



© UNICEF/UNI/43440/PIROZZI

Advocacy Brief on Child Justice 5 of 5

November 2022

Deprivation of Liberty of Children in Conflict with the Law in Europe and Central Asia

UNICEF Regional Office for Europe and Central Asia



“Using deprivation of liberty in cases of girls/boys in conflict with the law at the pre-trial, trial and post-trial stages as a measure of last resort and for the shortest appropriate period of time, will avoid unnecessary suffering and stigmatisation of children and their parents/families, decrease the chance of reoffending, avoid the excessive costs of deprivation of liberty, and increase children’s constructive role in society.”

Table of contents

1.	The concept of ‘deprivation of liberty’	2
2.	International and European standards on deprivation of liberty	2
3.	Deprivation of liberty of children in conflict with the law at the pre-trial stage	3
3.1.	Pre-charge detention (police custody)	4
3.2.	Pre-trial detention	5
4.	Deprivation of liberty of children in conflict with the law at the post-trial stage (custodial sentence)	6
4.1.	Principles and conditions of detention as a sentence	6
4.2.	Early release from post-trial detention	10
4.3.	Aftercare and reintegration of released children	11
5.	References on deprivation of liberty	13



1. The concept of 'deprivation of liberty'

The **United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)**, also called 'Havana Rules', intend to counteract the detrimental effects of deprivation of liberty by ensuring respect for the human rights of persons under the age of 18 years. They define 'deprivation of liberty' as *"any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is **not permitted to leave at will**, by order of any judicial, administrative or other public authority."*¹ Institutions for the deprivation of liberty of children in the administration of child justice can be closed, semi-open or open. In some countries, detention facilities are referred to as **child rehabilitation centres and educational centres**.² Examples of places where children in conflict with the law are deprived of their liberty are police lock-ups, pre-trial detention centres/remand homes, child/juvenile prisons, adult prisons, military camps, social care facilities, institutions for children addicted to drugs/alcohol, re-education/rehabilitation institutions, psychiatric hospitals and migration detention centres. The recent Global Study on Children Deprived of Liberty (2019) urges states to better respect and protect the rights of children by drastically **reducing the number of children deprived of liberty**, which can be achieved by means of diversion, de-institutionalization, eradicating migration-related detention and applying other non-custodial solutions instead of detaining children.³

2. International and European standards on deprivation of liberty

All **international instruments** covering children in conflict with the law incorporate the principles of 'no unlawful or arbitrary deprivation of liberty', 'deprivation of liberty in conformity with the law', 'deprivation of liberty as a measure of last resort' and 'deprivation of liberty for the shortest

1 Havana rule 11(b)), 1990 (emphasis added); Paragraphs 8 & 73 of General Comment No.24, 2019.

2 Nowak, M., *United Nations Global Study on Children Deprived of Liberty*, United Nations, New York, 2019. See also the box in section 6.1 of Advocacy Brief 1/5 'Prevention' ('special schools' in Uzbekistan and Kazakhstan).

3 *Ibid.* In this advocacy brief, refugee children in detention and children living with their mother in prison are not covered because these children are not in conflict with the law. The Global Study on Children Deprived of Liberty (2019) states that the number of incarcerated women who have young children, or who give birth while incarcerated, is unknown, and there is a lack of research about the health of children living with their mothers in prison. There is some evidence that children detained with their mothers experience, among other things, poorer mental health, below average cognitive and language development, high rates of HIV and hepatitis infection, lice and scabies infestation, and stunting and malnutrition. Allowing babies and small children to remain with their incarcerated mother permits breastfeeding and promotes secure attachment between mother and child, which is thought to be mutually beneficial. Although prison is clearly not an optimal environment for a child, in circumstances where there is no other appropriate caregiver available in the community, accommodating children with their mother in prison may be preferable to the child being moved into institutionalized care. Only eight, mostly European, states (Belgium, Bolivia, Denmark, Finland, Germany, Italy, Spain and Sweden) allow children to co-reside with their fathers in prison.

UNICEF has proposed six interconnected and mutually reinforcing actions that can be adapted to countries' contexts to improve justice for children, including the aim that every child is protected from detention (United Nations Children's Fund (UNICEF), *Reimagine Justice for Children*, New York, 2021.).



appropriate period of time'.⁴The **Beijing Rules (1985)** state that *"restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum; deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response; the well-being of the juvenile shall be the guiding factor in the consideration of her or his case."*⁵The **United Nations Rules for the Protection of Juveniles Deprived of their Liberty (1990)** stress that *"deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society."*⁶The **Committee on the Rights of the Child's General Comment No.24 (2019)** emphasizes that *"for the few situations where deprivation of liberty is justified as a last resort,"* it should be ensured that *"its application is for older children only, is strictly time limited and is subject to regular review"* (paragraph 6 (c) (v)). The Committee recommends that *"no child be deprived of liberty, unless there are genuine public safety or public health concerns, and encourages State parties to fix an age limit below which children may not legally be deprived of their liberty, such as 16 years of age"* (paragraph 89).

3. Deprivation of liberty of children in conflict with the law at the pre-trial stage

Pre-trial detention is the *"detention from the moment of the arrest to the stage of the disposition or sentence, including detention throughout the trial."*⁷ The Committee on the Rights of the Child *"notes with concern that, in many countries, children languish in pre-trial detention for months or even years, which constitutes a grave violation of article 37(b) of the Convention [on the Rights of the Child (1989)]. Pretrial detention should not be used except in the most serious cases, and even then only after community placement has been carefully considered."*⁸ Reports on failure to separate children from adults in detention facilities are common in many regions and

4 United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules) (rule 17.1(b)(c)); United Nations Convention on the Rights of the Child, 1989 (article 37(b)); United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (Havana Rules/JDLs) (rule 1); United Nations Minimum Rules for Non-Custodial Measures, 1990 (Tokyo Rules) (rule 6); Guidelines for Action on Children in the Criminal Justice System, ECOSOC Resolution 1997/30, 1997 (Vienna Guidelines) (guideline 18); European Rules for Juvenile Offenders Subject to Sanctions or Measures, 2008 (rule 10); Model Law on Juvenile Justice, 2013 (article 13(8)); Committee on the Rights of the Child's General Comment No.24, 2019 (paragraph 85).

5 Beijing rule 17.1(b)(c)(d), 1985.

6 Havana rule 12, 1990.

7 Paragraph 8 of General Comment No.24, 2019.

8 Paragraph 86 of General Comment No.24, 2019, emphasis added.



particularly widespread in pre-trial detention where the conditions and physical space make separation difficult.⁹

In **Bulgaria**, the Juvenile Delinquency Act (1958) and other legislation establish three types of closed facilities for children involved in anti-social behaviour and offending behaviour. The two ‘special schools’, i.e. Socio-Pedagogical Boarding Schools and Correctional Boarding Schools, are for children 8 years or older who have been involved in ‘anti-social’ activities or are at risk of involvement in such activities and/or who lack an environment appropriate for appropriate upbringing. Although the state has the power to deprive or restrict a child’s liberty, placing children in these closed facilities is de facto a deprivation of liberty. The fundamental principles of using deprivation of liberty as a last resort, and for the shortest possible period of time, are not always followed. For children in conflict with the law from 14 to 18 years who have to serve a custodial sentence, they are placed in a ‘reformatory’. There is one reformatory for boys and one for girls and both are part of the prison system and situated in prison buildings.

3.1. Pre-charge detention (police custody)

The Convention on the Rights of the Child (1989) explicitly states that the *“arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”* (article 37(b), emphasis added). Arrest is often the starting point of pre-trial detention. Children who are brought to the police station after being apprehended or arrested should not feel frightened when detained at the police station. In order to avoid trauma, the detained child must **not be placed in a locked cell or secure area**, unless there are exceptional circumstances, i.e. when the girl/boy poses a danger to her/himself or exhibits violent behaviour.¹⁰ Even in this case, however, **constant supervision and care** must be guaranteed. Children in police custody, also called ‘pre-charge detention’, should not be held together with adults, except where that is in their best interests, and should be **brought before a competent authority within 24 hours** to examine the legality of the deprivation of liberty or its continuation.¹¹ Girls should be separated from boys in pre-trial detention. *“In many countries, the recommended 24-hour limit to police custody is not legally implemented. Globally, the length of lawful police detention varies from several days, to weeks or even months. Even when States incorporate this standard into national legislation, they do not*

9 Nowak, M., United Nations Global Study on Children Deprived of Liberty, United Nations, New York, 2019. For example, in Uzbekistan, national legislation allows that children are deprived of liberty in pre-trial detention facilities together with an adult “if that adult can positively influence the child”.

10 Article 27 of the Model Law on Juvenile Justice, 2013.

11 Paragraphs 85 & 90 of General Comment No.24, 2019.



*always comply with it in practice.*¹² The Study on Violence against Children (2006) found that police and other security forces are often responsible for **violence against children** and that arrest is one of the situations in which violence occurs.¹³

Albania has developed a good pre-charge practice. Instead of locking up children allegedly in conflict with the law in non-child-friendly police cells, they can stay in the child-friendly interview room after their interview. These rooms are equipped with audio and video recording devices, with electronic key cards that enable the identification of the holder, with couches and air conditioning and are very well lit. A toilet is part of many child-friendly interview units or one is situated close by. Information on the rights of children in conflict with the law, in a child-friendly language and with easy-to-grasp visuals, is also made available.

3.2. Pre-trial detention

The court may order pre-trial detention of children in conflict with the law **only in exceptional cases**.¹⁴ The law should clearly state the **criteria** for the use of pre-trial detention, which should be primarily for ensuring appearance at the court proceedings and/or if the child poses an immediate danger to her/himself or others.¹⁵ Other exceptional cases in which pre-trial detention may be ordered are when the girl/boy has allegedly committed a serious offence or is a persistent offender, where she/he may tamper with a witness or obstruct the course of justice, or where it is believed that she/he may avoid further judicial proceedings by escaping. Children deprived of their liberty pending trial have the right to prompt access to **legal and other appropriate assistance** free of charge and to communicate regularly with their legal advisers privately and in confidence; to be **kept separately** from convicted children and all adult prisoners (except in exceptional circumstances when detention with adults is in the child's best interests); to communicate with and **receive visits** from family and friends; to have leisure and recreation materials and to challenge the legality of the deprivation of their liberty.¹⁶ Pre-trial detention should be subject to **regular review** by the court (every two weeks), with a view to ending it, and the **duration limited by law**. Children in pre-trial detention should be brought before a court as soon as possible, but not later than 30 days after pre-trial detention takes effect. The pre-trial detention should not exceed a period of three months, to be extended only once for another three months.

12 Nowak, M., *United Nations Global Study on Children Deprived of Liberty*, United Nations, New York, 2019.

13 Pinheiro, PS., *Independent Expert for the United Nations Secretary General's Study on Violence against Children*, World Report on Violence against Children, Geneva, 2006.

14 Article 35 of the Model Law on Juvenile Justice, 2013; Paragraphs 87, 89 & 90 of General Comment No.24, 2019.

15 If the child is considered a danger to her/himself or others, child protection measures should be applied. The court should not order pre-trial detention as a substitute for child protection measures or mental health treatment or because of homelessness (article 35 of the Model Law on Juvenile Justice, 2013).

16 Article 37 (c)(d) of the Convention on the Rights of the Child, 1989.



Girls/boys should be present in court at each review of their pre-trial detention and legally represented at the review. Cases of children in pre-trial detention should be **expedited** and all actors in the child justice system should prioritize these cases. The period of pre-trial detention should be deducted from any later sentence of deprivation of liberty.

4. Deprivation of liberty of children in conflict with the law at the post-trial stage (custodial sentence)

The court should impose deprivation of liberty as a sentence – also called a ‘custodial sentence’ or ‘post-trial detention/incarceration/imprisonment’ – only after careful consideration, only as a measure of last resort and only for the shortest appropriate period of time. Only **children who are convicted of a serious offence and/or are persistent offenders**, and if there is no other appropriate response¹⁷, may be sentenced to deprivation of liberty.¹⁸ The Global Study on Children Deprived of Liberty (2019) quotes international research on deprivation of liberty as a sentence. *“While there may be situations where young people create particular safety risks for themselves or others, research shows that, on the whole, rates of arrest and the number of people in detention do not necessarily reflect levels of crime. Instead, history suggests that the **extent to which child imprisonment is applied** at any given time and place is best explained rather by the decisions of politicians and policymakers than the volume or gravity of the crimes themselves. What is more, reliable evidence demonstrates that the detention of children as a punishment is often **widely ineffective** in relation to its stated objectives, namely the preservation of safety of societies and preventing crime.”*¹⁹

4.1. Principles and conditions of detention as a sentence

The primary purpose of any action taken against girls/boys in conflict with the law, including the deprivation of liberty, must be the **rehabilitation and reintegration** of the child rather than punishment or the protection of society. The Convention on the Rights of the Child (1989) requires

17 ‘No other appropriate response’ does not mean that a custodial sentence should be given to a child just because there is no other suitable placement, but instead refers to situations in which other measures would not be suitable or in the best interests of the child.

18 Beijing Rules, 1985 (rule 17.1(c); Model Law on Juvenile Justice, 2013 (article 55(2)).

19 Emphasis added. In some countries, for example in Albania, children are used for organized crime purposes. In the Global Study on Children Deprived of Liberty (2019), the following is stated in this respect: *“Generally, policies targeting organised crime strongly affect children recruited by criminal gangs and therefore perceived by the police and the community as a threat. For instance, children may be recruited by organised crime groups involved in drug trafficking, considered one of the ‘worst forms of child labour’; and typically used for ‘low level’ functions. These include monitoring, transport, sale, theft (where exposure to violence is particularly high due to clashes over territory), the protection of merchandise, or punishment if they fail. When children are coerced to join organised crime groups and forced into exploitation, including by committing criminal offences (e.g. petty crimes, begging, or prostitution), they should be considered as victims of the crime of trafficking in human beings.”*



that detention must not be used as a punishment, but rather that intensive work be conducted with children in order to rehabilitate and reintegrate them into society. The Havana Rules (1990) state that *“deprivation of liberty should be effected in conditions and circumstances which ensure respect for the human rights of juveniles. Juveniles detained in facilities should be guaranteed the benefit of meaningful activities and programmes which would serve to promote and sustain their health and self-respect, to foster their sense of responsibility and encourage those attitudes and skills that will assist them in developing their potential as members of society”* (rule 12). Internationally, the most important principles and conditions of **facilities where girls/boys serve their custodial sentence** are:²⁰

- **Legal safeguards/protocols:**

- No admission to a detention facility without a court order.
- No denial of the rights of the girls/boys, except to the extent that these are necessarily removed or restricted in order to implement the custodial sentence.
- Guidelines to address the risk of violence against girls/boys and to respond diligently to any (alleged) incident of such violence, including neglect, exploitation and physical, sexual and emotional abuse.²¹
- Children’s legal, medical and disciplinary records, and all other documents on children’s treatment should be placed in a confidential individual file.
- Girls/boys are separated from adult detainees, as there is abundant evidence that this compromises their health and basic safety and their future ability to remain free of crime and to reintegrate, and children are held only with other children who are of the same age group and have committed similar types of offences.
- Girls are held separately from detained boys and measures are in place to meet the specific needs of female children (such as pre-natal services for pregnant girls) as well as the special needs of other children in order to protect them from all forms of abuse.²²

20 Havana Rules, 1990 (rules 19 to 80); Convention on the Rights of the Child, 1989 (article 37); Model Law on Juvenile Justice, 2013 (articles 51, 55(3), 58 to 76); United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, 2014 (paragraphs 38 to 42); Havana Rules, 1990 (rules 19 to 87); General Comment No.24, 2019 (paragraphs 92 to 95).

21 See also: UNODC, *Introducing the United Nations Model Strategies and Practical Measures on the Elimination of Violence Against Children in the Field of Crime Prevention and Criminal Justice, A New Tool for Policymakers, Criminal Justice Officials and Practitioners*, Vienna, 2015.

22 The Global Study on Children Deprived of Liberty, 2019, estimates that girls constitute 6% of detainees held in pre-trial and post-trial facilities and concludes in this respect that “girls who experience youth detention constitute a large, marginalized and medically vulnerable population that is largely hidden from public view” and recognizes that “lesbian, gay, bisexual, transgender, and intersex (LGBTI) young people are frequently placed in gender-inappropriate detention facilities with many of them facing bias in adjudication as well as mistreatment and abuse. Detainees from sexual minorities face a greater risk of violence, including rape, physical assault and other forms of sexual abuse. Furthermore, their exposure to social isolation is further exacerbated in detention.” See also: United Nations General Assembly, *Safeguarding the rights of girls in the criminal justice system- Preventing violence, stigmatisation and deprivation of liberty*, Office of the Special Representative of the Secretary-General on Violence against Children, 2015. CRC-GC No.24 does not state anything specific regarding girls in detention. The previous CRC-GC No.10 on the Children’s rights in juvenile justice (2007), however, mentions that “Since girls in the juvenile justice system may be easily overlooked because they represent only a small group, special attention must be paid to the particular needs of the girl child, e.g. in relation to prior abuse and special health needs”, paragraph 40).



- Disciplinary measures are used only as a measure of last resort and are consistent with upholding the inherent dignity of the children. For example, girls/boys should not be subjected to corporal punishment, placed in a dark cell, solitary confinement or any other punishment that may compromise the child's physical or mental health or well-being; and disciplinary measures should not deprive children of their basic rights, such as visits by legal representatives, family contact, food, water, clothing, bedding, education, exercise or meaningful daily contact with others.
- Restraint or force is used only when the girl/boy poses an imminent threat of injury to her/himself or others, and only when all other means of control are exhausted. Only staff who have received training in the use of physical restraint may be authorized to use force or instruments of restraint against a child.
- Non-intimate searches of girls/boys are carried out by a professional of the same gender as that of the child.²³ Any search or examination which involves more than an examination of the exterior of the girl/boy's body or the removal of more than the girl/boy's outer clothing is conducted only when strictly necessary and where safeguards are in place to protect the child, such as only by a registered medical practitioner/registered nurse of the same gender as that of the child and in the presence of her/his parents/caregivers or staff of the welfare agency concerned.
- Detention facilities should be inspected regularly by an independent government agency in order to assess the compliance of the facilities with national and international standards and norms.
- Girls/boys have the right to make requests or complaints to the management of the detention facility, the central administration, judicial authorities and other independent authorities about any matter that affects them while in detention. Their complaints should not be censored, and the complaint procedure should be confidential, age-appropriate, gender-sensitive and accessible to children deprived of their liberty.
- **Facility/environment:**
 - Detention facilities should be decentralized in order to be as close as possible to the place of residence of the child's parents/caregivers and to enable access and contact with family members and to allow for (re)integration into the community.
 - They should offer a humane environment that promotes the welfare of girls/boys and upholds their rights and dignity, including appropriate sleeping accommodation, sufficient and clean bedding, storage facilities for personal items, adequate sanitary facilities, permission to wear own clothes, sufficient food of adequate nutritional value, access to clean drinking water, etc.

²³ Transgender children should be provided with a choice regarding the gender of the person conducting the search.



- Transfer of detained girls/boys to another detention facility is only allowed only by court order and in exceptional cases, that is only where it better promotes the reintegration and rehabilitation of the child into society or where it is imperative to remove the child from the detention environment because of serious security and safety risks.²⁴
- **Programmes/services:**
 - An individual tailored sentencing plan is developed to enable girls/boys from the outset of their detention to make the best use of their time and to develop skills and competences that enable them to reintegrate into society and to prepare them to be released as early as possible and give an indication of appropriate aftercare measures.
 - Meaningful and effective programmes that aim at the rehabilitation and reintegration of girls/boys and are adapted to their age, sex and other requirements.
 - Education suited to the child's needs and abilities and equal to that provided to children in the community or vocational training in occupations likely to prepare her/him for future employment. Work opportunities serve as a meaningful complement to vocational training and enhance the possibility of finding suitable employment.
 - Time for daily exercise and leisure activities in the open air, when weather permits, and opportunities to participate in arts and crafts activities.
 - Freedom of religion, conscience and thought.
 - Contact with the wider community through communication with their families, friends and other significant persons; visits to their home and family; visits of representatives of any lawful club or organization in which the child is interested; special permission to leave the detention facility for educational, vocational or other important reasons; and access to newspapers, publications, radio, television and other media.
 - An individually-tailored discharge plan to facilitate the child's reintegration process is prepared by staff of the detention facility in close collaboration with the responsible agency in the area to which the child is due to return as well as with the child and the family.
- **Staff/professionals:**
 - Girls/boys are examined by a physician/health practitioner upon admission to the detention facility and receive adequate physical and mental health care throughout their stay.
 - There should be a sufficient number of qualified and trained personnel, including paediatricians, doctors, nurses, child specialist educators, vocational instructors, psychologists, psychiatrists, social workers and welfare staff.

In addition, governments should ensure that there are no incentives to deprive girls/boys of their liberty and **no opportunities for corruption** regarding placement, or regarding the provision of goods and services or contact with family.²⁵

²⁴ Paragraphs 96 to 99 of the European Rules for Juvenile Offenders Subject to Sanctions or Measures, 2008.

²⁵ Paragraph 95(k) of CRC-GC24, 2019.



A good practice in **Bosnia and Herzegovina** is that judges are obliged to visit the children they have sentenced to a custodial sentence in the detention facility.

4.2. Early release from post-trial detention

If post-trial detention is unavoidable, girls/boys should be deprived of their liberty for the shortest appropriate period of time. Post-trial detention facilities should therefore **use early release schemes to the greatest extent possible**.²⁶ Girls/boys in detention should benefit from arrangements designed to assist them in returning to society, family life, education or employment after their (early) release. The rehabilitative activities in post-trial detention facilities should focus on children's preparation for their release. Custodial sentences imposed on girls/boys have to be reviewed by the competent authority (the court, children's review/parole board or other appropriate authority) no less than once every six months in order to determine whether continuing detention is necessary, or release is appropriate. The management of a detention facility may at any time, where there are grounds to believe that it is no longer appropriate to detain the child, request the competent authority to undertake a review of the continued detention of the child. Periodic review of any placement of a girl/boy is also supported by the Convention on the Rights of the Child. The Beijing Rules state in this regard that "[u]pon evidence of satisfactory progress towards rehabilitation, even offenders who had been deemed dangerous at the time of their institutionalization can be conditionally released whenever feasible."²⁷ The **periodic review of post-trial deprivation of liberty** should include:

- A full assessment of the child's rehabilitative progress and whether she/he is ready to be released
- The views of the child
- The views of the detention facility
- A written recommendation on the release or continuing detention of the child

Girls/boys are **informed about the outcome** of the periodic review as soon as possible and in a manner they can understand. If the decision of the competent authority is not to release the child, the reasons for that decision should be provided, as well as a statement of the steps that the girl/boy and the post-trial detention facility need to take in order for release to be considered during the next review. The competent authority may release girls/boys from post-trial detention with or without release conditions. Conditional release should be preferred to serving a full custodial sentence. **Release conditions** imposed on a child may be, among other things, to register with

²⁶ Beijing Rules, 1985 (rule 28); Havana Rules, 1990 (rules 79 & 80); General Comment No.24, 2019 (paragraphs 19 & 88); Model Law on Juvenile Justice, 2013 (articles 59(d), 77 to 81); European Rules for Juvenile Offenders Subject to Sanctions or Measures, 2008 (rules 49(2), 50(1), 51 & 100 to 103).

²⁷ Commentary on Beijing Rule 28, 1985.



the probation service (or appropriate authority), to live in a certain place (e.g. a halfway house), to attend specified community-based programmes, to return home every night at a specified time, not to go to certain places or associate with certain people, to submit to regular drug testing, to visit a mental health facility or to take medication on a regular basis. The purpose of any release conditions is to support the child in reintegration following her/his release. Failure to make such release arrangements may make it more likely that the child will re-engage in offending behaviour. In general, the **probation service** is responsible for supporting children and ensuring that they meet their release conditions. Community support to released girls/boys is encouraged. Without support, released children are likely to breach the release conditions. If a girl/boy breaches the condition(s) attached to her/his early release, this should not result in an automatic order by the court to place the child back in detention, but rather trigger a reconsideration of the level of support being offered and the conditions being imposed.²⁸

4.3. Aftercare and reintegration of released children

International instruments emphasize the importance of support to children released from post-trial detention.²⁹ Without adequate support, there is a high risk that any rehabilitative gains made during the child's detention will be lost. On the day of the child's release, the detention facility should ensure that the girl/boy is handed over to her/his parents/caregivers. As a minimum, **released children have the right to provision of support**, including:

- A suitable residence if the child cannot return to her/his family or such return is not in her/his best interests
- Support in gaining access to education and/or vocational training and/or securing employment
- Adequate clothing suitable to the climate
- Psychosocial support to assist with her/his reintegration into her/his family and community
- Transport to her/his home or the place where she/he will live
- Financial support until she/he has finished her/his education and/or vocational training or obtained employment, unless the child is financially supported by her/his family

The **probation service** (or other appropriate authority) works with both the child and her/his family and develops a release/discharge plan. The probation officer coordinates the implementation of the support services for released girls/boys and their family for a minimum of six months after their release. In the Global Study on Children Deprived of Liberty (2019), the following **early release and post-release programmes** for girls/boys are listed:

28 Hamilton, C., *Guidance for Legislative Reform on Juvenile Justice*, UNICEF & Children's Legal Centre, 2011.

29 Beijing Rules, 1985 (rule 28); Havana Rules, 1990 (rule 80); Model Law on Juvenile Justice, 2013 (article 81); European Rules for Juvenile Offenders Subject to Sanctions or Measures, 2008 (rule 103).



- Supervision and attendance centres
- School attendance
- Vocational skill training
- Community service work
- Reparation
- Competency development programmes
- Treatment programmes for alcohol or drug dependence
- Mentoring programmes
- Gang resistance programmes

According to article 147 of the Juvenile Justice Law (2006) of **Serbia**, the competent guardianship authority shall maintain constant contact with the child offender, his/her family and institution in which the child is remanded during the whole duration of the institutional measure. The purpose of this intensive contact is to better prepare the child and his/her family for the return to the former social environment and inclusion in social activities. An institution to which the child has been referred is required to notify the child, family and guardianship authority at least three months in advance of the scheduled discharge of the child and to suggest measures for his/her reintegration. Even though a reintegration plan is made prior to the discharge of each child, the quality of planning, preparation, support and monitoring of children after discharge is not functioning well in practice. The reasons for this lie in weak cross-sectoral cooperation and joint responsibility of various bodies in the process of preparation of child offenders for release and offering help and support upon discharge, combined with lack of opportunities and services in the local community. Another practical problem is that discharged children are often already over 18 years old when they leave the institution, and are no longer eligible to receive adequate support within the social protection system, which is already burdened by insufficient human and financial resources.



5. References on deprivation of liberty

International legal instruments:

- United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (Beijing Rules).
- United Nations Convention on the Rights of the Child, 1989.
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 1990 (Havana Rules/JDLs).
- United Nations Minimum Rules for Non-Custodial Measures, 1990 (Tokyo Rules).
- Guidelines for Action on Children in the Criminal Justice System, ECOSOC Resolution 1997/30, 1997 (Vienna Guidelines).
- United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice, 2014.
- Committee on the Rights of the Child, General Comment No.24, Children's Rights in Child Justice System, 2019.
- Nowak, M., *United Nations Global Study on Children Deprived of Liberty*, United Nations, New York, 2019.
- UNICEF, *Lost in the Justice System – Children in conflict with the law in Eastern Europe and Central Asia*, UNICEF Regional Office for CEE/CIS & UNICEF Innocenti Research Centre, Geneva, 2008.
- UNICEF, *Reimagine Justice for Children*, New York, 2021.
- United Nations General Assembly, *Safeguarding the rights of girls in the criminal justice system- Preventing violence, stigmatization and deprivation of liberty*, Office of the Special Representative of the Secretary-General on Violence against Children, New York, 2015.
- UNODC, *Model Law on Justice in Matters Involving Children in Conflict with the Law*, Vienna, 2013.
- UNODC, *Introducing the United Nations Model Strategies and Practical Measures on the Elimination of Violence Against Children in the Field of Crime Prevention and Criminal Justice: A New Tool for Policymakers, Criminal Justice Officials and Practitioners*, Vienna, 2015.

Other references:

- Hamilton, C., *Guidance for Legislative Reform on Juvenile Justice*, UNICEF & Children's Legal Centre, New York, 2011.
- Pinheiro, P.S., Independent Expert for the United Nations Secretary General's Study on Violence against Children, *World Report on Violence against Children*, Geneva, 2006.

