ.
[130] Bele, 2001, p. 488.
[131] Powell, 2014, p. 16; Lambie & Randell, 2013, p. 456.
[132] Barnert *et al.*, 2016, p. 107.
[133] The judge, the prosecutor, the attorney, directors of educational institutions, representative of the Ombudsman, the psychologist, the social worker, the mediator, the representative of the juvenile prison, the representative of the Police and the representative of the Correctional home.

The judge, the prosecutor, the attorney and the social worker all promoted community work. The representative of the Ombudsman supported the alternative sanctions as well.

The interviewees Regarding residential measures, most interviewees noted the absence of a legal option of compulsory treatment of addiction in the course of execution of residential measures, since currently such treatment is only possible on a voluntary basis. The judge and the prosecutor proposed that an instruction could be imposed in conjunction with the imposition of a residential measure.

Regarding the prescribed minimum and maximum terms of residential educational measures, interviews had different opinions. The judge, the prosecutor, the attorney and the majority of representatives of institutions considered that the current legislation on this matter is appropriate, whereas one of the directors of educational institutions believed that the mentioned time periods were too short.

It was also emphasised that a special facility for juvenile offenders with serious behavioural problems is lacking.

There were also diverging views regarding the adequacy of fines and juvenile prison. The interviewed attorney expressed his firm position against them.

The main critiques concerned the execution of sanctions, in the contexts of residential educational measures, juvenile prison and, to a certain extent, the supervision of social services. Accordingly, in this chapter of the report, those aspects are discussed and in light of the relevant provisions of the KZ, whereas the specific issues of enforcement are addressed in greater detail in the appropriate chapter of this study below.

It is important to note that the interviewed judge indicated that it is essential that sanctioning provides the juvenile with necessary and appropriate help, without excessive interference with their personal freedom. The judge evaluated the legal regime of non-residential measures as adequate, although questioned the purpose of reprimands where such cases had finally still reached adjudication. This should have been prevented by taking the necessary measures in the earlier stages of the procedure. However, the reprimand should remain in ZOMSKD, since in small number of cases its imposition may still be appropriate. The judge furthermore considered certain instructions beneficial. These include community service and social trainings – for example attending meetings at the Association for nonviolent communication. The instruction of regular attendance of school is imposed too seldomly; probably because dealing with juveniles by court comes too late in their life period for this instruction to have any reasonable effect. The judge did not find that imposing educational measures in such a high percentage (90%) is in itself problematic. The judge's opinion regarding the regulation of residential measures was positive as well, however the possibility of mandatory treatment of addiction in educational institutions should be made possible by the law – it is problematic that such treatment is currently solely voluntary. Placement in an institution was generally considered as reasonable, namely in cases where the juvenile needs to be removed from a negative environment. Although agreeing with the juvenile offenders' perception of placement in the Correctional home as a sort of punishment, placing certain juveniles in such an institution is according to the judge's opinion nevertheless necessary, as clear boundaries in the sense of a stricter treatment need to be set to more problematic juvenile offenders. The judge assessed the prescribed minimum and maximum terms of residential measures as appropriate, since according to their knowledge the juvenile needs approximately 3 months to settle in the institution properly – only afterwards an effective treatment programme may start; shorter terms would therefore not be reasonable. While supporting the existence of the fine in the KZ on the grounds that some juveniles actually do have their own income,

the judge nevertheless expressed concern, since it is not known who actually pays the fine (it may be the juvenile's parents) – according to the judge's opinion the fine in such cases is not educationally effective. On the other hand, the judge's viewpoint regarding juvenile prison was, that the minimum term of 6 months was unreasonable, namely due to an absence of appropriate educational programs – currently, the main aim of imposing juvenile prison is the incapacitation of the juvenile.

The interviewed prosecutor considered that juvenile offenders should receive appropriate help as soon as possible to prevent them from reoffending. Regarding non-residential measures and the need to make treatment of addiction mandatory, the prosecutor, in general, agreed with the judge, and emphasised further that it is crucial to monitor the execution of the measures more frequently and in cooperation with Social Work Centres. The prosecutor further confirmed that educational institutions should remain open, whereas the Correctional home should be a closed institution. In this respect, placement should have a clearer message to the juvenile offender that they committed a serious act. The prosecutor evaluated the minimum terms regarding residential measures as adequate. Their opinion about fines was negative, since according to them, in more than 90% of cases, the fine is paid by the juvenile offender's parents, which is, in their opinion, worse than if the fine had never even been imposed, since such conduct only promotes shifting the juvenile offender's responsibility.

The interviewed attorney considered that the imposed sanction should primarily be focusing on achieving the greatest benefit for the juvenile. The attorney shared the judge's and the prosecutor's opinion concerning the adequancy of the selection of educational measures and their minimum prescribed terms. The absence of an 'intermediate' institution was however noted – open educational institutions may not be appropriate for run-aways, whereas the Correctional home is a completely closed institution– an interim option is therefore missing. He further expressed concerns regarding the selection of an appropriate institution for children and young people with physical or mental disabilities. In their opinion, the draft ZOMSKD presents a clearer legal framework in this respect. The interviewee emphasised also that juveniles should be placed into such an institution as early as possible to receive the necessary treatment. The attorney was critical of the juvenile prison, since in contrast with the educational institution and Correctional home, prison does not provide the juvenile with necessary treatment. Juvenile offenders' activities in prison are voluntary, which in practice leads to incarcerated juvenile offenders behaving passively, not participating in any programs. A 6-month minimum term is therefore useless. In this aspect, the attorney assessed the Correctional home as a considerably more effective measure than juvenile prison. Furthermore, they stated that resocialisation is more likely to be achieved through placement in the Correctional home, where the juvenile is in contact with other juvenile offenders in a more suitable social environment. On the contrary, prison presents a substantially less appropriate social environment where, given the small numbers of incarcerated juvenile offenders, the juvenile undoubtedly comes into contact with adult offenders, which may adversely affect their well-being and development. The attorney assessed the imposition of a fine as unreasonable as well, since if the juvenile themself possesses financial means, in most cases they are not mature enough to be able to manage their own finance; it is also not uncommon that their parents pay the fine – in both cases the purpose of the sanction is not achieved.

Representatives of the educational institutions and the Correctional home all agreed on the necessity of such institutions; none of them believed that placement in these institutions, including the Correctional home, is too repressive. Most of them also agreed that the prescribed terms of educational measures are sufficient.

One of the directors of an educational institution expressed the presence of a general belief that these institutions are too punitive – the judges therefore preferred imposing non-residential measures,

namely supervision of social services, which in practice does not often achieve its intended effect. Juvenile offenders do not perceive such a measure as a criminal sanction. According to the views of the mentioned director, stricter sanctions – namely residential measures, should be imposed on certain juvenile offenders, specifically in cases of more serious criminal offences such as rape, extortion, drug trafficking or in cases of systematic reoffending. It was also said that such juvenile offenders should be removed from their shared environment with the victim and that, furthermore, non-residential measures would not give a sufficiently strong message, neither to the juvenile nor to the victim. The director also explained that in cases of where juveniles lack empathy and are particularly impulsive, placement in an educational institution is not reasonable – they should be placed in the Correctional home from the very beginning, since such juveniles respond only to "*drill*". According to the director's view, it is vital that such juvenile offender's characteristics are recognised as early as possible, either by an expert in the course of the criminal procedure or by admitting such juvenile offenders in a diagnostic centre,[134] which is currently non-existent.

The representative of an institution where children and young people with physicial and mental disabilities are placed, by reason of a residential measure, explained that juveniles with such issues are a part of a specific group of children that requires special treatment – the biggest issue lies with the absence of clear guidelines on how to provide such treatment. In this institution, many family engagement activities are organised to strengthen and support the inclusion of juvenile offenders into their primary environment. However, this practice comes from individual initiatives and is not a generally prescribed practice. This director does not support an establishment of a special institution that would treat physically or juveniles with mental disabilities exclusively. Formation of special units within existing institution would be more sensible, where behaviourally problematic juveniles could be organised into residential groups and thus being in greater contact with their primary environment, local community and nature. Accordingly, the representative does not support an establishment of a special juvenile "*forensic hospital*",[135] they promote the idea of deinstitutionalisation.

The director of another educational institution was more critical. In their opinion, the biggest challenge to the supervision of social services related to the absence of cooperation between juvenile offenders and their parents – such cooperation should be imposed by the court's decision and should not be based on mere voluntary motivation. He considered that Social Work Centres should not handle cases involving dangerous young people with personality disorders and high-conflict relationships. According to the director, the currently prescribed terms of educational measure are considerably too short to achieve the desired results. He also shared his very strong opinion concerning juveniles who do not respond to therapy and have extreme and threatening behaviours who even if they only represent 1-3% of juveniles, they would present 'a grave danger to society'. He considered that the main issue regarding these juvenile offenders is that the system as a whole fails to recognise their specific personal traits. It is a multidisciplinary problem that should be addressed by the educational sector, the Police, the justice system, social services and the health department. Accordingly, he proposed a establishment of a new residential measure – a new institution should be established to deal with very addicted and therapeutically unresponsive juveniles. It would function as a preliminary specialised unit, where a juvenile would be placed for a certain amount of time before being transferred to an educational institution. This educational measure would be called "*intensive*

[134] Article 471 ZKP.

[135] The interviewee here understood 'forensic hospitals' as an institution for children with physical and mental disabilities. The term does need to be explained and understood consistently as being addressed to children with severe mental health conditions. The difference between 'severe health problems' and 'mental disabilities' where children are at risk for themselves and for others should also be defined.

educational programme", its term would be determined upon the gravity of the committed offence and would last from 1 month to 6 months. They further supported establishing more closed-type institutions, since certain juveniles are uncontrollable and should be isolated and incarcerated when they endanger themselves and others; more institutions and trained staff is required. The director agreed with the above stated standpoints that a special, "*intensive*" unit within an educational institution should be founded, to treat juveniles with 'physical and mental disabilities'[136] as well as behavioural problems. In their opinion, an appropriate institution for placement of juveniles upon whom a safety measure of compulsory psychiatric treatment and confinement in a mental health institution was imposed, does currently not exist. Committing children and young people with physical and mental disabilities to an institution is not appropriate. Another issue that this director noted, was an absence of a diagnostic centre.

The interviewed social worker viewed the selection of measures and their prescribed terms as appropriate, whereas praised the execution of instructions and prohibitions and especially community service, since organisational and logistical matters were resolved and are currently well handled. A variety of organisations implement such measures which allows appropriate individualisation of the imposed instructions. On the other hand, supervision of social services is sometimes difficult to execute due to organisational and staffing issues.

The interviewed representative of the juvenile prison generally agreed with the principle of escalating sanctions, however some juvenile offenders with profound behavioural and emotional problems with issues of aggression and alcohol/ drug abuse are not fit for placement even in the Correctional home. In such cases, he considered that imposing juvenile prison is appropriate as a last resort. He assessed the prescribed terms of juvenile prison as appropriate, whereas he was more critical regarding the executional aspects. There are no special programmes; no special care or attention is given to juvenile offenders – they may only be allowed an extra hour outdoors and a more intensive educator's treatment. He considered that it would help if judges visited and monitored juvenile offenders in prison more often to examine the results of treatment. Accordingly, the representative proposed an experimental regime where the juvenile's release from prison would be based upon their personal development, similarly as is the current legislation regarding educational measures, and not based on a fixed court's decision. They concluded that more emphasis should be given more to the effective execution of non-residential measures (namely supervision by social services) rather than imposing residential measures or even juvenile prison. Better implementation of mechanisms of control during execution of non-residential measures could contribute to reducing juvenile delinquency in many cases.

4.3.7 Conclusions

Based on the gathered information, theoretical as well as empirical, it can be concluded that the current legislation of criminal sanctions for juvenile offenders does not require major changes. Certain legal inconsistencies that should be addressed were noted, however, most issues stem from gaps in the execution of certain sanctions in practice. Such problems cannot be undertaken by amendments

[136] The Ministry of Justice highlights here again the importance of terminology to distinguish children with mental disabilities that are not curable and those that are. This would need to be further researched and discussed.

of criminal legislation and should therefore be resolved at an organisational level of certain institutions.

Non-residential measures are well-conceived, offering the courts numerous and diverse options, thus providing a sufficient level of individualisation of a criminal sanction, namely the educational measure of instructions and prohibitions.

The judge considered that cases where a reprimand is imposed should be resolved with alternative methods, such as alternative diversion proceedings. However, if procedural preconditions (i.e., victim's consent) are not met, such proceedings may not be initiated. In such cases, given the fact the court would consider that a criminal conviction is reasonable and no other more invasive sanction would be necessary, a firm and clear warning and notice of a juvenile's wrongdoing in a form of reprimand is considered appropriate. Therefore, reprimand should remain in the criminal legislation.

Instructions and prohibitions are adequately prescribed in the KZ. Interviewees evaluated community service, social trainings and juvenile offender's compensation to the victim as especially positive. Accordingly, it is recommended that such instructions are imposed even more frequently. Through the conduction of educational courses, social workers and judges should be encouraged to propose and impose such instructions more often.

As was already noted in past studies, as well as by the conducted interviews, there are still several challenges to the supervision by social services by reason in particular to superficial contacts of social workers with juveniles and the absence of individualised programmes and activities. Therefore, it seems that in some cases, juveniles do not preceive such a measure as a sanction. Consequently, the measure does not always achieve its desired effect and purpose. One could agree with Svetin Jakopič's suggestions that juveniles should be more involved in various sport or cultural activities in cooperation with youth centres, social skills trainings as well as community work.[137]

The issue might be resolved by (1) amending the Catalogue so that more contacts and more diverse and individualised activities with juveniles would be prescribed, (2) conducting training courses for social workers to promote more thorough and individualised contacts with juveniles, (3) hiring more social workers or cooperating with (volunteer) assistants, as Svetin Jakopič suggests, in the probationary periods and evaluate the outcome of such cooperation,[138] if understaffing is a problem.

Current regulation regarding residential measures is generally adequate. All interviewees agreed that both open-type (educational institutions) and closed-type (Correctional home) facilities are required. Furthermore, the prescribed minimum and maximum terms of placement are sufficient. Despite of certain theoretical views that the terms should be shortened, none of the interviewees proposed it – on the contrary, they explained that juveniles require a certain period of time to properly settle in the institution and only afterwards treatment may start. Accordingly, the shortening of the minimal terms might be detrimental. Practical experience shows that the prescribed terms offer sufficient time to conduct proper treatment, so lengthening them on the other hand does not seem necessary. However, it needs to be emphasised that the evaluating the successful impact of treatments would contribute to understanding better recedivisim with this specific data – such comprehensive data is currently not available. Small-scale research on recidivism that was conducted involving juveniles placed in the Correctional home Radeče has shown the level of recidivism at 48% on average for the

[137] Svetin Jakopič, 2006, p. 66.
[138] Ibid.

period 1996 – 2004.[139] However, to evaluate the aspect of recidivism effectively among the general juvenile population, more extensive research should be conducted. Based on the existing data, it may be concluded at this stage that the need for lengthening the prescribed terms is not evident.

The existence of a category of 'highly problematic and educationally unresponsive' juvenile offenders, was pointed out by some directors of the institutions. However, it needs to be emphasized that this category consists of a very small number of individuals and therefore basing the amendment of the criminal legislation or establishing an entirely new institution for such a small category would not seem reasonable. Especially if other viable legal options exist – Article 13 of the ZOOMTVI prescribes a possibility of forming an intensive group within expert centres if such a need arises. Accordingly, instead of adopting new educational measures or institutions, existing individual institutions should implement intensive treatment for the most problematic juveniles.

Interviewees also agreed that the recognition at a very late stage of a juvenile's specific psychological characteristics is problematic. There are firstly risks that the imposed sanction will not have the desired effect at a time where young people are developing themselves and would be more inclined to change. Not using this time appropriately is lost time. The stated issue pertains not only to the juvenile justice system but also to other educational, social and health services, which however goes beyond the purpose of this study. From the perspective of the criminal legislation, this issue is sufficiently addressed, namely by the possibility of placing the juvenile in a diagnostic centre during criminal proceedings.[140] However, the problem is again of a practical nature – a diagnostic centre has not yet been established.

According to the directors of the institutions as well as the judge and the prosecutor, alcohol and drug addiction presents a noticeable problem that cannot be addressed appropriately under the current legislation, since treatment in the context of residential measures and juvenile prison is available on a voluntary basis. They all support that certain instructions in conjunction with residential measures become mandatory.

In theory, committing young people with physical and mental disabilities to an institution is unclear. As this measure presents a substitute for other residential measures and the safety measure of compulsory psychiatric treatment and confinement in a mental health institution, its legal nature should be defined – namely its legal aspects should be more clearly limited. Its implementation in practice also seems problematic due to the absence of regulation regarding the treatment programmes.

Despite the position of the prosecutor and the attorney that imposing a fine is useless if it is paid by the juvenile's parents, as it is often the case, it was can generally agreed that the fine should nevertheless remain. Howevern this position cannot be generalised. It is not unreasonable to believe that some juveniles actually do receive their own income and if according to their level of maturity imposing a more educationally intensive measure is not necessary, in such cases the imposition of a fine would serve the purpose of educational measures in an adequate manner.

Legislation regarding juvenile prison is adequate, since it clearly promotes re-education and resocialisation. Furthermore, the conditions under which it may be imposed indicate that it is indeed restricted to the most serious offences and for recidivistic juveniles who are facing important social problems. Accordingly, juvenile prison should remain in the current criminal legislation, only for the

[139] Prelić, 2006, p. 110.
[140] Article 471/I ZKP.

most serious cases and imposed as a last resort, when no other sanction is appropriate. Regarding its execution, the absence of sophisticated treatment programmes constitutes a clear gap. The existence of such programmes is crucial, since without them the prescribed purpose of juvenile prison is in practice solely reduced to the incapacitation of juvenile offenders. This does not contribute to the re-education and training of juveniles. Especially as it is a prison environment, where juveniles necessarily come into contact with adult offenders, such incarceration can be highly detrimental to juveniles' personal development. Regardless of the presented issues, lowering the prescribed minimum term of 6 months is not sensible. The purpose of juvenile prison should remain that of education, re-education and resocialisation. Juvenile prison sentences of less than 6 months would make such treatment impossible. Therefore, educational and recreational programmes should be established in the shortest possible time, as to ensure the practical implementation of the prescribed purposes of this sanction.

4.4 Draft ZOMSKD – an evaluation of sanctions

4.4.1 System of criminal sanctions for juvenile offenders

To a certain extent, the draft ZOMSKD follows the currently existing criminal law whith regard to juvenile offenders, while also introducing some novelties. On the one hand, in accordance with Article 21 of the KZ-1, the draft ZOMSKD maintains the age of criminal responsibility at 14 in the Republic of Slovenia.[141] It also maintains the age system according to which sanctions can be imposed, by distinguishing between younger (14-16) and older (16-18) children and young adults. The definition of young adults is slightly altered, by referring to the age at the time of the commission of the criminal offence[142] and not at the time of the trial, as is currently prescribed in the KZ.[143]

The draft ZOMSKD also keeps the provision prescribing that if the age of the offender cannot be established, the legal presumption is that the offender has not yet reached the age at which there is doubt.[144] This provision reflects the general principle of criminal procedural law "*in dubio pro reo*" meaning that facts that cannot be established with certainty are to be presumed in favour of the defendant.

The draft legislation also continues to provide for the possibility of terminating the execution of an educational measure or replacing it with a different educational measure.[145]

On the other hand, the general purpose of juvenile justice as a means of treatment of juvenile offenders is broadened: in addition to criminal sanctions, it includes measures that may be determined in diversion proceedings as well. The stated purposes generally remain the same.[146]

[141] Article 4 ZOMSKD.
[142] Article 5 ZOMSKD.
[143] Article 94/I KZ.
[144] Article 5/V ZOMSKD.
[145] Chapter 8 ZOMSKD.
[146] Article 6 ZOMSKD.

4.4.2 Criminal sanctions for juvenile offenders

The draft ZOMSKD defines the types of criminal sanctions for juvenile offenders in the exact same manner as the KZ, divided into three categories:

- educational measures,
- punishments,
- safety measures.[147]

The provision regarding the determination of educational measures generally remains the same, although certain circumstances have been added. One such circumstance is that the court should also consider the juvenile offender's attitude towards the victim. By being more victim-oriented, the described addition can be evaluated as positive.

All educational measures from the KZ are retained; none are added.[148]

Non-residential measures

Reprimand

The regulation of reprimand has not been changed. According to the conclusions made above this measure should remain in the draft ZOMSKD.

Instructions and prohibitions

An instruction of treatment of alcohol or drug addiction is added. It is important to note, that the juvenile offender's consent to such treatment is not required.[149] According to the viewpoints of the majority of the interviewees, alcohol and/or drug addiction represents a growing problem. The addition of such an instruction is therefore highly welcome.

However, it should be underscored that this addition in the ZOMSKD does not seem to solve the issue of the treatment of addictions in the course of the execution of residential measures. Indeed, the draft ZOMSKD, like the KZ, provides for instructions and prohibitions only in conjunction with the supervision of social services.[150] The provision should therefore be amended, so that certain instructions and prohibitions, where reasonable, in particular the treatment of addictions, may be imposed in conjunction with residential measures as well.

Furthermore, 3 new prohibitions are added:

- approaching/ communicating with victims (or related persons) – this includes direct and indirect contact, including the use of electronic means of communication,
- socialising with certain persons,
- access to specific places or events.[151]

[147] Article 11 ZOMSKD.
[148] Article 13 ZOMSKD.
[149] Predlog ZOMSKD, EVA: 2018-2030-0046 – predlog, 24. 12. 2019, pg. 64.
[150] Article 17 ZOMSKD.
[151] Article 16 ZOMSKD.

These prohibitions are almost identical with the provision in the KZ-1 that regulates supervised probation[152] and as such its execution in practice is already established. Any additional issues regarding the execution of these new prohibitions in cases of juvenile offenders are therefore not expected.

Supervision of the Social Work Centre

The supervision of social services is renamed as supervision of the Social Work Centre, which represents merely an editorial change, since this measure is already executed by Social Work Centres.

A more important change is the shortening of its minimum term to 6 months (currently 1 year) and its maximum term to 2 years (currently 3 years). The Ministry of Justice explains that practical experience has shown that this measure can have positive effects after just six months. Furthermore, the draft ZOMSKD prescribes more frequent reports on the execution of educational measures (time period shortened from 6 months to 3 months),[153] which, according to the Ministry's viewpoint, will allow the determination of whether this measure is effective or should be replaced with another measure, at an earlier stage.[154]

This change is contrary to the expressed views of the interviewees – none of them proposed shortening the terms of educational measures. Nevertheless, according to the gathered data the prevalent issue of the educational measure in question is not its length but its execution – namely that contacts with juvenile offenders are not frequent enough. If the proposed shortened periods within which the Social Work Centres are to report on the execution of the measure will prompt the social workers to conduct more frequent meetings and activities with juvenile offenders, which would in turn provide a more intensive treatment, then the shortening of the terms of this measure might not be detrimental. However, the proposed legislative amendments will not, in an of themselves, resolve the described practical issue. Nevertheless, the shortening of the maximum term is not detrimental, since the court may replace the measure in question with a different educational measure if it determines that its implementation is not successful.[155] The maximum period of 2 years therefore presents sufficient time for such an assessment.

Residential measures

Committal to an educational institution

This provision remains substantively unchanged. According to the views presented above it can be concluded that no amendments are required.

However, a stipulation is added that it is the court that shall determine the specific educational institution in which the imposed measure is to be executed.[156] This is contrary to Article 8/II of the ZOOMTVI, according to which the Social Work Centre is to determine the Expert centre into which the juvenile offender is to be placed. Accordingly, these should be harmonised.

[152] Article 65 KZ-1.
[153] Article 116/II ZOMSKD.
[154] Predlog ZOMSKD, EVA: 2018-2030-0046 – predlog, 24. 12. 2019, pg. 64-65.
[155] Article 117 ZOMSKD.
[156] Article 17 ZOMSKD.

Committal to a correctional home

Compared to the current legal framework, the draft ZOMSKD slightly changes the purpose of this measure: the juvenile offender is to be placed in a correctional home if they, in addition to the continuous guidance of experts, require stricter supervision to ensure their education and re-education as well as deterrence from further committal of criminal offences.[157] This amendment does not, however, significantly affect the current purpose and nature of this residential measure.

Furthermore, the provision of Article 80/II of the KZ which provides for the court to consider the nature and gravity of the committed criminal offence when determining what measure to impose is not included in the draft ZOMSKD. Rather, as per Article 6 of the draft ZOMSKD, the court shall consider other general circumstances, notably if other educational measures have previously been imposed on the juvenile offender and been unsuccessful. This amendment presents an important alteration of the criteria for imposing a residential measure. This may be considered as stricter in the approach since the court now has a much more limited scope when addressing the circumstances of the case to determine the imposition of this measure – the court could hereafter impose this sanction even in cases of minor criminal offences. However, restricting the imposition of this sanction generally to more serious criminal offences as per the current legislation, may be perceived as contrary to the general purpose of sanctioning juvenile offenders. The proposed regulation of Article 19/II draft ZOMSKD provides greater possibilities for the individualisation of the sanction as it more appropriately addresses the concrete needs of the juvenile offender – including where stricter measures are required even if none of the committed criminal offences were of more serious nature. Furthermore, such regulation is not contradictory to the principle of gradual penal sanctioning – the provision keeps the precondition that the court shall impose this measure only if other educational measures have previously been imposed and been unsuccessful. Accordingly, the proposed amendment is evaluated as positive.

Minimum and maximum terms are not amended, as agreed with the positions expressed above.

Committal to an institution for young people with mental disabilities

In the draft ZOMSKD, this provision now concerns only juvenile offenders who are affected by mental disabilities, whereas juvenile offenders with physical disabilities are not covered. It is also prescribed that the court shall obtain an expert opinion from the Committee for guidance of children with special needs; the Committee shall deliver its opinion within one month of receiving the court's request. This amendment can be seen as positive, since juveniles should be examined by a professional and dedicated authority within a reasonable amount of time so that their treatment can start as early as possible.

Furthermore, this measure may substitute only a residential measure, and not a safety measure of compulsory psychiatric treatment and detention in health institution as is currently prescribed in the KZ.[158] Regarding the term of the committal to the institution in question, the provisions of the substituted measure (committal to an educational institution or to a correctional home) are to be applied respectfully.

The omittance of the substitution of the safety measure is in accordance with the presented theoretical viewpoints, since the legal nature as well as purpose of such a safety measure are rather different than the legal nature and purpose of the measure in question. Nevertheless, the mentioned

[157] Article 18 ZOMSKD.
[158] Article 81/II KZ.

safety measure may still be imposed upon the juvenile offender as an independent measure if conditions for it are fulfilled.[159]

The amended provision is also clearer regarding the length of placement, since it is no longer ambiguous which educational measure's legal regime is to be applied. These delimitations are therefore considered positive.

Punishments

Fine

This provision remains generally unchanged in the draft ZOMSKD. As similarly prescribed in the KZ,[160] lower amounts may be imposed on the juvenile offenders than upon adult offenders – no more than 180 daily amounts whereas a single daily amount may not exceed 500 EUR[161] (for adult offenders generally no more than 360 daily amounts, whereas a single daily amount may not exceed 1.000 EUR[162]).

According with the above expressed positions on fines, this provision is considered adequate.

Juvenile prison

The conditions for imposing juvenile prison and determining the length of the sentence remain unchanged in the draft ZOMSKD. [163] The condition for imposing the maximum term of 10 years has been slightly altered, since it can hereafter be imposed for criminal offences for which a sentence of minimum 15 years is prescribed (according to the KZ the maximum term of 10 years may be prescribed for criminal offences for which a 30-year prison sentence is prescribed).[164]

However, this may not be perceived as a stricter sentencing framework, as it only presents an editorial amendment in line with the currently valid KZ-1. Currently the punishment framework for juvenile offenders is still based on the amended KZ (no longer valid in any other part) and thus refers to its Special Part of the KZ. In KZ it was explicitly prescribed that certain criminal offences are punishable by a 30-year prison sentence, whereas the (now valid) KZ-1 provides for the possibility of imposing a maximum 30-year sentence in its General Part. In the Special Part the diction in the description of individual criminal offences is that such an offence is punishable by imprisonment of at least 15 years, which effectively means up to 30 years.

According to the expressed standpoints, the juvenile prison legal regime itself does not require amendments.

Conclusions

All in all, this section has found that general provisions regarding sanctioning in draft ZOMSKD are adequate and do not require amendments, particularly those provisions concerning reprimand which remain unchanged from KZ. Rather, the integration of an instruction of treatment of alcohol or drug

[159] Articles 11 and 32 ZOMSKD and 70.a KZ-1.
[160] Article 88/II KZ.
[161] Article 24 ZOMSKD.
[162] Article 47/II KZ-1.
[163] Article 25 and 26 ZOMSKD.
[164] Article 89/II KZ.

addictions in the draft ZOMSKD is welcome. By contrast, amendments to instructions and prohibitions are proposed to provisions concerning the treatment of addictions in order to be imposed in conjunction with residential measures.

In the draft ZOMSKD, the minimum term of the measure for the supervision of the Social Work Center is shortened from 1 year to 6 months and its maximum term is shortened from 3 years to 2 years. The shorter maximum term foreseen in the draft ZOMSKD is not considered detrimental due to the court's power to replace the measure with a different educational one in cases where implementation is not successful. The maximum period of 2 years is considered sufficient for such an assessment. Moreover, it should be long enough to ensure that the offender has had a chance to readjust their behaviour and develop new routines more conducive to a law-abiding future. Hence, it seems that the change is not problematic, but rather a welcome one.

Provisions concerning the committal to an educational institution remain generally unchanged, no substantive amendments are needed. However, the rule that prescribes that the court shall determine the specific educational institution in which the imposed measure is to be executed, is contrary to Article 8/II of the ZOOMTVI, which prescribes that the Social Work Centre is to determine such institution. As a consequence, the rules should be harmonised.

The draft ZOMSKD includes an altered criterion for the committal to a correctional home such as that the court is bound to consider, in additional to other general circumstances, if other educational measures had been previously imposed on the juvenile in question. Such change is welcome as it provides for greater possibilities for the individualisation of the sanction due to an increased capacity to address the convrete needs of the juvenile, regardless of the gravity of the offence.

Changes to the provisions for the committal to an institution for children and young people with mental disabilities are particularly welcome. The measure included in the draft ZOMSKD now applies only to juveniles who suffer from mental disabilities. The Committee for guidance of children with special needs shall provide the court with an expert opinion within one onth of receiving the court's request. The imposition of this measure may substitute only a residential measure. The amended provision is considered positive as it prescribes for the Committee's opinion in a timely manner. Moreover, the provision's legal nature, the legal regime that is to be applied as well as terms for the committal to an institution are more clearly defined.

Finally, provisions concerning fines and conditions for imposing juvenile prison (including the determination of the length of the sentence remain unchanged and do not require particular amendments.

4.4.3 Recommendations

- The purposes of sanctions for juvenile offenders, namely (re-)education, rehabilitation and the proper development of the young person, should be underscored in any new legislation that is adopted.
- In order for the stated purposes of sanctions to be fulfilled, individualisation of sanctions is strongly needed. This can only be achieved through an adequate assessment of each young person's personal situation and circumstances, including any potential mental health or mental development difficulties, as well as specific emotional or behavioural needs. If the underlying reasons for a juvenile offender's behaviour can be understood, the most

appropriate measures or sanctions can be adopted, hence increasing the chances of a successful reintegration and reducing the risk of reoffending. While in this context, absolute priority needs to be given to the individualisation of sanctions, it is important to ensure that the principle of equality is still respected, through making sure courts decide on cases knowing what measures are typically used in similar cases.

- Courts should duly monitor the implementation of imposed sanctions and, if needed, promptly replace them with other, more appropriate measures based on the juvenile offender's potential difficulties, needs, or (lack of) progress.
- Challenges relating to both the decision and the execution of sanctions stem from the absence of adequate specialisation, and any new legislation should foresee courts, judges and prosecutors which are specialised in juvenile justice and given a specific mandate to work in a holistic manner on cases involving juvenile offenders.
- The supervision of juvenile offenders against whom a criminal sanction has been imposed has proven problematic. In order to be meaningful, such supervision should be regular, involving a continued dialogue between the juvenile offender, specialised social services, and the judge who decided upon the sanction.
- The existing difficulties in terms of supervision by social services stem from systemic challenges that reach far beyond the social services involvement with the criminal justice system. With regard to dealing with juvenile offenders, some of them could potentially be resolved by:
    - amending the Catalogue so that more frequent contacts and more diverse and individualised activities with juvenile offenders could be prescribed;
    - conducting training courses for social workers to promote more thorough and individualised contacts with juveniles;
    - hiring more social workers or possibly cooperating with (volunteer) assistants, on the condition that they receive prior training.
- A number of non-residential sanctions are already foreseen in the existing legal framework and could be better used under a new legal framework, for instance as follows:
    - By foreseeing an appropriate individual assessment of each juvenile offender, in which the young person's situation, circumstances and needs are taken into account. That way, the court can choose between the diverse options the most appropriate sanction for each individual case, bearing in mind that the purpose of the sanction should be to maximise the young person's chances of (re-)education, rehabilitation and proposer personal development;
    - Establishing that the lightest possible sanction appropriate after considering the individualisation of the measure, should always be imposed. This means that the often criticised reprimand should still remain a viable option in the system for cases when no heavier sanction is considered necessary and should consist of a firm and clear notice of the juvenile offender's wrongdoing;
    - Enhancing the use of instructions and prohibitions as forms of sanctions which could correspond to the juvenile offender's individual situation and benefit their rehabilitation, rather than imposing sanctions that involve the deprivation of liberty unless those are considered absolutely necessary.

- Residential sanctions are also regulated by the already existing legal framework, but would need to be accompanied by a more firm and individualised treatment plan for juvenile offenders. For instance, the new legislation could foresee:
    - that the identification of a juvenile offender's specific psychosocial characteristics or needs is carried out immediately by the social services or by a designated diagnostic centre which should be clearly established by law, to ensure the most effective sanction or measure can be adopted in each case. Each time an inadequate sanction is adopted, valuable time is lost in the young person's development phase, potentially making their rehabilitation more difficult. Currently such diagnostic centres are non-existent;
    - that certain instructions may be imposed in conjunction with residential sanctions. That way, institutions for juvenile offenders can implement intensive and targeted treatment programmes for the most problematic residents, and also address the noticeable problem related to alcohol and drug addiction within residential facilities.
- The committal of juvenile offenders with physical or mental disabilities to an institution is currently ambiguous and its legal aspects should be more clearly defined in any new legislation and delimited from other legal options. The draft ZOMSKD foresees amendments to this measure, notably by limiting it to juvenile offenders with mental disabilities (excluding physical disabilities) and by foreseeing a more clearly defined legal regime, which is considered welcome. Importantly, the ZOMSKD foresees that a Committee for the guidance of children with special needs shall provide the court with an expert opinion within one month, and the imposition of this measure may substitute only another residential sanction. It is recommended to follow the amendments foreseen by the ZOMSKD in this regard.
- Juvenile prison should remain in the legislation and be strictly reserved for the most serious cases. It should be imposed as a measure of last resort only, when all other measures have proven inefficient or the circumstances are exceptionally grave. Moreover, juvenile prison today represents an unsatisfactory sanction with regard to the purposes of sanctions for juvenile offenders, and could be improved for instance by:
    - establishing educational and recreational programmes as well as sophisticated treatment programmes for juvenile offenders placed in juvenile prison in order to facilitate their (re-)education and rehabilitation;
    - maintaining the prescribed minimum term of 6 months, to ensure that the purpose of juvenile prison can be guaranteed and that prison sentences are only passed in cases where courts absolutely cannot imagine other measures to be successfull.
- Provisions concerning the committal to an educational institution should be harmonised with Article 8/II of the ZOOMTVI, to establish whether it is the court or the social work center in charge to select the appropriate educational institution for the juvenile.

5. CRIMINAL PROCEDURE

5.1 Evolution of the procedural criminal juvenile legislation in Slovenia

The Criminal Procedure Act (ZKP) was adopted in 1994 and entered into force in 1995. Its provisions are guided by the principles enshrined in the Constitution of the Republic of Slovenia, *inter alia* the protection of personal liberty (Article 19), order and duration of detention (Article 20), the protection of human personality and dignity (Article 21), equal protection of rights (Article 22), the right to judicial protection (Article 23), public trial (Article 24), the right of appeal (Article 25), the right to compensation (Article 26), the presumption of innocence (Article 27), and legal guarantees in criminal proceedings (Article 29).

For the ZKP to comply with Article 56 of the Constitution of the Republic of Slovenia and Article 3 of the Convention on the Rights of the Child (CRC) - the principle of the best interest of the child, the ZKP provides for the special protection of children in a criminal procedure. It states that children in conflict with the law have a right to special care and attention.

The ZKP regulates the specific procedure for juvenile offenders in Chapter XXVII. This chapter has been subject to several changes, most recently through the Act amending the Criminal Procedure Act (ZKP-O). The ZKP-O transposed the Directive EU 2016/800 of the European Parliament and the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings into the ZKP.

The draft ZOMSKD aims to unify the substantive and procedural aspects of handling juvenile offenders in one Act, which would include thoroughly regulating the criminal proceedings for such offenders. In this regard, ZOMSKD would become *lex specialis* to the ZKP. The ZOMSKD also intends to introduce several improvements to the effectiveness and fairness of criminal proceedings against juvenile offenders, which were not included in ZKP-O. Due to the fact that ZKP is quite frequently amended, the use of ZKP provisions regarding the questions not specifically regulated in ZOMSKD (under additional condition that such provisions are not contrary to ZOMSKD) could pose a challenge or a threat to the principle of legal safety and predictability.

5.2 Overview of the theoretical and normative aspects of the criminal procedure against juvenile offenders in Slovenia

The aspiration to treat juvenile offenders differently from adult offenders is deeply rooted in Slovenian legal thought, as the particularity of handling juvenile offenders was already established in the Socialist Federative Republic of Yugoslavia (SFR of Yugoslavia).[165]

The criminal procedure against juvenile offenders in Slovenia today is based on the standard criminal procedure for adult offenders. However, Chapter XXVII of the ZKP contains special provisions for juvenile offenders to diminish the possibly harmful effects of criminal proceedings on the

[165] Bavcon, Šelih, 1978, pp. 362-369.

development of juvenile offenders.[166]Alternatively, a new option to process cases with young offenders was established with the passing of **ZZOKPOHO,[167] which opens a possibility for a juvenile offender to be questioned in a specialised institution based on the Barnahus model**.[168]

Institutions and practitioners participating in proceedings against a minor must act with special expedition to bring the proceedings to completion as soon as possible[169]; act in the best interest of the young offender[170]; respect their dignity; and remain mindful of their age, maturity, mental capacity, level of understanding, and other personal circumstances to prevent the proceedings from affecting the juvenile's development.[171]

In line with the general practice of European countries, juvenile offenders under the age of 14 are not criminally liable in Slovenia.[172] If it becomes clear during a criminal proceeding that the minor was below the age of 14 when committing the criminal offence, the criminal proceedings must be discontinued and a social welfare authority informed thereof.[173] In case of a doubt whether the minor was of legally relevant age (14, 16, 18, or 21), the presumption applies that they were not.[174]

In the case of offenders older than 14, the situation is different. As noted by Filipčič and Plesničar, the Slovenian criminal procedure is based on the principle of legality which binds prosecutors (and to some extent police officers) to institute criminal proceedings if they obtain evidence that a criminal offence was committed.[175] However, even when the offender is over the age of 14, there is a chance that the criminal procedure will not conclude with a sanction due to the discretion of the prosecutor to initiate proceedings or not (to dismiss a case – see Table 6 below) or to refer the criminal complaint to a mediation or to defer criminal prosecution (the expediency principle).[176] According to Filipčič, these diversion practices were introduced to disburden the court system through introducing alternative procedural mechanisms.[177] Due to the principle of legality, the prosecutor remains the only subject that can initiate criminal proceedings against a minor.[178]

A minor may not be tried in their absence[179] and has the right to be accompanied by a parent or a guardian (or in certain cases another person of their choosing) during the criminal proceedings. Both the juvenile and the accompanying person must be informed about the juvenile offender's rights.[180] The hearing of the juvenile may be conducted with the assistance of an educator or other expert.[181]

[166] Šugman Stubbs, 2008 pp. 483-539; Filipčič and Plesničar 2017, p. 402.
[167] Zakon o zaščiti otrok v kazenskem postopku in njihovi celostni obravnavi v hiši za otroke (ZZOKPOHO), Ur. l. RS, št. 54/21
[168] Article 1/II ZZOKPOHO.
[169] Article 461 ZKP.
[170] Article 453/II ZKP.
[171] Article 453/III ZKP.
[172] Filipčič and Prelić, 2011, p. 449.
[173] Article 452 ZKP.
[174] Article 452.a ZKP.
[175] Filipčič and Plesničar, 2017, p. 402.
[176] Article 466 ZKP; Filipčič, 2010, p. 6.
[177] Filipčič, 2015, p. 825.
[178] Article 465/I ZKP and Article 465/II ZKP.
[179] Article 453 ZKP.
[180] Article 452.c ZKP.
[181] Article 452.

The ZKP also regulates detention and remand for juvenile offenders. The length of pretrial detention, which can, once the charge has been filed, last up to 2 years, has been considered too long.[182]

Before the charge has been filed, juvenile offenders may be detained for the same reasons as adult offenders, but for a maximum duration of 3 months.[183] That means that in total, a juvenile offender may be detained for 2 years and 3 months altogether.

In case of detention or remand, there is a prohibition to accommodate juvenile offenders together with adult offenders (unless there are exceptional circumstances as described below).[184] If a minor has committed a criminal offence jointly with adult persons, the proceedings against the minor must be separated and conducted under the provisions governing juvenile criminal proceedings, unless a joint procedure is necessary for a comprehensive clarification of the case.[185]

A minor may have a legal counsel throughout the whole proceedings.[186] They must have legal representation (apart from situations where the appointment of a defence counsel is obligatory for an adult offender) from the beginning of the preparatory procedure (or in some cases even before) if they are tried for a criminal offence punishable by more than three years of imprisonment. If tried for a less serious offence, the judge decides if legal representation is necessary.[187] The minor must also have legal representation in cases of deprivation of liberty.[188] The minor may choose a defence counsel themselves or through the help of relatives or guardians, otherwise, a judge chooses an attorney from the list of attorneys specialised in juvenile cases.[189]

During the preliminary procedure of the criminal proceedings, the court must establish the facts of the case, but also conduct an individual evaluation of the minor, namely their age, maturity, personality, development, etc. (individual evaluation of a minor).[190] No one shall be exempt from the duty to testify about the circumstances necessary to make such an evaluation.[191] It is important to note that such duty does not refer to information regarding the criminal offence committed, but merely to information about the juvenile offender.

5.3 Current issues in juvenile criminal procedure in Slovenia

5.3.1 Alternative diversion procedures

General

Theoretical and normative aspects

The ZKP allows the State Prosecutor to decide not to request the institution of criminal proceedings against a minor, but to refer instead the criminal complaint to mediation or to defer the criminal

[182] Filipčič and Prelić, 2011, p. 453.
[183] Article 472 ZKP and Article 201 ZKP.
[184] Article 452.d ZKP and Article 473 ZKP.
[185] Article 456/I ZKP.
[186] Article 454/IZKP.
[187] Article 454/IIZKP.
[188] Article 454/IVZKP
[189] Article 454/V ZKP and 452.b/III ZKP.
[190] Article 469/I ZKP.
[191] Article 455 ZKP.

prosecution.[192] If the case is referred to mediation, the criminal complaint is dismissed after the mediation process led by a mediator is successfully completed. In case of deferment of prosecution, the prosecutor does not request the opening of criminal proceedings, but instead imposes on the juvenile offender one of the tasks set out in the law. If the minor completes the task within the given time limit, the public prosecutor dismisses the complaint.

The prosecutor can do this in the case of a criminal offence which is punishable by up to five years of imprisonment or a fine, and if they realise that due to the nature of the criminal offence and the circumstances in which it was committed, as well as given the past life of the minor and their personality traits, the proceedings against the minor would not be expedient.[193]

If the prosecutor decides to instigate alternative diversion procedures, they must notify the victim and inform them of the reasons for their decision. The victim has the right to request from the juvenile panel to institute criminal proceedings within eight days. [194]

This option provided to the victim by Article 466 ZKP emphasises the role of the victim. As this provision stands in contrast to the usual practice in juvenile criminal proceedings, where the rights of the victim are secondary to the best interest of the accused, some suggest this right of the victim be removed from legislation.[195]

Practical aspects

Figure 4 (*see below*) indicates that prosecutors dismissed on average 48.5% of all cases, among which almost a third were dismissed for reasons of expediency and the fact that the offences concerned were too minor, and 16% for the alternative options of mediation and deferment of prosecution. This is a significant drop from 2005 when, as the table 6 (*see below*) indicates, the latter group of reasons comprised 31% of all dismissals.

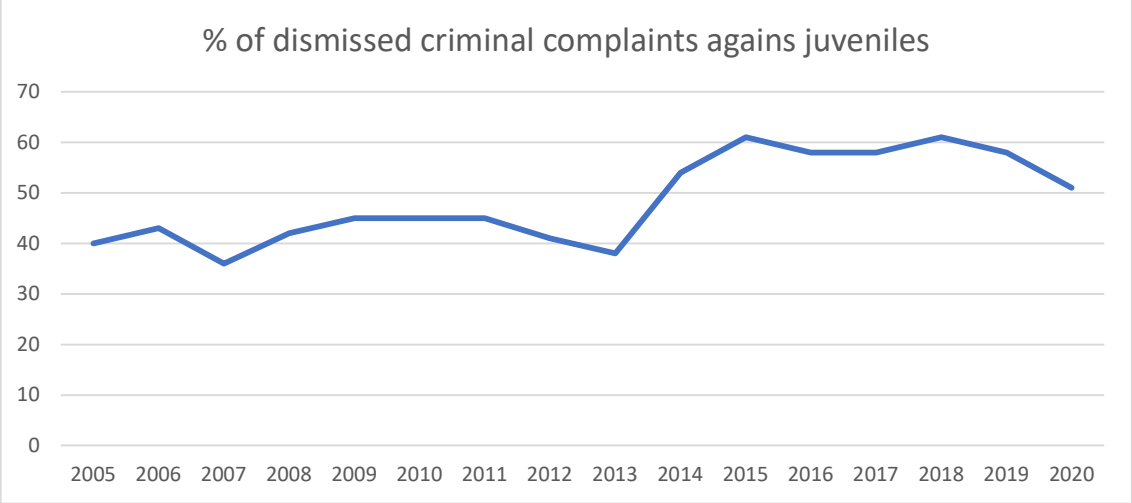

Figure 4: Dismissal of criminal complaints (Source: Supreme State Prosecutor's Office of the Republic of Slovenia).

[192] Article 466/II ZKP.
[193] Article 466/I ZKP, Article 161.a/II ZKP and Article 162/II ZKP.
[194] Article 466/IV ZKP.
[195] Filipčič *et al*., 2010 p. 22.

	2013	2014	2015	2016	2017	2018	2019	2020
Reason for dismissal – total	851	980	918	770	673	787	856	756
Minor importance of the offence (%)	32,1%	32.4%	28.6%	30.9%	31.2%	29.6%	28.4%	20.9%
Withdrawal of the proposal for prosecution (%)	8%	14.3%	11.3%	18.8%	11.3%	13.7%	15.4%	17.9%
Mediation (%)	2,2%	0.3%	1.3%	1.6%	2.8%	1.8%	2.7%	1.4%
Deferment of prosection (%)	11,7%	12.3%	13.9%	11.8%	18.6%	12.1%	14.4%	11.9%
Expediency principle (%)	11,2%	11.5%	13.5%	8.6%	7.0%	6.9%	7.7%	9.8%

Table 6: Dismissal of criminal complaints on different grounds (Source: Statistical Office).

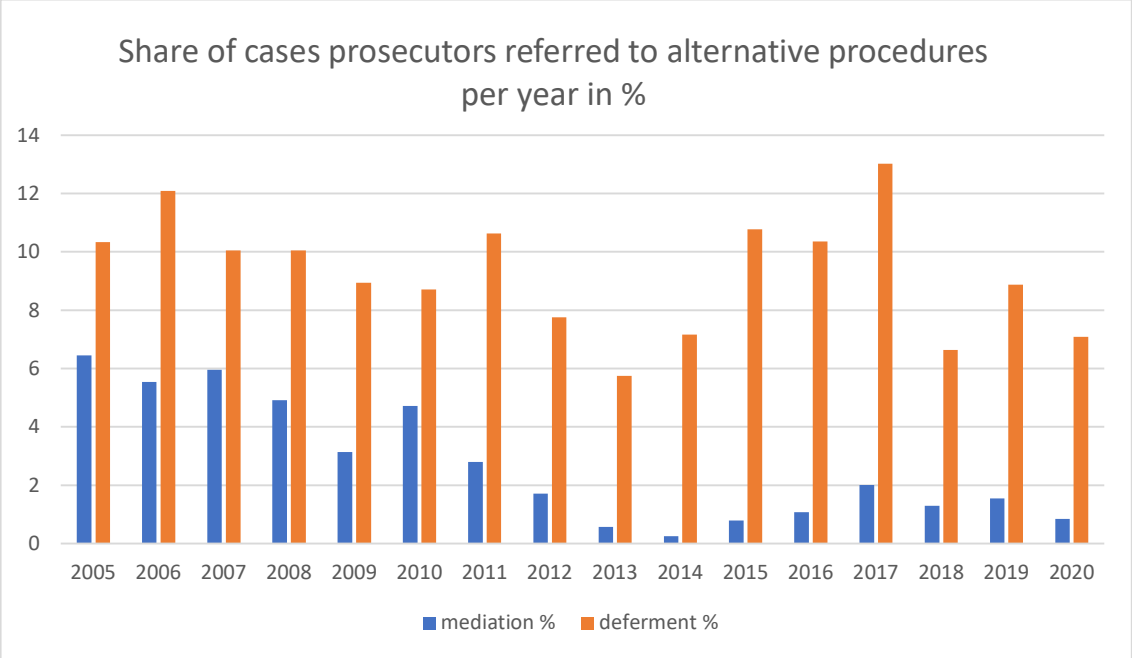

Figure 5: Share of cases referred to mediation and deferment (Source: Supreme State Prosecutor's Office of the Republic of Slovenia).

Stakeholders' views

During the roundtable in April 2022, the stakeholders discussed the issue of choosing between mediation and deferment, which was also a topic discussed with different professionals in the semi-structured interviews. According to the prosecutor, the line between mediation and deferred prosecution is blurred - the catalogue of offences for which these two measures are possible is repetitive and overlapping. Prosecutors find the guidelines and instructions of the Supreme State Prosecutor's Office regarding alternative diversion procedures t helpful, but not binding or precise. Therefore, it is common practice to defer proceedings to mediation in case of more personal criminal offences, where the offender and the victim know each other, and when the victim is a natural person.

Prosecutors consider that the legal framework falls short of substantive provisions which should be developed to provide more guidance to help them decide for the alternative diversion procedures.

The judge was overall satisfied with the ratio of decisions made by prosecutors to defer or prosecute. The representative of the police, however, stated that from their perspective, it would be better if more cases were brought before the court, as that would, in their opinion, **reduce recidivism.** According to the police, a deferral can sometimes send the wrong message; it would be more beneficial for the juvenile to be prosecuted and learn from their mistake and the criminal procedure that follows. The police's main task is to maintain public safety and peace; therefore, they would like to see more court sanctions imposed upon juveniles. Such practice would offer a more long-term solution to the problems both experienced and caused by a juvenile offender. Similarly, a director of an educational institution advocated for limiting diversion procedures, especially in cases of violent criminal offences. Responding lightly to aggressive offences does not set a good example or serve an educational purpose. In their opinion, prosecutors also do not have the expertise to assess which juvenile has serious emotional and behavioural difficulties and will continue with criminal activities because those are not properly addressed. According to the prosecutor, several prosecutors share the opinion that the juvenile's first offence should go to court to let them know their actions have serious consequences. However, the prosecutor strongly supported not bringing to the court cases that are not serious and/or are committed by the juvenile due to adrenaline or peer pressure. The attorney highlighted that in certain cases the stigma deriving from a criminal procedure is disproportionally harmful to the juvenile compared to the benefits of bringing the case to court.

When seeking a solution to this problem as part of the roundtable, the stakeholders agreed that listing specific criminal offences for which diversion procedures at the level of prosecution would not be allowed or effective would not be beneficial. Through the years, juvenile delinquency changes, and there would always be a need to adjust the list or add to it new criminal offences. As listing specific criminal offences would thus merely provide a temporary solution, the prosecutor thought it would be better to raise the sentencing limit. The stakeholders finally agreed that the best approach would be to broaden the catalogue of criminal offences in which diversion is possible and to do so by allowing quite precise delineation, but not making the system too limiting or rigid.

Draft ZOMSKD

The draft ZOMSKD gives greater weight to diversion procedures, as it states that such procedures take precedence over criminal proceedings, which are therefore subsidiary in nature.[196]

ZOMSKD further determines that mediation or deferment of prosecution are only allowed for criminal offences punishable by a fine or up to 5 years of imprisonment,[197] which is the same limit as set currently set by ZKP. The difference with ZOMSKD, however, is that it extends the catalogue of criminal offences for which the alternative procedures are allowed to certain criminal offences punishable over 5 years of imprisonment. For mediation, such criminal offences are the grand larceny and arson, and for deferment of prosecution, the drug production and trafficking, illicit substances in sport and precursors for the manufacture of narcotic drugs, grand larceny, robbery, damage to or destruction of objects of special cultural value of special cultural interest or of natural value and others.[198]

[196] Article 8 ZOMSKD.
[197] Article 58/I ZOMSKD.
[198] Articles 59/I and 60/I ZOMSKD.

When deciding about mediation or deferment of prosecution, the prosecutor must take into account the conditions stated in the ZKP and make sure such alternative procedures will contribute to the optimal development of the juvenile, inferred from the specific circumstances of the case. [199]

Conclusion

Based on the opinions of relevant stakeholders, more thought should be put into determining the conditions for diversion procedures. The inclusion into the ZOMSKD of the requirement that the prosecutor must make sure diversion procedures will contribute to the optimal development of the juvenile, inferred from the specific circumstances of the case, is positively evaluated. However, it **remains unclear whether prosecutors have the expertise to make such an assessment and how they can evaluate all the circumstances of the case in the best interest of the child.**

More effort should therefore be made to equip prosecutors with knowledge about the social and psychological development of children.

COE Guideines on Child Friendly Justice: 5. Multidisciplinary approach 16. With full respect of the child's right to private and family life, close co-operation between different professionals should be encouraged in order to obtain a comprehensive understanding of the child, and an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation. 17. A common assessment framework should be established for professionals working with or for children (such as lawyers, psychologists, physicians, police, immigration officials, social workers and mediators) in proceedings or interventions that involve or affect children to provide any necessary support to those taking decisions, enabling them to best serve children's interests in a given case. 18. While implementing a multidisciplinary approach, professional rules on confidentiality should be respected. Explanatory notes: 5. Multidisciplinary approach 70. The text of the guidelines as a whole, and in particular Guidelines 16 to 18, encourage member states to strengthen the interdisciplinary approach when working with children. 71. In cases involving children, judges and other legal professionals should benefit from support and advice from other professionals of different disciplines when taking decisions which will impact directly or indirectly on the present or future well-being of the child, for example, assessment of the best interests of the child, possible harmful effects of the procedure on the child, etc. 72. A multidisciplinary approach to children in conflict with the law is particularly necessary. The existing and growing understanding of children's psychology, needs, behaviour and development is not always sufficiently shared with professionals in the law enforcement fields.

Article 58 of the ZOMSKD could support the decision of prosecutors on mediation or deferred prosecution by giving them the option to involve juveniles themselves and adults from their close circle (parents, carers, teachers, psychologist, social worker) to contribute to the identification of the best solution for them in accordance with their needs and taking into account their views and opinions. It could also be possible to ask for a written opinion from Social work centre.

EU Directive on procedural safeguards for children who are suspects or accused persons in criminal proceedings: (35) Children who are suspects or accused persons in criminal proceedings should have the right to an individual assessment to identify their specific needs in terms of protection, education, training and social integration, to determine if and to what extent they would need special measures during the criminal

[199] Article 58/I ZOMSKD.

proceedings, the extent of their criminal responsibility and the appropriateness of a particular penalty or educative measure.
(36) The individual assessment should, in particular, take into account the child's personality and maturity, the child's economic, social and family background, including living environment, and any specific vulnerabilities of the child, such as learning disabilities and communication difficulties.
(37) It should be possible to adapt the extent and detail of an individual assessment according to the circumstances of the case, taking into account the seriousness of the alleged criminal offence and the measures that could be taken if the child is found guilty of such an offence. An individual assessment which has been carried out with regard to the same child in the recent past could be used if it is updated.
(38) The competent authorities should take information deriving from an individual assessment into account when determining whether any specific measure concerning the child is to be taken, such as providing any practical assistance; when assessing the appropriateness and effectiveness of any precautionary measures in respect of the child, such as decisions on provisional detention or alternative measures; and, taking account of the individual characteristics and circumstances of the child, when taking any decision or course of action in the context of the criminal proceedings, including when sentencing. Where an individual assessment is not yet available, this should not prevent the competent authorities from taking such measures or decisions, provided that the conditions set out in this Directive are complied with, including carrying out an individual assessment at the earliest appropriate stage of the proceedings. The appropriateness and effectiveness of the measures or decisions that are taken before an individual assessment is carried out could be re-assessed when the individual assessment becomes available.
(39) The individual assessment should take place at the earliest appropriate stage of the proceedings and in due time so that the information deriving from it can be taken into account by the prosecutor, judge or another competent authority, before presentation of the indictment for the purposes of the trial. It should nevertheless be possible to present an indictment in the absence of an individual assessment provided that this is in the child's best interests.
This could be the case, for example, where a child is in pre-trial detention and waiting for the individual assessment to become available would risk unnecessarily prolonging such detention. [200]

Mediation

Theoretical and normative aspects

Mediation is a procedure in which the victim and the perpetrator resolve the conflict as equal parties. Upon the suggestion of relevant experts, the legislator extended the possibility of mediation to all stages of the proceedings.[201] In deciding whether to take the case to the mediation, the state prosecutor shall take into account the type and nature of the offence, the circumstances in which it was committed, the personality of the perpetrator and their prior convictions for the same type of criminal offences or for other criminal offences, as well as their degree of criminal liability.[202] A referral to mediation does not vouch for a successfully completed mediation procedure. Mediation is successful when the suspect and the victim reach an agreement and the suspect fulfils the obligations stipulated in this agreement.

Practical aspects

In Slovenia, mediation has been in use since 2000. Statistical data indicate that since 2004, the number of cases that prosecutors refer to mediation has steadily declined until 2014, when the numbers hit record low and then began to increase, albeit extremely slowly. It is now almost not used at all, despite its rather successful use in the past years (*see figure 5 above*).

[200] DIRECTIVE (EU) 2016/800 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0800&from=EN
[201] Filipčič *et al*., 2010, p. 23.
[202] Article 161.a ZKP.

When asked about the possible reason for the lacking use of mediation as an alternative procedure, the prosecutor explained that there is a substantive **lack of mediators specialised enough to address criminal offences committed by juveniles. There used to be more of them, but due to the changed circumstances in the conditions for their work, there are currently barely enough specialised for different offences amongst adults.** The prosecutor is *de facto* limited in their decision by the lack of specialised mediators.

Year	Referred cases		Success rate %
	The number of juvenile cases referred to mediation	% of all cases	
2004	344	1.16%	68%
2005	225	6.46%	62%
2006	191	5.54%	63%
2007	194	5.95%	69%
2008	155	4.92%	70%
2009	100	3.15%	61%
2010	155	4.72%	76%
2011	88	2.80%	67%
2012	52	1.71%	52%
2013	17	0.58%	94%
2014	7	0.26%	43%
2015	16	0.80%	81%
2016	19	1.07%	68%
2017	32	2.01%	59%
2018	23	1.30%	57%
2019	32	1.55%	78%
2020	17	0.85%	94%

Table 7: The number of juvenile cases referred to mediation and success rate (Source: Supreme State Prosecutor's Office of the Republic of Slovenia).

Statistics have shown that on average, only 2,6% cases are referred to mediation, but that the success rate of initiated mediation processes on average in the past years has been almost 70% (See Table 7 above).

		CE	KK	KP	KR	LJ	MB	MS	NG	NM	PT	SG
2005	% of all cases	0.96%	3.64%	19.55%	6.97%	8.95%	0.00%	4.05%	4.59%	10.88%	0.00%	2.34%
2006	% of all cases	4.78%	7.83%	4.69%	6.43%	9.29%	0.00%	3.01%	5.62%	0.00%	0.00%	4.04%
2007	% of all cases	2.61%	1.92%	9.70%	8.70%	10.15%	0.00%	6.61%	2.30%	2.15%	0.00%	0.90%

2008	% of all cases	2.32%	1.89%	14.73%	6.75%	8.06%	0.00%	5.36%	3.48%	0.72%	0.00%	4.29%
2009	% of all cases	1.84%	0.00%	6.12%	2.58%	5.67%	0.00%	7.77%	2.17%	0.00%	0.00%	0.00%
2010	% of all cases	3.46%	0.94%	12.18%	1.06%	7.91%	0.00%	7.34%	0.93%	0.00%	1.09%	6.17%
2011	% of all cases	2.26%	0.93%	6.96%	0.00%	5.13%	0.00%	4.00%	0.90%	0.00%	2.33%	1.89%
2012	% of all cases	2.98%	0.00%	5.26%	0.00%	2.40%	0.00%	2.52%	1.32%	0.00%	0.00%	1.23%
2013	% of all cases	1.40%	0.00%	1.45%	0.00%	0.97%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
2014	% of all cases	0.79%	0.00%	0.00%	0.00%	0.39%	0.00%	0.95%	0.00%	0.00%	0.00%	0.00%
2015	% of all cases	0.51%	0.00%	0.85%	0.00%	0.80%	1.59%	2.70%	0.00%	0.57%	0.00%	2.38%
2016	% of all cases	1.28%	0.00%	0.00%	0.89%	1.71%	0.47%	4.62%	0.00%	0.00%	0.00%	0.00%
2017	% of all cases	0.47%	0.00%	0.00%	2.06%	3.99%	2.04%	0.00%	0.00%	0.69%	0.00%	0.00%
2018	% of all cases	1.97%	0.00%	0.00%	0.00%	2.48%	0.00%	3.51%	0.00%	0.51%	0.00%	0.00%
2019	% of all cases	0.86%	0.00%	2.91%	1.36%	2.16%	1.75%	0.00%	1.41%	0.45%	0.00%	0.00%
2020	% of all cases	0.40%	0.00%	2.63%	0.00%	1.26%	1.32%	0.00%	0.00%	0.00%	0.00%	0.00%

Table 8: The share of cases referred to mediation by each DSPO ((Source: Supreme State Prosecutor's Office of the Republic of Slovenia).

This table indicates important differences between the 11 district state prosecutor's offices: the share of cases that were referred to mediation ranged between 0% and 19.55% in 2005. Such practice demonstrates geographic unequal treatment not only of suspects but also of victims in Slovenia. **It suggests that the availability of mediation depends above all on a policy of a particular district state prosecution office and not on the type and nature of the committed offence or other relevant circumstances**. These differences indicate a non-unified criminal policy in various geographical areas despite the Guidelines adopted by State Prosecutor General aiming at achieving the opposite.

At the roundtable discussion, the prosecutor pointed out that a decision for mediation is *de jure* left to the prosecutor but is *de facto* limited by the lack of specialised mediators, which is why mediations are very rare and region-specific. More specifically, prosecutors only propose mediations in Ljubljana, Koper and Maribor, most of them in Ljubljana, where they also have a specialised mediator for juveniles. It can be concluded that the problem of mediation is not legislative, but practical. When asked for the reasons for such small number of mediators, it has been suggested that the monetary award for mediators is quite low and therefore not stimulating enough.

Focusing on the content of the mediation agreements, it must be emphasised that they may carry different tasks for the juvenile to fulfil. Statistical data show (*figure 6 see below*) that in the past 15 years by far the most common agreement was for the offender to apologise to the victim (on average more than 50% of all agreements), while the second most common obligation was the compensation of damages. Various other obligations in mediation agreements are not uncommon either, such as natural restitution of damages, return of items, and services in benefit of the injured party. It needs to be noted that the parties often combine and cumulate different obligations discussed above in one agreement.

A prosecutor at the roundtable discussion explained that such an outcome – an apology as the main result of the mediation – is often perceived as unsatisfactory, especially in the case of violent and more serious criminal offences, and is therefore another reason why the prosecutors rarely decide for mediation. Mediation as a response to violent criminal offences has further been criticised in the interview with a director of an educational home.

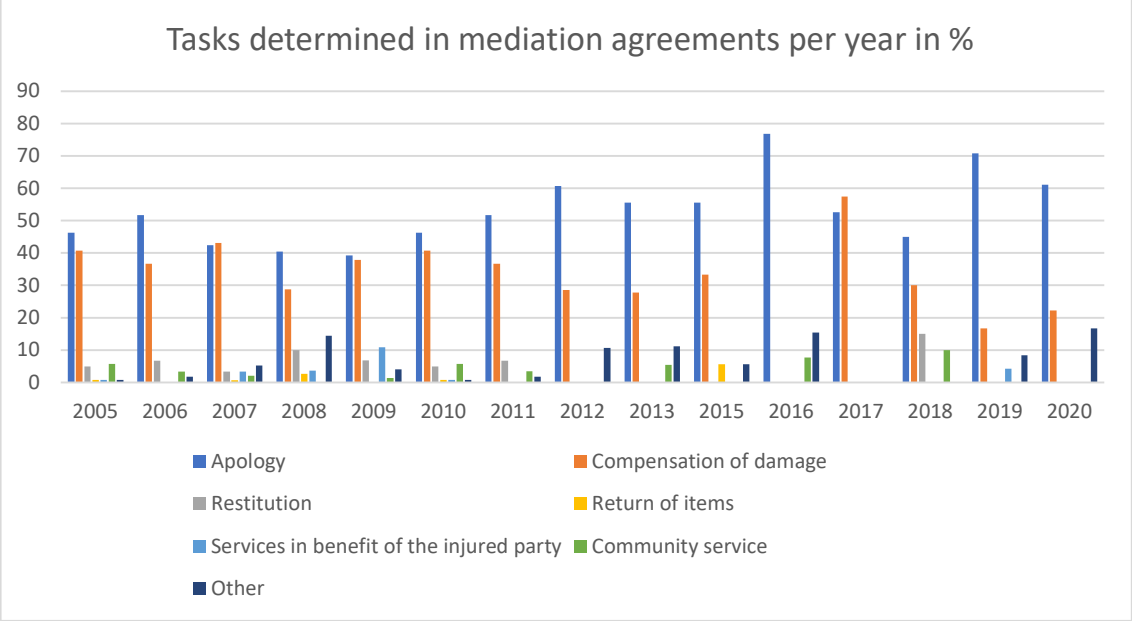

Figure 6: Tasks determined in mediation (Source: Supreme State Prosecutor's Office of the Republic of Slovenia).

Statistical data show (*Table 9 see below*) that among the different reasons for unsuccessful mediation the most common was the absence of the party's response to the invitation.

	The number of	A party fails to	A party does not	Mediation agreement	Mediation agreement	Withdrawal of the	Other reasons	Sum

	cases referred to mediation	respond to an invitation	consent to mediation	not concluded	not fulfilled	injured party's request for prosecution during the mediation procedure		
2005	225	27	32	2	5	7	10	77
2006	191	20	22	1	6	10	12	70
2007	194	26	31	1	3	0	8	61
2010	155	12	14	7	4	0	6	37
2011	88	8	10	4	7	0	4	29
2012	52	7	9	2	7	0	0	25
2013	17	1	0	0	0	0	0	1
2015	16	2	3	0	1	0	1	6
2016	19	4	3	0	0	0	1	7
2017	32	2	9	1	0	0	1	13
2018	23	2	7	0	0	0	0	9
2019	32	4	5	0	0	0	3	9
2020	17	5	0	1	0	0	0	6

Table 9: Reasons for unsuccessful mediation (Source: Supreme State Prosecutor's Office of the Republic of Slovenia)

ZOMSKD

To regulate mediation, ZOMSKD follows Article 161.1 ZKP, but modifies it according to certain comments made by experts in the past. The catalogue of criminal offences for which mediation is allowed is extended. The prosecutor may divert a case to mediation even for certain criminal offences for which the prescribed sentence is higher than 5 years when there exist "special circumstances".[203] The commentary to the Article 59 explains that such special circumstances are to be determined by the general state prosecutor, but indicates that the criminal act remained at the attempt or that it is in the interest of the victim that the case is diverted to mediation.

Another novelty of the ZOMSKD is that in case mediation results in community service or service in the benefit of the injured party, such service must not last longer than 120 hours.[204] The prosecutor has no role in the enforcement of such service, it is entirely monitored by the appropriate Social Work Centre. [205] The time frame for completion of such service is extended to 6 months. [206]

Lastly, ZOMSKD stipulates that the mediators in juvenile cases are chosen amongst professors, teachers, educators and other persons with experience of working with juveniles.[207]

Conclusion

The provision that mediators in juvenile cases are chosen amongst persons who have previously worked with juveniles is adequate, however this provision alone is not sufficient to address the practical problem of the lack of specialised mediators. The Ministry of Justice should put more

[203] Article 59/I ZOMSKD
[204] Article 59/II ZOMSKD.
[205] Article 59/II ZOMSKD.
[206] Article 59/III ZOMSKD.
[207] Article 59/IV ZOMSKD.

thought, energy and financial resources into mediation and change the conditions for mediators in order to stimulate more people to apply for such positions. Currently, the number of mediation processes in juvenile cases and the monetary compensation for mediators in such cases are very low, therefore not a lot of people decide to specialise in this field.

Mediators should further be equipped with relevant knowledge to be able to assess and minimize the chances of recidivism.

A greater attention could be paid to other possible outcomes of mediation, besides the apology, such as community service, service in the benefit of the injured party, or restitution of damages.

The time frame of six months foreseen for the completion of services is considered appropriate.

Deferment of prosecution

Theoretical and normative aspects

The other option for diversion for prosecutors is that of deferring prosecution under the condition that the juvenile offender performs certain actions to remove the harmful consequences of the criminal offence. These tasks include repairing or compensating for any caused damage, paying a contribution to a public fund, a charity institution or the compensation fund for victims of criminal offences, or performing community service. If the juvenile offender fulfils such obligation within a period of six months, the criminal complaint is dismissed. Deferred prosecution was introduced into the Slovenian legislation in 1995 and is therefore an older restorative justice instrument compared to mediation.

Practical aspects

The fact that deferred prosecution is an older instrument is probably one of the reasons why it has consistently been used more often than mediation (as shown by figure 5 above) above. On average, 9,3% of cases are referred to deferment of prosecution (*see table 10 below*).

It should be emphasised that with deferred prosecution the same trend as with mediation cannot be detected in an initial gradual decrease in the percentage of deferred cases per year. The percentage of cases referred to prosecution has decreased after 2006, but not drastically. The success rate of the deferred procedure (i.e. how often did juvenile offenders fulfull the obligations set by the prosection) is a bit lower than in the case of mediation – on average 65,5% (*see Table 10 below*).

Year	**Referred cases**		
	Number	**% of all cases**	**Success rate**
2005	360	10.33%	60.5%
2006	417	12.10%	55.9%
2007	332	10.05%	70.5%
2008	317	10.05%	72.6%
2009	284	8.94%	79.2%
2010	286	8.71%	63.6%
2011	264	10.63%	67.8%
2012	235	7.76%	68.9%
2013	169	5.76%	62.7%
2014	186	7.17%	69.3%

2015	215	10.78%	60.0%
2016	184	10.35%	49.5%
2017	207	13.02%	58.9%
2018	118	6.64%	79.66%
2019	183	8.88%	66.12%
2020	142	7.08%	61.97%

Table 10: Number of juvenile cases referred to deferment and success rate (Source: Office of the State Prosecutor General).

Table 11 (*see below*) indicates that just as in mediation procedures there are relatively great differences between the 11 district state prosecutor's offices: the share of cases that were referred to deferment ranged between 1.79% and 23.81% in 2020. **Such practice demonstrates geographically unequal treatment not only of suspects, but also of victims in Slovenia.**

		CE	KK	KP	KR	LJ	MB	MS	NG	NM	PT	SG
2005	% of all cases	20.00%	34.55%	0.90%	13.94%	0.60%	14.10%	22.30%	18.35%	9.86%	20.38%	10.94%
2006	% of all cases	25.80%	33.04%	1.56%	15.66%	3.53%	13.08%	27.82%	23.59%	22.26%	8.69%	14.14%
2007	% of all cases	17.32%	25.96%	3.03%	18.70%	3.92%	13.62%	16.53%	18.39%	15.02%	2.86%	10.43%
2008	% of all cases	14.24%	26.42%	5.43%	13.49%	3.31%	17.27%	9.82%	12.17%	8.24%	21.62%	11.43%
2009	% of all cases	20.79%	26.61%	4.59%	8.76%	3.58%	11.88%	14.56%	10.14%	2.26%	8.55%	7.46%
2010	% of all cases	15.96%	16.04%	5.58%	10.64%	2.77%	15.16%	7.34%	10.19%	7.92%	17.39%	12.35%
2011	% of all cases	19.77%	14.81%	2.17%	15.87%	1.24%	12.35%	17.60%	10.81%	3.95%	15.12%	15.09%
2012	% of all cases	18.16%	10.79%	3.35%	12.94%	2.78%	7.58%	22.69%	10.53%	2.64%	14.13%	6.17%
2013	% of all cases	9.80%	12.0%	0.72%	7.92%	2.62%	8.18%	21.74%	11.93%	0.40%	2.06%	1.08%
2014	% of all cases	21.26%	15.0%	1.53%	19.40%	2.36%	8.24%	16.19%	9.57%	0.74%	4.76%	1.69%
2015	% of all cases	17.86%	8.60%	10.19%	19.47%	5.45%	17.06%	25.68%	15.79%	3.98%	10.53%	0.00%
2016	% of all cases	20.51%	12.35%	14.56%	14.29%	5.27%	13.62%	13.85%	8.77%	4.79%	18.42%	5.08%
2017	% of all cases	23.83%	13%	27.10%	15.46%	7.19%	19.73%	25.00%	20.69%	1.38%	8.00%	1.89%
2018	% of all cases	20.69%	10.34%	13.45%	14.52%	2.48%	15.43%	45.61%	3.92%	3.59%	10.20%	20.93%
2019	% of all cases	19.83%	9.09%	18.02%	14.97%	2.41%	12.28%	8.57%	14.08%	2.69%	5.13%	24.24%
2020	% of all cases	15.79%	5.41%	12.50%	7.63%	2.52%	7.89%	21.28%	11.27%	1.82%	1.79%	23.81%

Table 11: The share of cases deferred to deferment by each DSPO (Source: Office of the State Prosecutor General)

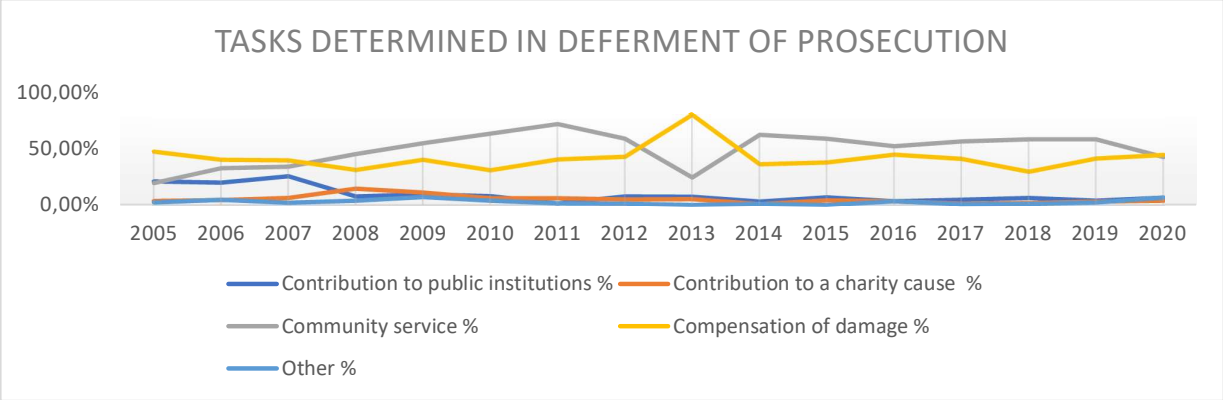

Figure 7: Tasks determined in deferment of prosecution (Source: Office of the State Prosecutor General).

Statistical data indicate that community service remains the most prevalent instruction for juvenile offenders, followed by compensation for damage (*figure 7 see above*).

ZOMSKD

Similarly to the case of mediation, the draft ZOMSKD extends the catalogue of criminal offences for deferred prosecution under special circumstances even to certain offences for which the prescribed sentence is higher than 5 years.[208]

It further changes the tasks determined in deferment of prosecution, which are adapted to juvenile offenders.[209] In case of restitution of damages or community service, the service must not last longer than 120 hours.[210] Lastly, the time frame for completion of such services is extended to 6 months.[211]

Conclusion

More thought should be put into how geographical differences in exercising deferment of prosecution can be minimised.

Prosecutors must be equipped with appropriate knowledge in order to be able to determine which task is the most appropriate from the perspective of the juvenile offender's psychological and social development as well as to minimise the risks of recidivism.

5.3.2 Pre-trial detention

Detention does not provide the optimal conditions for children and young people's development and well-being. Detention may in fact negatively affect the children's social and psychological wellbeing and development, consequently decreasing their chances of reintegration into society and increasing

[208] Article 60/I ZOMSKD.
[209] Article 60/III ZOMSKD.
[210] Article 60/IV ZOMSKD.
[211] Article 60/V ZOMSKD.

their chances of recidivism.[212] Therefore, the UN Rules for the Protection of Juveniles Deprived of Their Liberty (Havana Rules) from 1990 and the European Rules for Juvenile Offenders Subject to Sanctions or Measures from 2008 state that juvenile detention must be used as a last resort and for the shortest period possible. Second, detained juveniles must be separated from adults unless that is not in their best interest.

Duration of pre-trial detention

Theoretical and normative aspects

According to the ZKP, the maximum duration of detention for juvenile offenders before they are indicted/charged is three months – one month of detention may be prolonged for an additional two months for justified reasons.[213] After the indictment, the detention of a minor can last up to two years, the same as for adult offenders.[214] The Slovenian legislation allowing for the detention of a juvenile to last this long has already been heavily criticised by experts and international bodies such as the UN Committee on the Rights of the Child, as this duration is, theoretically, among the longest in Europe.[215] However, statistical data has shown that the practice is different, and juveniles spend more than six months in detention just in exceptional cases (only two juveniles were detained for more than six months in the last 20 years).

Practical aspects

Statistical data shows that the number of juveniles who were detained for more than three months has increased in the past 10 years. However, the absolute number of juvenile detainees has more than halved in the last years (*see Table 12 below*).

Year	Number of juvenile detainees	Up to 15 days (%)	15 to 30 days (%)	30 to 90 days (%)	90 to 180 days (%)	180 – (%)
2001	24	33.3%	12.5%	54.2%	-	-
2002	13	30.8%	15.4%	53.8%	-	-
2003	17	47.1%	17.7%	35.3%	-	-
2004	13	38.5%	23.1%	38.5%	-	-
2005	21	19.0%	42.9%	38.1%	-	-
2006	32	15.6%	25.0%	59.4%	-	-
2007	16	-	25.0%	59.4%	-	-
2008	14	35.7%	28.6%	35.7%	-	-
2009	20	5.0%	20.0%	65.0%	-	-
2010	12	8.4%	33.3%	58.3%	-	-
2011	14	-	21.4%	78.6%	-	-
2012	17	5.9%	11.8	64.7%	17.6%	-
2013	15	13.4%	-	66.8%	26.8%	-
2014	6	33.4%	-	66.7%	-	-
2015	14	-	21.4%	35.7%	42.9%	-
2016	13	15.4%	30.8%	46.2%	7.7%	-

[212] Powell, 2014, p. 34.
[213] Article 472/II ZKP.
[214] Article 207/V ZKP.
[215] Filipčič *et al*., 2010, p. 26 ; Filipčič and Prelić 2011, p.453.

2017	5	-	-	80.0%	20.0%	-
2018	6	-	16.7%	33.4%	16.7%	33.4%
2019	7	14.3%	-	28.6%	57.1%	-
2020	4	-	-	-	100%	-

Table 12: Duration of pre-trial detention (Source: Ministry of Justice).

In an interview, the representative of the Ombudsman stated that cases of juvenile detentions are quite rare. The work of the Ombudsman is divided into different fields**, so conclusive statistical data is not available**. Nevertheless, the representative of the Ombudsman estimated that the number of complaints and initiatives the Ombudsman receives annually in the realm of juvenile justice is very low; about 10 per year. Also, the Ombudsman has never received a complaint about a juvenile being held in detention for two years.

Although pretrial detention is rarely imposed against juvenile offenders and even more rarely lasts longer than three months, this statistic cannot be used as a justification for such a long duration of pre-trial detention allowed by the legislation.[216] The legal possibility of two-year pre-trial detention for juveniles was also criticized by the interviewed judge. However, the judge stated that detention is sometimes necessary to guarantee the juvenile's presence at the trial, which contributes to the prompt completion of the criminal proceedings against them. The prosecutor, similarly, highlighted that pre-trial detention is sometimes necessary, but agreed that the duration of pre-trial detention as allowed by the ZKP should be shorter for the criminal proceedings to end faster.

ZOMSKD

The draft ZOMSKD addresses this issue by shortening the duration of pre-trial detention from two years and three months to a maximum of three months if instituted before the filing of the proposition for sanction[217] and six months if instituted after the filing of the proposition for sanction[218] and another six months after the issuing of a sanction.[219] The new maximum of six months is therefore also used for detention after a juvenile prison sentence has been passed, which is not explicitly determined in the ZKP.

Conclusions

Article 65 of the draft ZOMSKD offers a sufficient solution regarding the legally allowed duration of detention for juvenile offenders. It is also appropriate that ZOMSKD distinctively regulates three different types of detention – pretrial detention; detention after the filing of the proposition for sanction; and detention after the issuing of a sanction. Moreover, it is considered appropriate that pretrial detention can last up to three months, and detention after the proposition for sanction and after the issuing of sanction can last up to six months.

Conditions in pre-trial detention

Theoretical and normative aspects

Until 1998, the ZKP prohibited minors to be accommodated in detention together with adult offenders, unless the detention and thus isolation of the minor would last too long – in those cases,

[216] Filipčič *et al.*, 2010, p. 26 ; Filipčič and Prelić, 2011, p. 453.
[217] Article 65(4) ZOMSKD.
[218] Article 65(5) ZOMSKD.
[219] Article 65(6) ZOMSKD.

the minor was allowed to be placed in detention together with adult offenders if it was established that adult offenders would not harmfully influence the minor's development.[220] Since 1998, such situations are regulated with even more caution; juvenile and adult offenders can be placed in detention jointly only upon a decision passed by a juvenile judge (and not, for example, the prison administration) and only when this is explicitly found to be in the best interest of the child.[221] Furthermore, and according to ZKP-O, the judge must now obtain an opinion of the director of the institution/prison before passing a written decision about joint detention of adult and juvenile offenders, whereby they must specifically state the reasons why such a placement is in the best interest of the child.[222]

ZKP-O also regulates another situation that was not addressed before: when a juvenile offender reaches the age of 18 but is not yet 21 when they are placed in detention or during such a placement, they may be placed in detention together with minors, i.e. children under the age of 18, if such a placement is - based on their personality and the circumstances of the case - in their best interest and the best interest of the minors under the age of 18.[223]

According to some experts, young persons' involvement with the criminal justice system might negatively impact their mental health and development, especially in the case in which they are deprived of their liberty.[224] ZKP-O therefore specifically requires the institution in which the juvenile offender is placed in detention to gain information from social services and other institutions about any previous treatment of that person to enable them to continue to take part in educational programs or enrol in other appropriate programs if these are compatible with detention.[225] Based on the ZKP-O, the juvenile offender placed in detention must be guaranteed at least three hours of movement outside daily.[226]

Practical aspects

In the last decades, the conditions of detention in Slovenia have been repeatedly addressed. As described by Filipčič, the Slovenian Ombudsman issued a report in 2007 in which they described the conditions in Slovenian prisons as "inhumane".[227] The representative of the Ombudsman also pointed this out in his interview, stating that the Ombudsman had detected this problem in several of his visits to Slovenian prisons.

Specifically referring to juvenile pre-trial detention, a representative of the prison administration exposed the problem of placing juveniles together with adults in detention. He highlighted that there is a difference between adults who can adapt to the circumstances of the prison quite quickly and juveniles who need guidance, leadership, and supervision. He confirmed that – in line with ZKP-O – the prison administration must first request written approval from the court if it plans to accommodate a juvenile in detention together with an adult. In their request, the administration must list the reasons for such a placement, describe the adult with whom they wish to accommodate the juvenile, and state which criminal offence the adult is imprisoned for. He explicitly stated that he fully supports such requirements, as he deems them a sufficient security mechanism to prevent potential

[220] Filipčič *et al.*, 2010, p. 27.
[221] *ibid*. ; Article 473(2) ZKP.
[222] Article 473(2) ZKP.
[223] Article 473(3) ZKP.
[224] Development Services Group, 2017, p. 3.
[225] Article 473(4) ZKP.
[226] Article 473(5) ZKP.
[227] Filipčič *et al.*, 2010, p. 27.

abuses and negative impacts on the juvenile. Overall, he finds the placement of the juvenile together with adults appropriate and beneficial as the juvenile would – due to the small number of minors put in pre-trial detention in Slovenia - experience isolation that can be dangerous in a prison setting due to the risk of psychological distress, self-harm, and/or suicide.[228] What remains problematic is that juvenile offenders placed in detention must wait for the judge's decision to approve their placement together with adults, however, such decisions are usually adopted quite promptly. The representative of the prison administration also explained that juveniles are usually put together with adults in rooms that accommodate up to 3-4 persons. It was further explained that the adults which juveniles are placed with are usually younger adults in their 20s and not older adult offenders.

The representative of the Ombudsman also invoked the opinion of the CTP that accommodating juveniles with adults should not occur. However, he also explained that during their visits to institutions for the deprivation of liberty in Slovenia, they noticed that the number of juveniles put in detention is really small. This number is even smaller for females. If juveniles were placed in detention only with fellow juveniles, they would most probably face isolation and therefore be at risk of even greater distress.

As Slovenian prisons are extremely overcrowded,[229] there exists legitimate fear that the protection of a juvenile from isolation would be used as a façade for dealing with overcrowding, ignoring the real best interest of the child.[230]

The representative of the prison administration further stated that the administration by its initiative, allows juveniles to go outside for at least three hours a day and organizes sports tournaments which are very motivational for juveniles. He noted that juveniles get along particularly well with prison guards, who represent a kind of father figure for them (in contrast to educational workers who are mostly females and receive less respect from juveniles).

ZOMSKD

The draft ZOMSKD regulates detention similarly to the ZKP-O. It states that juveniles must not be placed together with adults unless such placement would be in the juvenile's best interest, especially when separation from other detainees would cause the isolation of a juvenile. A judge decides to place a juvenile in detention together with adults after they have received an opinion from the representative of the respective institution and must explain in written form the reasons for their decision.[231] The ZOMSKD specifically states that this rule applies even when a juvenile has reached the age of 18 during detention. [232]

Similar to the ZKP-O, the draft ZOMSKD also states that the juvenile should receive the necessary care, protection, and individual assistance they need. The ZOMSKD also requires the institution in which the juvenile is detained to immediately gain data on any previous treatment of that juvenile and enable the juvenile to continue to take part in any educational or another program, or enables them to enroll in such programs to the extent, compatible with detention. [233]

[228] For more data on the negative effects of isolation in detention on juveniles' mental health see Development Services Group 2017: 5
[229] Council of Europe 2019; Meško and Jere, 2012, p. 329.
[230] Filipčič and Prelić, 2011, pp. 454, 455.
[231] Article 67/I ZOMSKD.
[232] Article 67/I ZOMSKD.
[233] Article 67/II ZOMSKD.

The draft ZOMSKD specifically grants juveniles the right to at least three hours of movement outside daily.[234] It further grants juveniles the right to religious and spiritual service. [235]

Conclusions

The ZKP-O and the draft ZOMSKD put forward appropriate judicial safeguards for the best interest of the child in deciding whether the juvenile be placed together with adults.

There remains a risk, however, that such a decision is aimed at solving the general problem of prison overcrowding which is extensively present in Slovenia. It is important that – in their opinion for the court - the prison administration describes the adult person they want to place the juvenile with, as well as their criminal offence. The ZOMSKD could put more obligations on a judge to independently examine whether the request from the prison administration is appropriate and justified. It could be useful for the judge to follow the prison population statistics to make sure that the prison administration is not solving the problem of overcrowding but is following the best interest of the child.

In the roundtable discussion, the stakeholders stated that juveniles usually respond particularly well to juvenile judges, especially when the judge visits the institution in which they are accommodated. The obligation of the judge to visit juveniles relates more to the enforcement of criminal sanctions when the juveniles are placed within educational institutions, the correctional home, or the juvenile prison, but it could be relevant for detention as well. The ZOMSKD states that the judge has the same obligations towards juveniles that they have towards adult in pre-trial detention under the ZKP. It would be worth considering adding to the ZOMSKD the obligation of the judge to visit at least once the juvenile in pre-trial detention to establish a personal relationship with the juvenile and to inspect the conditions in which the juvenile is housed.

5.3.3 Diagnostic centre

Theoretical and normative aspects

In the framework of the preliminary procedures, the ZKP gives the juvenile judge the possibility to place the minor in a transit home or a diagnostic centre, or under the supervision of a social welfare authority. The juvenile may also be placed in another family, if such measures are necessary to remove the minor from their old surroundings or provide them with help, protection, or accommodation.[236]

The ZKP does not, however, define what a diagnostic centre is or what properties, capacities, and requirements an institution should have to qualify as such a diagnostic centre.

The Act on the Intervention for Children and Youth with Emotional and Behavioural Disorders in Education (ZOOMTVI)[237] establishes expert centres as institutions for the upbringing and education of children and adolescents with special needs and emotional and behavioural disorders and problems.[238] It is not clear, however, whether these expert centres can be used as diagnostic centres according to the ZKP. Expert centres according to the ZOOMTVI assist children and adolescents with emotional and behavioural problems; assistance and support to kindergartens, schools, and

[234] Article 67/III ZOMSKD.
[235] Article 67/IV ZOMSKD.
[236] Article 471/ ZKP.
[237] Zakon o obravnavi otrok in mladostnikov s čustvenimi in vedenjskimi težavami in motnjami v vzgoji in izobraževanju (ZOOMTVI), Ur. l. RS, št. 200/20.
[238] Article 2/I ZOOMTVI.

institutions for the education of children and adolescents with special needs; assistance in working with children and adolescents with emotional and behavioural problems and disorders; professional support to parents, legal guardians or foster parents (hereinafter: parents) and other persons important to the child or adolescent; additional professional assistance under the law governing the guidance of children with special needs; and help involve children and adolescents in various daily forms of work.[239] In performing these tasks, expert centres according to the ZOOMTVI also include experts in the fields of paediatric psychiatry, nursing, psychotherapy, mediation, addiction treatment and, if necessary, other experts.[240]

Due to the involvement of such experts, expert centres from ZOOMTVI might qualify as diagnostic centres according to the ZKP, however the legislation does not explicitly state so.

Practical aspects

In the interviews and during the roundtable, the stakeholders repeatedly stated that it is not clear what exactly is meant by the diagnostic centre in the ZKP and that in Slovenia no diagnostic centre similar to the one mentioned in Article 471 of the ZKP ever existed. Two interviewees mentioned that an institution that could be understood as a diagnostic centre existed in the 1980s or -90s, but no longer exists. It was also suggested that centres for the mental health of children and juveniles currently exist in Slovenia, but it is not clear whether they can be considered as diagnostic centres and take upon themselves the obligation under Article 471 ZKP.

A clinical psychologist at the Counselling Centre for Children, Adolescents and Parents in Ljubljana welcomed the option of placing certain juvenile offenders in a diagnostic centre. She was sceptical about ZOOMTVI providing a suitable solution. She suggested Rakitna Youth climate health resort to be used as a diagnostic centre, as experts employed there have the appropriate knowledge.

The absence of an institution such as a diagnostic centre generally prevents the judge from evaluating properly the condition of the young person before them. This is instrumental to ensure adapted criminal procedures and sanctions which need to be child-friendly and individualised.

ZOMSKD

The ZOMSKD provides for the placement of juveniles in a diagnostic centre only when this is necessary for the drafting of the expert's report or opinion about the child.[241] It is not entirely clear whether this Article (as *lex specialis*) would derogate Article 471 of the ZKP so that it would no longer be possible to place a juvenile in the diagnostic centre when that would be necessary to remove them from their old surroundings or provide them with help, protection, or accommodation. For these situations, however, the ZOMSKD now foresees other restrictive measures, such as temporary placement under the supervision of the social work centre, placement with another family or person, or temporary placement in a corrective institution.[242]

Contrary to the ZKP, which does not limit the duration of the placement in a diagnostic centre, ZOMSKD limits such placement to 30 days.

Conclusions

For greater clarity, the draft ZOMSKD could include a definition of what a diagnostic centre is or what criteria it must fulfil so that judges can identify existing institutions as diagnostic centres and use them

[239] Article 4/I1 ZOOMTVI.
[240] Article 4/III ZOOMTVI.
[241] Article 64/V ZOMSKD.
[242] Article 64/I ZOMSKD.

under Article 64 of the ZOMSKD. For now, some guidance is provided in the commentary to Article 64 of the ZOMSKD, stating that this would usually mean a healthcare institution.[243] The commentary further explains that the use of a broader term diagnostic centre instead of using a concrete name of an institution is necessary to ensure flexibility to determine the appropriate institutions.[244] Such an explanation should be explicitly stated in the law. Alternatively, such a definition and/or explanation could be included in a regulation, issued by the Ministry of Justice or Ministry of Education.

5.3.4 Specialisation

Theoretical and normative aspects

There are no specialised criminal courts for juvenile offenders in Slovenia, but a certain level of organisational specialisation is established through internal court organisation with juvenile panels,[245] assigning juvenile cases to semi-specialised juvenile judges, who are allowed to judge in adult cases as well.[246] In juvenile criminal law cases where lay judges sit on the tribunal, these are elected among persons experienced in the education of juveniles.[247]

Even though the current criminal legislation does not establish a complete organisational specialisation in a form of specialised courts, ZKP-O introduced new changes aimed at bringing more specialised knowledge into juvenile criminal proceedings. ZKP-O, while transposing Directive EU 2016/800 into Slovenian legal order, has recently established that judges, public prosecutors, police officers, defence lawyers, and mediators involved in juvenile proceedings now regularly acquire additional knowledge in the field of juvenile delinquency.[248] For judges, public prosecutors and mediators, the basic and regular training shall be organised by the Ministry of Justice, for police officers by the Ministry of the Interior, and for attorneys by the Slovenian Bar Association.[249] The Slovenian Bar Association shall maintain and publish a list of attorneys professionally qualified to represent juveniles, to which it shall include attorneys who have completed the basic training.[250] Under ZKP, the person may choose their attorney freely[251], which is why it is currently not possible to prescribe obligatory specialization of attorneys. A juvenile or their parents, guardian or relatives may choose the attorney who is specialised or non-specialised, but when the attorney is chosen for the juvenile by the court, the court chooses an attorney from the list of specialised attorneys.[252]

ZKP-O further states that the hearing of a juvenile may be conducted with the assistance of a pedagogue or other expert.[253]

In 2021, the Rules on the programme and the procedure regarding the implementation of training for judges, state prosecutors, police officers, defence counsels and mediators in criminal cases, that

[243] Commentary to the Draft Act ZOMSKD, pg. 80.
[244] Commentary to the Draft Act ZOMSKD, pg. 80.
[245] Article 462/I ZKP.
[246] Filipčič and Plesničar, 2017, p. 402.
[247] Article 462/IV ZKP; Filipčič, 2006, pp. 397-414; Filipčič and Plesničar, 2017, p. 402.
[248] Article 452.b/I ZKP.
[249] Article 452.b/II ZKP.
[250] Article 452.b/III ZKP.
[251] See, for example, Article 4/I and Article 148/IV ZKP.
[252] Article 454/V ZKP.
[253] Article 452.č/II ZKP.

participate in the procedures against juvenile offenders were issued.[254] These Rules establish the programme and methods of delivery of basic and regular training for judges, public prosecutors, police officers, defence lawyers and mediators involved in proceedings against minors.[255] The purpose of the training is to update the knowledge of the trainees, to acquire in-depth, additional and specialised knowledge, and to acquaint them with scientific advances in the field of the treatment of juvenile offenders and juvenile delinquency, in particular in the field of children's rights, appropriate interview or interrogation techniques, child psychology and communication in a child-friendly language, the enforcement of criminal sanctions for juveniles and the understanding of the development of the juvenile. [256] The basic training covers the following topics: the specific features of the treatment of juvenile offenders and juvenile delinquency; an understanding of the development of the juvenile; techniques of interviewing or interrogating the minor; and the enforcement of criminal sanctions against juveniles. [257]

Practical aspects and stakeholders' views

In the interview with a judge, it was highlighted that the absence of specialised judges (and that the specialised juvenile department at the first instance court in Ljubljana was dissolved approximately 10 years ago) only for juveniles is causing difficulties in practice. Firstly, the judges deal with juvenile as well as other cases, even though handling juvenile cases require the use of a different and child-friendly approach with different dynamics, language, and pace. It is extremely difficult for judges to switch between different types of cases in particular those involving juveniles where specific time and due care is needed.

During some interviews, it was expressed that specialised juvenile courts should be reintroduced to the Slovenian legal system, even though that would mean that some judges would have on average less cases than others, as the role of a juvenile judge is broader and should be enhanced in the enforcement of sanctions.

The clinical psychologist stated that in their experience judges lack sufficient basic knowledge of developmental stages of children and the main principles of talking to a child or a juvenile.

At the Supreme state prosecutor's office, there are not specialised juvenile departments, but there are currently 2 specialised prosecutors for juvenile justice. At the level of the district state prosecutor's offices, the existence of specialised departments varies from office to office, they are more common at bigger offices.

The judge pointed out that the prosecutor's offices are organised in a way where it is impossible to send to the court two different prosecutors – one specialised for juvenile crime and one for proceedings against adult offenders – on the same day, which means that the judge cannot decide to have a main hearing of the juvenile on the same day where another main hearing of the adult offender takes place, even though that would be beneficial for the juvenile. Instead, a judge must postpone the juvenile's hearing at a later date, to combine it with other possible juvenile hearings in order to enable

[254] Pravilnik o programu in načinu izvedbe osnovnega in rednega usposabljanja za sodnike, državne tožilce, policiste, zagovornike in poravnalce, ki sodelujejo v postopku proti mladoletniku (Uradni list RS, št. 67/21) (Pravilnik)
[255] Article 1 of the Pravilnik.
[256] Article 2 of the Pravilnik.
[257] Article 4 of the Pravilnik.

the specialised prosecutor to participate at the main hearing. The prosecutor confirmed that at the Supreme state prosecutor's office there are only two prosecutors specialised for juvenile cases.

The specialisation of social workers is neither regulated by law, nor by internal rules. There are no specialised social workers for juvenile delinquency. Additional education on that field occurs only at the initiative of social workers individually. Several stakeholders expressed the need to prescribe the legal obligation for social workers to specialise or to obtain additional knowledge of juvenile delinquency, especially given their significant role in deciding on the sanction (report, opinions, supervision…).

It has been noted during interviews and a roundtable that specialisation cannot be prescribed as a necessary requirement for attorneys (for example that only specialised attorneys could represent a juvenile in criminal proceedings), as such obligation would interfere with one's freedom to choose their own attorney. As pointed out during the interviews, a conflict exists, however, between the freedom to choose one's own attorney and the best interest of the child. Prosecutors stated that in cases where attorneys are not specialised in juvenile justice, they tend to treat juvenile offenders in the same way as adults and forget about the educative function of a criminal process **– they encourage the juvenile to lie, to influence witnesses, to remain silent and to avoid criminal proceedings**. Similarly, the judge noted that, generally, attorneys do not understand the importance of educative measures and that the main purpose of criminal proceedings against a juvenile is assistance, help and protection of juveniles**. It was noted that it is often visible how juvenile's are "taught" how to speak at the court, which negatively affects the relation between a juvenile and a judge**. The attorney stated in the interview that as a specialsed attorney he is mindful of the difference when dealing with adult or juvenile offenders, in the former case he puts the emphasis on the client's wishes whereas in the latter case he puts it on the juvenile's needs.

From what has been stated during the roundtable discussion and the interviews, it is more beneficial to the juvenile offender to have an attorney, specialised in juvenile delinquency. This will always be the case when the attorney is chosen by the court, as it then must be chosen amongst specialised attorneys, but will not always occur when juvenile or parents, guardian or relatives choose the attorney. However, most of the time the attorney is appointed by the court.

The judge reported positive effects from the basic training regulated by the 2021 Rules and stated that even though such training is not obligatory, it is in practice perceived as such. A series of specialised trainings was implemeneted in 2021 by the Judicial training centre aimed at judges, prosecutors, attorneys and some other professionals.

ZOMSKD

In accordance with the Directive EU 2016/800, the draft ZOMSKD states that judges, prosecutors, policemen, attorneys and mediators, who take part in a criminal proceeding against a juvenile offender must acquire additional knowledge from the field of juvenile delinquency.[258] For judges, public prosecutors and mediators, the basic and regular training shall be organised by the Ministry responsible for Justice, for police officers by the Ministry of the Interior, and for attorneys by the Slovenian Bar Association.[259] The Slovenian Bar Association shall maintain and publish a list of

[258] Article 42/I ZOMSKD.
[259] Article 42/II ZOMSKD.

attorneys professionally qualified to represent juveniles, to which it shall include attorneys who have completed the basic training.[260]

The commentary to Article 42 ZOMSKD explains that specialisation as regulated in this Article is not an obligatory requirement for participation in criminal proceedings against a juvenile. On the other hand, the commentary claims to follow the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, which in the paragraphs 14 and 15 state that all professionals working with and for children should receive necessary interdisciplinary training on the rights and needs of children of different age groups, and on proceedings that are adapted to them, and moreover, professionals having direct contact with children should also be trained in communicating with them at all ages and stages of development, and with children in situations of particular vulnerability.[261]

It can be observed that the Guidelines use stronger language with regards to the mandatory nature of the specialisation in comparison to ZOMSKD.

CONCLUSIONS

A certain level of specialisation of judges, prosecutors, police and mediators, through acquiring additional and soecialised knowledge, should be made obligatory.

Considering the role of Social work centres in juvenile criminal proceedings, social workers (at least those working with juvenile offenders) should be included in the ZOMSKD Article 42 (obtaining additional knowledge on juvenile delinquency).

More thought must be put into resolving the conflict between one's right to choose their own attorney and the best interest of the child. Currently, juveniles (or their parents) who choose their own attorney may be less well represented than when courts decide on the attorney. Perhaps the benefits of the specialised attorney could be explained to the juvenile and the parents or guardians before they choose the attorney themselves.

5.3.5 Length of the proceedings

Theoretical and normative aspects

Institutions and practitioners participating in proceedings against a minor and other institutions whose advice, reports or opinions have been requested, shall be bound to proceed with a special expedition to bring the proceedings to completion as soon as possible.[262]

If a minor has participated in a criminal offence jointly with adults, the proceedings against the minor shall be separated and conducted in accordance with the provisions regarding juveniles, unless the joinder is necessary for a comprehensive clarification of the case.[263]

[260] Article 42/III ZOMSKD.
[261] Smernice Odbora ministrov Sveta Evrope za otrokom prijazno pravosodje ki jih je sprejel Odbor ministrov Sveta Evrope dne 17. novembra 2010, in obrazložitveni memorandum, 2013, ISBN 978-92-871-7274-7.
[262] Article 461 ZKP.
[263] Article 456 ZKP.

Practical aspects and stakehodlers' views

During the roundtable discussion and interviews, the length of the criminal proceedings has been pointed out as one of the main problems of juvenile criminal justice.

Table 14 shows that both the preliminary proceedings and the proceedings before the juvenile panel (See ZKP, Sub-chapters 4. And 5. of the Chapter XXVII) take, in the vast majority of cases, more than one month and less than six months. The duration of both procedures very rarely exceeds one year, and in only a few exceptional cases two years.

		The number of cases	0m-1m	1m-3m	3m-6m	6m-9m	9m-12	1-2l	2-3l	3l+
2008	Preliminary proceedings	1012	9.78%	27.08 %	25.30 %	24.31 %	8.99 %	4.25%	0.30 %	-
	Trial	691	11.29 %	29.67 %	20.69 %	20.41 %	9.70 %	7.96%	0.14 %	0.14%
2009	Preliminary proceedings	876	9.59%	34.13 %	32.31 %	13.24 %	7.19 %	3.42%	0.11	-
	Trial	546	16.12 %	28.21 %	29.12 %	17.40 %	6.59 %	2.38%	0.18 %	-
2010	Preliminary proceedings	747	8.43%	33.87 %	37.48 %	11.78 %	4.82 %	3.48%	0.13 %	-
	Trial	469	13.86 %	36.46 %	24.73 %	10.87 %	8.32 %	5.54%	0.21 %	-
2011	Preliminary proceedings	790	6.84%	23.54 %	32.66 %	24.05 %	7.59 %	4.81%	0.51 %	-
	Trial	505	8.51%	35.84 %	23.56 %	12.08 %	8.71 %	11.29 %	-	-
2012	Preliminary proceedings	777	9.14%	31.02 %	31.15 %	15.57 %	7.34 %	5.79%	-	-
	Trial	524	15.65 %	40.08 %	28.24 %	9.54%	3.24 %	2.67%	0.57 %	-
2013	Preliminary proceedings	709	7.76%	38.22 %	29.90 %	13.96 %	6.77 %	2.96%	0.14 %	0.28%
	Trial	462	13.20 %	44.81 %	24.03 %	9.74%	5.41 %	2.38%	0.43 %	-
2014	Preliminary proceedings	715	7.55%	39.72 %	26.01 %	12.31 %	8.39 %	5.59%	0.42 %	-

	Trial	436	15.60 %	35.55 %	27.98 %	9.63%	5.73 %	4.82%	0.69 %	-
2015	Preliminary proceedings	602	7.31%	34.05 %	29.73 %	14.45 %	6.15 %	7.48%	0.83 %	-
	Trial	437	10.53 %	38.90 %	22.20 %	13.73 %	8.01 %	6.18%	0.46 %	-
2016	Preliminary proceedings	489	13.14 %	45.60 %	32.31 %	7.77%	2.45 %	1.02%	-	-
	Trial	398	14.07 %	35.68 %	22.86 %	13.57 %	6.53 %	6.53%	0.75 %	-
2017	Preliminary proceedings	472	13.14 %	42.16 %	33.69 %	8.26%	1.91 %	0.85%	-	-
	Trial	314	17.20 %	41.72 %	29.30 %	8.92%	1.59 %	1.27%	-	-
2018	Preliminary proceedings	432	7.41%	40.51 %	31.71 %	13.89 %	3.70 %	2.78%	-	-
	Trial	267	13.11 %	51.69 %	19.10 %	7.12%	3.75 %	5.24%	-	-
2019	Preliminary proceedings	458	19.66 %	43.10 %	23.10 %	8.97%	3.10 %	1.72%	0.34 %	-
	Trial	290	5.68%	48.47 %	25.33 %	11.57 %	5.02 %	3.93%	-	-
2020	Preliminary proceedings	440	6.82%	32.73 %	32.73 %	12.73 %	7.50 %	7.05%	0.45 %	-
	Trial	244	13.93 %	36.48 %	26.64 %	11.48 %	6.15 %	5.33%	-	-
2021	Preliminary proceedings	536	4.66%	29.10 %	25.19 %	15.11 %	4.85 %	18.47 %	2.43 %	0.19%
	Trial	314	13.38 %	34.39 %	26.43 %	10.83 %	7.01 %	7.64%	0.32 %	-

Table 13: Duration of the Criminal Procedure (Source: Ministry of Justice).

Representative of the Ombudsman reported of a case, where a girl participated in a criminal offence with adult offenders and that significantly prolonged the criminal proceedings for her.

ZOMSKD

The draft ZOMSKD foresees that the police, prosecutors, courts and other institutions, experts and translators must act as fast as possible during pre-trial proceedings as well as in criminal proceedings

against a juvenile.[264] The difference with ZKP is that ZOMSKD mentions the stakeholders more specifically, which brings greater clarity to the provision.

Just as with the ZKP, if a minor has participated in a criminal offence jointly with adult persons, the proceedings against the minor shall be separated and conducted in accordance with the provisions regarding juveniles, unless the joinder is necessary for a comprehensive clarification of the case.[265]

Conclusions

More thought should be put into the issue of lengthy proceedings.

Social workers could be specifically included in Article 40 of ZOMSKD.

More specialised personnel will have positive effects on shortening the duration of criminal proceedings against juveniles.

5.3.6 Defence counsel

Theoretical and normative aspects

A juvenile may have a defence counsel throughout the criminal proceedings.[266] In addition to the other cases provided for in ZKP, a juvenile shall have a defence counsel from the beginning of the preparatory proceedings for an offence punishable by imprisonment for a term exceeding three years, or for other offences for which a lighter penalty is prescribed if the juvenile judge considers that a juvenile needs one. In this respect, the mental and evolving capacities and development of the child will need to be taken into account, as well as his/her personal characteristics, the complexity of the case and the severity of the sanction or other measures which may be applied to the minor in the particular proceedings.[267] In any event, the juvenile shall have a defence counsel if he is deprived of his liberty. [268]

If the juvenile is not legally represented and and if the the legal representative or relatives do not take a legal counsel either, then a counsel shall be appointed *ex officio* by the authority before which the proceedings are pending from the list of lawyers referred to in Article 452b, paragraph 3, of ZKP. [269] If it is necessary to ensure an effective defence, the competent authority may also appoint a lawyer who is not included in such a list to act as counsel for the juvenile. [270] The competent authority shall, as a general rule, appoint the same defence counsel for a minor who has already been appointed defence counsel in other proceedings against him. [271]

Practical aspects and stakeholders' views

Even though the ZKP states that as a general rule the judge must appoint the same defence counsel for a minor who has already been appointed defence counsel in other proceedings against them, this rule is not always respected. During the roundtable and interviews, stakeholders reported that juveniles sometimes have more than five different attorneys in different cases at one time. Such

[264] Article 40 ZOMSKD.
[265] Article 47 ZOMSKD.
[266] Article 454/I ZKP.
[267] 454/II ZKP.
[268] 454/IV ZKP.
[269] 454/V ZKP.
[270] 454/V ZKP.
[271] 454/V ZKP.

situations do not respect the best interest of the child, as juveniles need to establish a close bond with the attorney and need to trust them.

Furthermore, an attorney observed that in practice the provision that the court appoints a defence counsel whenever the judge deems that necessary is very rarely used. This is not in the best interest of a child. The attorney moreover pointed out that juveniles often do not say when they do not understand what the judge tells them, in order not to sound "stupid". They are ashamed to admit that they do not understand procedural guarantees, certain expressions or their obligations. The judge cannot always know whether juvenile understood everything or are they merely saying so in order not to feel ashamed.

ZOMSKD

ZOMSKD regulates the obligatory defence counsel in the same way as regulated by ZKP.[272] The commentary to Article 41 ZOMSKD highlights that when drafting ZOMSKD, the Directive 2016/800 as well as the judgement Up-143/97-14 from 19.6.1997of Constitutional Court, expressing the importance of the right to attorney, were taken into account.[273]

Conclusions

ZOMSKD regulates the right to attorney (Article 41) appropriately.

Judges should make better use of the current provision of 454(1) ZKP and appoint an attorney when they suspect that juvenile is not capable of fully understanding the proceedings. The level of certainty for such decision does not have to be very high, as the appointed attorneys will be chosen from the list of specialised attorneys.

Judges should further make sure that, if possible, one attorney is appointed throughout the entire criminal proceedings. The current provision of ZKP (and the draft ZOMSKD), has this as a general rule but this should be translated into practice as well.

5.4 Recommendations

- While criminal proceedings against juveniles are in general considered adequately regulated in the legal framework, lengthy proceedings for juvenile offenders was repeatedly pointed out as a serious issue in need of improvement. Any new legislation should include clear provisions relating to the need for swift proceedings in cases that involve young persons under 18 years of age. This could partly be addressed and ensured through a stronger systemic specialisation of juvenile courts and personnel.
- Diversion procedures already exist in the legal framework, but significant regional differences have been noted in their implementation, which must be addressed. The draft ZOMSKD prescribes the priority of diversion procedures over regular criminal proceedings. This would enable a stronger focus on the aims of juvenile justice to rehabilitate and resocialise juvenile offenders and would be beneficial for these young persons. Therefore, it is recommended that the priority of diversion procedures should be included in any new legislation and a more unified approach to diversion is adopted by the prosecution service.

[272] See Article 41 ZOMSKD and Article 454 ZKP.
[273] Commentary to the Article 41 ZOMSKD.

- Any new legislation also needs to provide more substantive guidance for prosecutors' decisions to choose mediation and deferment of prosecution for juvenile offenders whenever possible.
- New legislation should also include clear provisions to ensure that measures are passed that promote a sufficient mass of specialised mediators on juvenile justice is trained and available, so that the prosecutors are not factually precluded from referring a case to mediation even when this would be in the best interest of the child.
- More in general, the specialisation of professionals involved in the juvenile justice system is needed and professional trainings to acquire specific additional knowledge should be made mandatory, including for social workers working with juvenile offenders. Considering such specialisation should include both systemic specialisation (the organisation of the courts, prosecution etc.) and knowledge-based specialisation (including training of professionals dealing with juvenile offenders on pressing issues, e.g. diversion criteria, mediation process).
- ZOMSKD must establish special safeguards to ensure that juveniles are not placed in detention with adults as a means of combating overcrowding in prisons, but only when such placement is in the best interest of the child and is duly justified as such. However, any such instance must be reasoned and only applicable a form of last resort – precedence is to be given to possibilities of ensuring the juvenile has daily contact with other children, even if under controlled forms;
- The draft ZOMSKD regulates the right to an attorney appropriately. However, even before the adoption of a new law, judges could and should make better use of the already existing legal framework (notably provision of 454(1) ZKP) and appoint an attorney to ensure that juvenile offenders are fully informed of their rights and understand the proceedings.
- Special consideration should be granted to the issue of juvenile offenders sentenced to juvenile prison. The small number of juvenile offenders sentenced to such a measure poses a systemic problem that needs to be addressed; it is absolutely necessary for specialised educational and similar programmes to still be formulated and carried out, which needs to be included in any normative changes. It is necessary to rething the balancing between the potential isolation of juvenile offenders and their coming in contact with adult offenders and adopt mitigating strategies.

6. ENFORCEMENT OF CRIMINAL SANCTIONS

6.1 Evolution of the enforcement criminal juvenile legislation in Slovenia

The enforcement of criminal sanctions against juveniles has followed the trends of juvenile criminal law. It has been subject to several critiques and consequent reforms.

As early as the Austro-Hungarian Empire and later in Socialist Federal Republic of Yugoslavia (SFRJ), juvenile criminal proceedings have always differed from adult criminal proceedings. As a consequence, this has led to a differentiated approach in sanctioning as well.[274] In 1974, Šelih noted the crucial importance of education as well as a therapeutic treatment during the enforcement of criminal sanctions imposed on juveniles, as well as in the aftermath of the sanction has already been fully enforced.[275] Šelih was in this regard particularly critical of the ineffective post penal treatment of juveniles,[276] which remains a recurring problem nowadays.

Interestingly, however, while the State has been limiting the repressive power of parents towards children on the one hand, it fully reserves the right to use all such repressive powers for its own institutions in stages of enforcement of criminal sanctions.[277] Nevertheless, certain concepts, that were deemed too repressive, such as solitary confinement, were abolished or their use limited as a last resort measure. Moreover, the goals of (re)education, (re)socialization and assistance to juveniles received more attention and emphasis, as noted during the interviews with the representative of a prison. The Criminal Code KZ-94 improved the opportunities for a greater individualization of sanctions,[278] which contributed significantly to achieving those goals. The changes stemmed from the idea that the individualization of punishment in the context of juvenile offenders must address the shortcomings of the juvenile's previous environment, education, socialization and development as well as aim towards their resocialization and minimizing the risk of recidivism.[279]

The most recent change in the context of enforcing criminal sanctions for juveniles was the new regional approach in cases of children and youth with emotional and behavioural disorders. The new system requires such juveniles to be placed in an institution within their region,[280] which will transform the structure of certain institutions responsible for the enforcement of juvenile criminal sanctions, as they will have to accommodate a wider spectrum of different juveniles. Institutions expressed some level of uncertainty, especially due to the fact that they will have to accommodate juveniles that would be prior to the introduction of regional approach sent to a different institution.

6.2 Overview of the theoretical and normative aspects of the enforcement of juvenile criminal sanctions

The enforcement of criminal sanctions for juvenile offenders has not been thoroughly regulated within a single legislative act yet, but it is currently scattered in different acts. The most relevant law

[274] Bavcon *et al.,* 2013, p. 507.
[275] Šelih, 1974, pp. 85, 86.
[276] *Ibid*.
[277] Filipčič *et al*., 2006, p. 12.
[278] Bavcon *et al.,* 2013, p. 509.
[279] *ibid*. p. 510.
[280] See Article 3/IX ZOOMTVI.

regulating this issue is the Enforcement of Criminal Sanctions Act (ZIKS-1), but certain provisions relevant for the topic may be found in Criminal Code - KZ-1, and the Act on the Intervention for Children and Youth with Emotional and Behavioural Disorders in Education – ZOOMTVI.[281]

According to the last juvenile legislation analysis in Slovenia, the legal regulation of the enforcement of juvenile criminal sanctions is quite adequate and does not require significant changes. Nevertheless, it does need some improvements at the practical level and implementation.[282] The issues arise mostly due to the lack of funds, experts and other resources.[283] These findings were confirmed during the process of drafting the present report.

6.3 Current issues in the enforcement of juvenile criminal sanctions

6.3.1 Activities before placement in institutions

Theoretical and normative aspects

In certain cases, educational institutions may engage with juveniles before they are placed there on the basis of a court decision. This is a new solution introduced by ZOOMTVI. It was meant to allow the educational institutions qualifying as expert centres to engage in several preventive tasks. These include assisting children and young people with emotional and behavioural problems, providing assistance and support to kindergartens, schools and institutions for the education of children and adolescents with special needs in their work with children and adolescents with emotional and behavioural problems and disorders, providing professional support to parents, legal guardians or foster parents and involving children and young people in various forms of day work.[284]

Practical aspects

A good practice, developed on the legal basis of Article 4(1) ZOOMTVI, was reported by the director of an educational institution, who claimed that the institution often responds to a call from schools, which are unable to deal with a child or a juvenile with emotional and behavioural problems. In such cases they send a mobile team of experts to the school, where they design a thorough plan of treatment, together with the school personnel as well as the juvenile themselves.

ZOMSKD

ZOMSKD does not regulate the activities of education centres before the sanction is issued as a result of juvenile criminal proceedings.

Conclusions

The option of early intervention as provided by ZOOMTVI could be more widely used by educational institutions. Schools, parents or other subjects dealing with a child or a juvenile with emotional and behavioural problems should reach out for assistance in dealing with such children. It should also be possible for juveniles with such issues to reach out for assistance to the expert centres as soon as they recognize the potential escalation of the emotional or behavioural problem.

[281] Zakon o obravnavi otrok in mladostnikov s čustvenimi in vedenjskimi težavami in motnjami v vzgoji in izobraževanju (ZOOMTVI), Ur. l. RS, št. 200/20.
[282] Filipčič *et al*., 2010, p. 8.
[283] *Ibid*.
[284] Article 4/I ZOOMTVI.

The establishment of mobile teams composed of experts from educational institutions capable of assisting juveniles with behavioural problems before they enter criminal proceedings is positively evaluated and further recommended.

ZOMSKD could follow the approach taken by ZOOMTVI and extend the advisory role of educational institutions to the period before issuing the sanction. In this way, the expert knowledge these institutions' expertise could contribute to a better individualization of sanction.

6.3.2 The beginning of enforcement of institutional measures

Theoretical and normative aspects

The competent social work centre must begin with the enforcement of the institutional measure 30 days after the court decision regarding the sanction is issued, at the latest.[285] The court informs the respective social work centre about the scope of the court decision in 8 days. [286]

According to ZIKS-1, the institutions must accept the appointed juvenile (i.e. they cannot reject the any juvenile).[287] Despite this provision, however, the doctrine warned that several institutions decline the placement of certain juveniles claiming that they are unable to properly accommodate and assist them due to thei characteristics, specific issues or needs.[288]

Practical aspects

The representatives of the correctional home reported that there are considerable inequalities among juveniles accommodated in the correctional home. These inequalities stem from a different understanding of whenthe enforcement of an institutional measure should start. In the past, the enforcement of institutional measures began when the court's decision on the placement of a juvenile into a correctional home became final. Now, however, this is not always the case, as certain judges measure this time differently, not starting when the decision is final but rather when the decision is formally passed on to the institution. Therefore, it happens that two juveniles are appointed to the correctional home for the same amount of time, but *de facto* one stays a few days longer, due to the judges' different perceptions of when the institutional measure actually began.

Several interviewees expressed that juveniles are generally accommodated in education institutions too late, meaning that it would be more beneficial for a juvenile if they were placed in an institution earlier. They mostly agreed that sanctioning must be progressive – starting with milder sentence and then moving on to more restrictive measures if necessary. However, interviewees argued that in certain cases of specific juvenile offenders that are extremely problematic, a stricter measure should be chosen immediately or at least sooner, due to the damage an inappropriate placement can have on that juvenile, on other juveniles placed together with them, and even on the staff of the institution.

ZOMSKD

ZOMSKD follows ZIKS-1 in regulating this issue, establishes that the social work center must start implementing the institutional measure within the 30 days following the court's decision to impose such measure on the juvenile in question.[289] The change is proposed, however, with regard to the 8 days in which the court must inform the social work centre, the juvenile, as well as the respective

[285] Article 170/I ZIKS-1.
[286] Article 169/II ZIKS-1.
[287] Article 170/III ZIKS-1, Article 255 ZIKS-1.
[288] Filipčič *et al*. 2010, p. 13; Šelih, 2019, p. 2.
[289] Article 90/IV ZOMSKD.

institution about the finality of the decision regarding criminal sanction, which is in ZOMSKD replaced with the word "swiftly". [290] ZOMSKD does not contain an obligation for institutions to accept the appointed juvenile, except in cases of training establishment.[291]

Conclusions

The inconsistency that arises due to different understandings of when the enforcement of institutional measures begins must be avoided. This practice should be agreed upon by professionals working in the juvenile justice system in order to exclude any possible discrimination among juveniles. A unanimous understanding of when the enforcement of an institutional measure begins could be achieved not only through legislative changes, but also through direct communication, additional training and similar solutions.

6.3.3 Placement in educational institutions

Theoretical and normative aspects

Juveniles may be placed in an educational institution under both criminal and family legislation.[292]

The new ZOOMTVI, that came into force on 13 January 2021, established new approaches in providing assistance to juveniles with mental disabilities in educational institutions who, because of their more difficult problems, need more structured and intensive support or therapeutic treatment, namely, the Intensive Groups.[293] In such a group, the institution can ensure a higher level of safety for children and adolescents through the constant presence of professionals. [294]

Practical aspects

The main issue regarding placements, is the fact that different groups of juveniles are placed together, as reported by the interviewed stakeholders. The interviewed prosecutor, for example, argued that these two groups should be starkly separated in practice. However, the representative of the educational institution stated that the distinction is not so clear, as due to the length of the criminal proceedings some juveniles are placed into educational institutions on the basis of family law just because the procedure is faster. It is, thus, not always the case that children placed in an institution under family law are victims. Rather, they may very well be perpetrators (not yet recognised as such under criminal law).

Another issue concerning the placement of juveniles, as put forward in an interview with a representative of the educational institution, is that there are some extremely problematic juveniles for whom there are no measures available that would permanently control their aggression. Such juveniles are harmful towards other juveniles as well as the personnel in the institution and it is not currently possible to permanently separate them from others. Even though there are not many of them (in 20 years the representative estimated that they had 7 juveniles of such nature), they may cause permanent damage, such as a grave injury caused to an educator, who is now disabled. While

[290] Article 90/II ZOMSKD.
[291] Article 115 ZOMSKD.
[292] Družinski zakonik (Ur. l. RS, št. 15/17, 21/18).
[293] Article 13/V ZOOMTVI.
[294] Article 13/V ZOOMTVI.

seeking a solution, the educational institution started with a mixed pedagogical and medical approach, which allowed for certain medical treatment in the educational institution.[295]

ZOMSKD

ZOMSKD does not regulate the placement of juveniles in educational institutions in detail. It states, however, that the educational institution is compelled to accept a juvenile sent there on the basis of a court decision.[296]

Conclusions

More attention and resources must be put into the regulation of the placement of juveniles with strong behavioural issues in educational institution. A monitoring system should be in place to track the effects and successes of the Intensive Groups established by ZOOMTVI, as well as periodic evaluations carried out. Such evaluations could be conducted only after ZOOMTVI would have been in place for a longer period of time.

The use of diagnostic centres as prescribed by ZKP before completing the criminal proceeding would allow courts to better assess the juvenile's situation in order to place them in the right institution.

Educational institutions must remain mindful of the differences among their juvenile population and organize their accommodation accordingly.

6.3.4 Post-penal treatment

Theoretical and normative aspects

The competent social work centre is responsible to assist each juvenile after his release from the institution and accompany them into their path towards social reintegration and independence with the help of a councelor who can be appointed by the institution, if necessary.[297]

ZOOMTVI states that educational institutions acting as expert centres as described in ZOOMTVI[298] must draw a plan for a juvenile to be included in independent life and work, containing a plan to finish their education, to look for a job, apartment, to be included in appropriate support groups or other assistance to the juvenile in their home environment. This plan must be designed one month before the juvenile completes the educational measure in the institution, together with the juvenile and their parents.[299] Moreover, if a juvenile cannot return home, they must be allowed to be accommodated in a juvenile apartment for a maximum stay of 12 months after completing an educational program or until the age of 26.[300]

Practical aspects

Representatives of educational institutions claimed that the regulation of post-penal treatment could be improved. In the law, it is well regulated, but in practice it does not work. They argued that the

[295] See the evaluation of such approach by Ministry of Education at: Final report on the experiment Introducing an integrated educational and health model for children
and adolescents with psychiatric disorders or mental illness with associated aggressive (available at: https://www.zrss.si/pdf/koncno_porocilo_uvedba_modela.pdf) .
behaviour

[296] Article 99/III ZOMSKD.

[297] Article 174/III ZIKS-1.

[298] See Article 2 ZOOMTVI.

[299] Article 27/III ZOOMTVI.

[300] Article 27/III and Article 28/I ZOOMTVI.

solution of accommodating juveniles in apartments in the aftermath of their placement is in practice very useful and beneficial. They, however, find it inappropriate that such option is only available for educational institutions but not to correctional home. The absence of this option for juveniles in correctional home creates demotivation among them. Often, juveniles cannot return home, because the environment is harmful, or their parents or guardians do not accept them.

ZOMSKD

ZOMSKD establishes that the social work centre together with the respective institution must assist the juvenile (during and after the measure) to plan and to materialize the plan of social participation, involvement in social life and provide the juvenile with an advisor. This provision is applicable for all institutional measures.

Conclusions

It is appropriate that ZOMSKD regulates post-penal obligations of social work centres and institutions for all types of institutional measures.

In practice, more effort must be placed into post-penal treatment of juveniles.

The option of juvenile apartments should be extended to juvenile offenders who have been sentenced to correctional homes as well.

6.3.5 Minimum length of certain measures

Theoretical and normative aspects

The minimum length of a juvenile's stay in educational institution is 6 months and in correctional home 1 year. The minimum length of the prison is one third of the sentence, but in no case less than 6 months. After these periods of time a conditional release is possible.

Practical aspects

Representatives of the institutions evaluated the prescribed timeframe for educational institutions as appropriate. On average juveniles stay in educational institution 2-3 years, which is usually sufficient. In case a placement of 3 years in an educational institution does not turn to be enough, a juvenile should be, in their opinion, placed into correctional home.

The judge agreed that the minimum length of the institutional measures is necessary due to the fact that it takes some time for a juvenile to settle down and start with the program. However, the length makes less sense with regard to the juvenile prison, as there exist no obligatory program that a juvenile would have to participate in, and therefore the length could be equalized with the length prescribed for adults. They noted, on the other hand, that without the minimum length prescribed for juvenile prison, juvenile prison could become "an easy option" for judges – they would choose short prison sentences as an appropriate sanction, but it would in fact have no positive effect on the juvenile.

ZOMSKD

The minimum length of a juvenile's stay in educational institution is 6 months and in correctional home 1 year.[301] The minimum length of the prison is one third of the sentence, but in no case less than 6 months.[302] After such time, a conditional release is possible.[303]

[301] Article 127/l ZOMSKD.
[302] Article 128/l ZOMSKD.
[303] Article 127/l ZOMSKD and Article 128(1) ZOMSKD.

Conclusions

The minimum lengths prescribed by ZOMSKD are appropriate. The minimum length for juvenile prison is appropriate, as well as the obligation[304] to offer a juvenile education, re-education or training programs in prison. Such programs must be established and more effort must be placed on motivating juveniles to participate in such programs, as the only way to meet the purpose of juvenile prison, which is assistance and education instead of punishment. In this context, also the prescribed minimum length will be justified.

Moreover, the minimum length set at the normative level does not serve as a punitive tool, but rather encourages judges to use other measures whenever a lighter institutional or prison sentence would be fit. The minimum, contrary to its use in *common law* systems reinforces the system's awareness that short prison (and institutional) sentences are detrimental and cannot fulfil any of the punishment goals set forth by the normative framework. Considering the frequency with which the measures are imposed in Slovenia, it is safe to say that they are also used as such in practice.

6.3.6 Change of the measure

Theoretical and normative aspects

The enforcement of the measure imposed may be suspended or replaced by another educational measure when the circumstances of the juvenile substantially change with respect to the ones that had led the court to impose an educational measure of supervision by a social work center or an institutional measure.[305] In addition, the enforcement of the measure may, depending on the success of the education, re-education or training, be suspended or the measure imposed may be replaced with a more suitable one which will better achieve the purpose of the educational measures.[306]

Practical aspects

In practice the change of an institutional measure takes too long. As reported by the representative of the educational institution, it usually takes 6-9 months in order to transfer a juvenile from an educational institution to a correctional home. During that time, the juvenile remains in the educational institution, even in case they are threatening to other juveniles or personnel.

ZOMSKD

The court may, according to the success of the education, re-education and training, change or replace the issued educational measure with a new measure.[307]

When an educational measure has been issued but it is found not to be sufficient due to a substantial change in the juvenile's circumstances, the court may stop the enforcement of the current measure and change it or replace it with a more appropriate measure.[308] When an educational measure is replaced with a stricter measure, time of the less strict measure does not count into the maximum time limit of the stricter measure.[309]

[304] See Article 123 ZOMSKD.
[305] Article 83/I KZ.
[306] Article3 83/II KZ.
[307] Article 117/I ZOMSKD.
[308] Article 117/II ZOMSKD.
[309] Article 117/III ZOMSKD.

Conclusions

The procedure for changing measures should be faster in order for them to be more effective. In order to achieve this, modifications on both, legislative and practical level are needed.

6.3.7 Mental and physical disabilities

Theoretical and normative aspects

A court may issue an order for a juvenile affected by mental or physical disabilities to be committed to an appropriate training establishment instead of being committed to an educational institution or a re-education home.[310]

Practical aspects

As reported by the representative of the training establishment, one of the issues of the enforcement of the institutional measures against juveniles with mental or physical disabilities is that in certain cases the disabilities are not discovered soon enough. In the vast majority of cases such conditions are recognized before the criminal proceedings (the juvenile has an administrative decision considering their condition). However, in some cases such conditions are discoveredafter the proceedings have ended with an imposed measure, and thus during the enforcement of such measure (in an educational institution or correctional home). In such cases it is necessary to react promptly in order to change the measure, as the placement in an inappropriate institution result in the juvenile not receiving the treatment they need and the conditions may escalate.

The representative further reported that in cases in which juveniles with mental or physical disabilities are inappropriately placed in an educational institution or correctional home, they often learn the bad habits or inappropriate behavioural patterns of other juveniles.

Another issue is the lack of clear guidelines on how to handle juveniles with a combination of mental or physical disabilities and behavioural issues. The representative of the training establishment stated that working closely with the juveniles' families and their home environmentis a good practice to adopt.

Even though juveniles with a combination of mental or physical disabilities and behavioural issues need special attention, it is difficult to define the appropriate approach, as the number of such juveniles in Slovenia is small, and those who commit criminal offences is even smaller. That is why the interviewees did not think that establishing a special institution for this group of juveniles is a viable option, but rather they propose creating smaller family-like units inside the existing institutions (including training establishment). In such units, experts on children with mental or physical disabilities and behavioural issues, should be hired. Such units would promote connecting with nature, creating a good social atmosphere as well as developing certain soft skills, and in this way contribute to a greater well-being of such juveniles as well as safety of other juveniles in the institutions and the personnel thereof. The representative stated that at the training establishment they aim towards deinstitutionalization.

Another solution put forward by the representative of the training establishment is that a mobile team of experts could be set up in order to assist juveniles with mental or physical disabilities in any institution.

[310] Article 81 KZ.

ZOMSKD

ZOMSKD follows ZIKS-1 in regulating the enforcement of the placement in training establishments, with the addition that such establishment must accept the appointed juvenile (cannot reject the placement).[311]

Conclusions

Juveniles with mental or physical disabilities should be given special attention by all the respective institutions – social work centres, courts and others. More attention should be put into recognizing such disabilities in early stages of the criminal proceedings, in order to individualize the measure as much as possible. This may be achieved through the use of diagnostic centers as foreseen by ZKP.

More attention must be put in formulating guidelines to address the needs of juveniles with a combination of mental or physical disabilities and behavioural issues. Such guidelines do not have to be included in ZOMSKD or other legislative acts but can be prescribed by the Minister. The practice of closely working with the juvenile's family and their home environment may be extended to other institutions dealing with this particular group of juveniles, especially while waiting for the measure to be changed. For example, in case of a juvenile's transfer from an educational institution to a training establishment they have to be given an appropriate treatment even before the transfer occurs, immediately after the condition is discovered in an educational institution).

The social aspect of dealing with such juveniles is crucial and should be given greater attention.

The fact that ZOMSKD establishes an obligation for the training establishment to accept and adequately receive the juveniles appointed to its institution is deemed positive.

6.3.8 Disciplinary proceedings

Theoretical and normative aspects

If a juvenile commits a disciplinary offence during their placement in a correctional home, a disciplinary penalty may be imposed in accordance with a disciplinary proceeding.[312] Such penalties may be a written warning; house arrest for up to three months; placement in a special space during free time for up to seven days (equipped as a living room); and placement in a special space without the right to work for up to three days (equipped in such a way as to prevent self-harm and destruction of equipment).[313] A decision imposing a disciplinary penalty may be appealed and the appeal shall suspend the execution of the disciplinary penalty, except for the house arrest for up to three months.[314]

In educational institutions, in the event of a sudden outbreak of aggressive behaviour towards oneself or others endangering the life of a juvenile, their peers or staff, or when they could cause significant damage to property or when they are suspected of having committed a criminal offence, the professionals shall act in accordance with the special standards of behaviour to be adopted in case of a crisis, which are already embedded in the educational programme.[315] In cases of intentional infliction

[311] Article 115 ZOMSKD.
[312] Article 191 and Article 192 ZIKS-1.
[313] Article 191 and Article 194 ZIKS-1.
[314] Article 191/II ZIKS-1.
[315] Article 20/II ZOOMTVI.

of damage to property, the head of the institution may impose alternative educational measures on the juvenile, such as mediation, repairing the harmful consequences of their behaviour , performing good deeds such as voluntary work, and may also require compensation for damages.[316] The consumption and possession of alcohol or illegal drugs are prohibited.[317] If the professional suspects that the juvenile is carrying prohibited or dangerous items that endanger their life or health or the life and health of others, they shall ask the juvenile to hand them over voluntarily, otherwise they shall carry out a search of the juvenile's personal belongings or their premises.[318] They may also carry out a test to check the presence of psychoactive substances. [319] The multidisciplinary team of the correctional home may propose the participation of the juvenile in a therapeutic or medical assistance programme. [320]

Practical aspects

A representative of an educational institution reported that the disciplinary proceedings regulated in ZIKS-1 are too formalized. The formalization of the process lowers the educational nature and the effect of the disciplinary sanction, which is why they often avoid such proceedings and for smaller breaches of the rules they activate internal and informal disciplinary measures instead. Such internal non-formalized measure is "week-end punishment" when a juvenile is not allowed to leave for the weekend but must stay in the educational institution.

At the roundtable discussion, stakeholders reported that they are noticing an increase in alcohol and drug addiction problems amongst juveniles. They reported that the options given in these cases are too limited.

ZOMSKD

The draft ZOMSKD regulates disciplinary proceedings in more details compared to ZIKS-1.

It establishes the possibility to impose the following disciplinary measures on a juvenile who has committed disciplinary offences in a correctional home: reprimand; home arrest up to three months; placement in a detention centre for up to three days; placement in an exclusion room without the possibility of going to education or work for up to three days.[321]

ZOMSKD specifically states that disciplinary procedures shall be used only as a last resort.[322]

It further provides an exhaustive list of disciplinary offences for which a disciplinary procedure may be started, which are: a physical assault on another person; failure to comply with an order of an official, which would cause serious disruption in the functioning of the correctional home; the making, introduction or possession of objects suitable for assault, escape or become an accomplice of an assault and attempted escape; escaping or attempting to escape from a remand home; possession, introduction, concealment or distribution of alcoholic beverages, illicit drugs and other illicit psychoactive substances or objects; causing damage to property, whether intentionally or due to negligence; coercion, exerting or inciting others to exert psychological or physical pressure; and finally the unauthorised possession or use of mobile telephones and other communication devices.[323] The

[316] Article 20/III ZOOMTVI.
[317] Article 21/I ZOOMTVI.
[318] Article 21/II ZOOMTVI.
[319] Article 21/IV ZOOMTVI.
[320] Article 21/V ZOOMTVI.
[321] Article 111/I ZOMSKD.
[322] Article 111/II ZOMSKD.
[323] Article 111/III ZOMSKD.

latter disciplinary offence is a new feature of the draft ZOMSKD, as nothing similar was present in ZIKS-1.

A court decision imposing a disciplinary penalty may be appealed.

ZOMSKD regulates the details regarding disciplinary proceedings in the same way as ZIKS-1.

Conclusions

All interviewees noted the stark rise in juvenile criminal offences committed online, due to the increased use of mobile phones and other communication devices among juveniles. For this reason, the newly added disciplinary offence in the draft ZOMSKD (i.e. unauthorised possession or use of mobile telephones and other means of communication) is considered appropriate.

6.3.9 Juvenile prison

Theoretical and normative aspects

A person may stay in juvenile prison until reaching the age of 23, unless their stay is deemed necessary for the purpose of completing school or other training programs.[324]

Practical aspects

The representative of the prison reported that in contrast to educational institutions and correctional home, prison does not offer specific education, re-education and training programs for juveniles, however they are planning to establish at least some programs similar to the ones established in correctional homes. The involvement in such programs is possible only on a voluntarily basis.

The juvenile prisoners are accommodated separately from adult offenders, however due to the limiting space in prison, they meet each other during breaks, meals and walks, which is not beneficial for the juveniles. The problem on the other hand is similar as in pre-trial detention – due to the small number of juvenile prisoners, they often face isolation.

ZOMSKD

The draft ZOMSKD follows ZIKS-1 in regulating juvenile prisons. [325]

Conclusions

Prisons must establish appropriate programs for juveniles, even though the juvenile prison population is small.

Juveniles should be encouraged to attend and participate in the optional programs offered by the juvenile prison.

[324] Article 113/I ZIKS-1.
[325] Article 121/II ZOMSKD.

6.3.10 Judicial supervision of the institutional measures

Theoretical and normative aspects

The administration of the institution in which a juvenile serves an educational measure must report every six months to the court that imposed such measure. [326] The judge of this court may also visit the juveniles in the institution in person.[327]

Practical aspects

A representative of an educational institution maintained that the judges' visits to juveniles placed in institutions resulted in positive effects on the juveniles. It is beneficial for a juvenile to remain motivated in order not to let down the judge who they perceive as "their" judge.

ZOMSKD

Supervision of the lawful and correct execution of educational measures shall be performed by the court that imposed the measure.[328] The competent social work centre shall report to the public prosecutor and the court at least every three months on the progress of the enforcement of the educational measure imposed.[329] The judge may also request a report more frequently. [330]

The institution in which the measure is being enforced shall report on the progress of its enforcement at least every three months to the public prosecutor and the court which imposed the institutional measure. [331] The judge may also request a report more frequently and must visit the court personally at least once a year, to meet with the juvenile in the institution and interview them. [332]

Conclusions

Due to the positive effects that the judges' visits have on juveniles, ZOMSKD could prescribe more than 1 obligatory visit per year, in order to increase the motivation of juveniles for education, resocialization and treatment.

6.4 Recommendations

- One of the main findings of this chapter is that the majority of issues relating to the enforcement of criminal sanctions for juvenile offenders do not arise at the legislative level, but at the practical level. Therefore, what is foreseen by the draft ZOMSKD is considered to be adequate and significant changes are not recommended. Nevertheless, a number of practical aspects would need to be addressed, namely:
    - the lack of resources and specialised experts in the enforcement of criminal sanctions;
    - the inconsistencies concerning the moment in which the enforcement of an institutional measure begins, which may also affect the duration of a sanction and cause legal uncertainty;

[326] Article 489 ZKP
[327] Article 489 ZKP
[328] Article 116(1) ZOMSKD.
[329] Article 116(2) ZOMSKD.
[330] Article 116(2) ZOMSKD.
[331] Article 116(3) ZOMSKD.
[332] Article 116(3) ZOMSKD.

    - the lack of guidance on the treatment of juvenile offenders with serious behavioural issues (sometimes in combination with mental or physical disabilities) who are placed into educational institutions;
    - the lack of clarity as to when and how to use disciplinary measures.
- To avoid difficulties to reintegrate into society following the end of a sanction against a juvenile offender, and to reduce the risks of recidivism, it is suggested that any new legislation could establish that all juvenile offenders, including those who have served a sentence in a correctional home (who are currently excluded from this option), are offered the opportunity to be placed in special apartments after the end of their measure.
- Any new legislation should foresee provisions that strengthen the modalities by which a sanction or measure against a juvenile offender can be exchanged for another if it becomes clear that the imposed sanction is unsuccessful or inappropriate given the needs of the young person. Such changes should be enacted promptly, before it is too late, and require continued supervision and monitoring of the implementation of sanctions against juvenile offenders.
- The draft ZOMSKD establishes mandatory judicial supervision of institutional measures by foreseeing judges' physical visits to juvenile offenders in institutions once per year. Given the positive effects that have been noted of such visits, such a provision must remain in any new legislation and could, if adequate resources are made available, be extended to more than one visit per year.
- Lastly, juvenile prison, which is a measure of last resort only, must follow the same aim and have the same purpose as other sanctions against juvenile offenders, namely the rehabilitation and resocialisation of the juvenile offender, and the minimisation of the risks of recidivism. Therefore, any new legislation should emphasise the importance of enabling and encouraging juvenile offenders to participate in educational and other relevant programmes, and make such programmes available at all times.

7 SOURCES

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7.2 Jurisprudence

7.2.1 Constitutional court

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7.2.2 Supreme Court of the Republic of Slovenia

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7.4 Statistical sources

7.4.1 Annual reports on the work of the Police

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https://www.policija.si/o-slovenski-policiji/statistika

https://www.policija.si/images/stories/Statistics/Annual%20Reports/AnnualReport2020.pdf

https://www.policija.si/images/stories/Statistics/Annual%20Reports/AnnualReport2019.pdf

https://www.policija.si/images/stories/Statistika/LetnaPorocila/PDF/LetnoPoročilo2018.pdf

https://www.policija.si/images/stories/Statistika/LetnaPorocila/PDF/LetnoPorocilo2017.pdf

https://www.policija.si/images/stories/Statistika/LetnaPorocila/PDF/LetnoPorocilo2016.pdf

https://www.policija.si/images/stories/Statistika/LetnaPorocila/PDF/LetnoPorocilo2015_popravljeno.pdf

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https://www.policija.si/images/stories/Statistika/LetnaPorocila/PDF/LetnoPorocilo2011.pdf

https://www.policija.si/images/stories/Statistika/LetnaPorocila/PDF/LetnoPorocilo2010.pdf

https://www.policija.si/images/stories/Statistika/LetnaPorocila/PDF/LetnoPorocilo2009.pdf

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https://www.policija.si/images/stories/Statistika/LetnaPorocila/PDF/lp2001.pdf

7.4.2 Annual report on the work of the Supreme State Prosecutor's Office of the Republic of Slovenia

All accessed in May 25, 2022:

https://www.dt-rs.si/letna-porocila

https://www.dt-rs.si/files/documents/Letno%20poročilo%20DT%20za%20leto%202020.pdf

https://www.dt-rs.si/files/documents/Letno%20poročilo%20DT%20za%20leto%202019.pdf

https://www.dt-rs.si/files/documents/Porocilo_2018.pdf

https://www.dt-rs.si/files/documents/Skupno%20letno%20poročilo%202017.pdf

https://www.dt-rs.si/files/documents/POROCILO-2016-koncno-min.pdf

https://www.dt-rs.si/files/documents/Porocilo_2015-2.pdf

https://www.dt-rs.si/files/documents/porocilo-2014.pdf

https://www.dt-rs.si/files/documents/porocilo-2013.pdf

https://www.dt-rs.si/files/documents/POROCILO-2012.pdf

https://www.dt-rs.si/files/documents/POROCILO-2011.pdf

https://www.dt-rs.si/files/documents/POROCILO-2010-koncno_III.pdf

https://www.dt-rs.si/files/documents/POROCILO-2009.pdf

https://www.dt-rs.si/files/documents/POROCILO-2008-koncna8.pdf

https://www.dt-rs.si/files/documents/POROCILO_2007_24.pdf

https://www.dt-rs.si/files/documents/porocilo_2006.pdf

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7.4.3 Judicial statistics

Accessed in May 25, 2022:

https://podatki.gov.si/dataset/sodna-statistika-bilten#

7.4.4 Statistical Office of the Republic of Slovenia

Accessed in May 25, 2022:

https://pxweb.stat.si/SiStat/sl/Podrocja/Index/53/kakovost-zivljenja