

# ANALYSIS OF THE CHILD PROTECTION SYSTEM IN BULGARIA

## **ANNEX 1: Case Studies**



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# 1. Case study – Foster and residential care

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## 1.1. Description of the specific case<sup>1</sup>

### 1.1.1. Foster care

The Foster care case revolves around an 11-year-old girl who is currently placed in foster care. The child has been within the scope of the child protection system since a few months after her birth (2008). The initial contact came when the mother left the country for work and the child was assigned kinship care (placed in the care of relatives). The mother returned subsequently but there was a signal that the family with which the child was placed, had been forcing the mother to prostitute. As a result, a new measure was taken, and it took several months for the girl to be taken out of that family and placed in a Home for Medic0-Social Care for Children (HMSSC). Two years after being placed at the Home, the child was moved to another HMSSC in one of the cities where the field research was based, by request from the mother who was currently living near this city. That is when the interviewed CPD opened a case.

In 2011, the child was deinstitutionalized and placed in a voluntary foster family, but 3 years later the measure was once again changed - the foster family wanted to transition from being voluntary to professional foster parents. This was an administrative act without factual changes for the child, as it was re-placed to the same foster family who would now begin to receive monthly salaries in conjunction to the allowances for the child. In the meantime, the biological mother had stopped all contact with the child.

As prolonged placement in a professional foster family is done via a court order, the mother had to appear in court and she then claimed that she wants to take care of her child. Because of this oral claim the court issued a decision for the child to be placed for only 6 months in the foster family to estimate if eventual reintegration with the mother's family is possible. The CPD, supported by the Foster care team, the CPD at the mother's current address, and with consultations from the mother and the foster parents, created a plan for reintegration involving active meetings between the mother and child in an attempt to restore the broken relationship. The reintegration procedure did not go according to plan, the mother did not attend all scheduled meetings and then left abroad to continue prostituting once again without any prior notice.

The child was yet again placed in foster care by the court – in the same family up to the age of majority or the age of 20 if the child is enrolled in school, or until change of the circumstances that led to this measure.

Since then, the mother has returned to the country several times and issued statements that she wants to care for her child. However, she never follows through with them. As of the time of the interview, the child, who is now 11 years-old, has been included in the adoption register. At first she felt very negatively to the idea of being adopted, but has since started to slowly accept the idea. The child has been visiting a psychologist at the Centre for Social Support.

### 1.1.2. Residential care

The case on Residential care revolves around a 14-year-old child placed in a Family-type placement center (FTPC). The center is located in a large city which is a regional center. There the child lives with his two older sisters aged 16 and 18.

<sup>1</sup> It must be noted that the researchers had no direct contact with case files. The information was received solely through the accounts of the respondents, so key facts could be missing. The accounts oftentimes included contradictory statements and at times the audio of recordings was unclear.

According to the social worker assigned to the case, in 2006 the child and his siblings lived in a farm with his mother and father. It was the General Practitioner doctor who alarmed CPD that the children are neglected. CPD gave a one month injunction notice to the family to relief the situation. The mother of the children and her partner have been consulted about available community services as well as financial support they could use. A meeting with their employer has been organized.

A month later CPD found that the conditions of the injunction had not been met and placed the three children in different institutions. This decision was taken in a meeting attended by the social worker, the CPD director, a lawyer from CPD, the mayor and the nurse serving the settlement. A reintegration plan has been prepared by the Center for Public Support (CPS) and given to the mother. Nevertheless, between 2006 and 2008 she visited the child only once. A new plan was developed and submitted to the mother. She expressed her desire to take care of the child and was referred to CPD consulting services.

In the meantime, the mother gave birth to a fourth child and was directed to a service for prevention of separation with the newborn child. The lifestyle of the family remained erratic - frequent changes of place of living and rare meetings with the CPS staff. In 2008 again the support plan was amended to elaborate the visits between the mother and her children.

In 2009 when the child was around 4 years old, he had been placed in another institution. The mother was informed that the child is registered in the adoption register. There is no information that such a note had been served to the father. The mother did not appeal nor opposed that decision. It is not clear whether candidates for adoption met the child but in 2011 the mother gave a statement for reintegration. She was again referred to community services and the plan was reviewed. The main finding of the review was that the material conditions of the mother's household are inadequate, and the family lacks sufficient income to support their children.

In 2012 the boy was placed in a new institution where he was reunited with his sisters. There is no indication in the case that this was a specialized institution. That year the mother visited the children once. In 2013 the mother was summoned and told the reintegration plan is not followed and the child will be registered in the adoption register. The mother signed a declaration that she is unable to take care of the child. In May 2013 the child is registered in the adoption register. The case file of the child specifically indicates that the child agreed to the adoption perspective because "he was angry at his mother".

In 2014 when the deinstitutionalization reform begun in Bulgaria a needs assessment report was prepared. Participants in this process were the leading social worker, a social worker, a counsellor from the institution, a psychologist, a paramedic from the institution and the class teacher. In the same year the mother was visited in her home and informed about the deinstitutionalization. At the time the mother told the CPD office that she is not able and is not willing to take care of the child and agrees for the child to be placed in FTFC. Her close family members - brothers and sisters were also informed about the prospect of placing the boy in FTFC but all decline the possibility to host the child in their households.

In April 2014 each of the siblings was informed about the placement. The meetings were attended by the leading social worker and a psychologist. A placement plan was elaborated with each of the children. At the time a meeting with the mother was organised to inform her about the placement of her children in FTFC and to consult her on the available community services.

In 2018 when the child is 12 years old, he is directed to resource school support. However, the child says that he does not attend the resource classes.

Before the placement in FTFC the child says that he lived in two different institutions. In his opinion he has been relocated to FTFC because of age, as there were predominantly younger

children in the previous institutions. The child allegedly does not remember living outside of institutions/residential care. With regards to the decision-making process linked to the placement, the child is confused and apparently does not know how the mechanism works. First says that the director of the FTFC makes the placement decision, then changes his mind and points to some other person which is impossible to identify.

When asked about his attitudes to the specific FTFC the respondent becomes withdrawn and disengaged. Answers with single words:

*“Q: Tell me about the FTFC environment?”*

*A: It's Ok.*

*Q: How about the other kids there?”*

*A: It's Ok.”*

## 1.2. General definitions of the issue

Typology, Prevalence, general legal and policy framework (page length: 1)

Foster care is defined by Art. 34a (1) of the CPA as the raising and upbringing of a child in a family environment. The CPA gives the general terms and conditions related to foster care – what are foster parents, who can become one and who cannot, as well as the relationship between the foster family and the biological one (when such can be established). The Rules for the Implementation of the CPA define the possibilities and options for social assistance and financial aid for foster families, as well as the conditions for raising children in professional foster families, the terms of their contracts and the rules and procedures for financing, including the amount of the monthly remuneration of the foster family.

The **Ordinance on the Conditions and Procedure for Application, Selection and Confirmation of Foster Families and Placement of Children in them** is the document which lays out the grounds for placement in foster care and the length of placement (which usually is correlated to the reason):

**1. Short-term** – it is undertaken for a period of up to one year as a means to support the biological family before returning the child back to it. During this period, measures are taken to prevent abandonment in accordance with the **Ordinance on the Conditions and Rules for the Implementation of Measures to Prevent the Abandonment of Children and Their Placement in Institutions, and for their Reintegration;**

**2. Long-term** - it is undertaken for more than one year for children:

- whose parents are deceased, unknown, deprived of parental rights or whose parental rights are limited;
- whose parents have not provided sufficient long-term care for them without warrantable reason;
- whose parents are permanently unable to raise them;
- which have not been returned to the biological family within the short-term placement;
- whose adoption is impossible.

**3. Urgent** – it is undertaken for the purpose of preserving the life and health of children:

- in an emergency situation;
- who have been appointed with the measure of police protection, but its deadline has expired;
- who are victims of violence and trafficking in human beings;
- who are in the age group 0-3.

**4. Replacement foster care** – it is undertaken in order to provide recreation to the foster family/kinship care or for children placed in long-term specialized institutions as a means for integration into the community, as stated in the Additional provisions to the Rules for Implementation of the CPA.

The same Ordinance lays down the procedure for applicants to apply for foster parents and provides the providers of the social service “Foster care” with a set of minimal requirements for selection of candidates, as well as guidelines for assessment, training and monitoring of the confirmed foster parents. It establishes the procedure for placement of the child in the foster family and the process of creating a bond between the child and the foster parent. Additionally, this is the document which further defines the role of the professional foster parent.

At the operational level, the work of the social workers at the CPD, the social workers from the provider of the social service “Foster care” (mainly the social workers from the Foster care teams) is guided by the **Methodology for the conditions and means of providing the social service „Foster care“**.

Family-type placement center (FTPC) is a place in the community where children who need care live in small groups – up to 15 children. The philosophy of the FTPCs is that the children receive individualized care which is as close as possible to the family environment, the community and the respective parents. According to Art. 36(2)(4)(a) of the Rules for the Implementation of the Social Protection Act there are 7 types of FTPC varying in characteristics of the beneficiaries – i.e. FTPC for children without disabilities, FTPC for children and/or adolescents with disabilities, FTPC for adults with various forms of disabilities etc. This analysis focuses on FTPCs for children without disabilities.

The service aims to provide secure and protected living environment for children from 0 to 18 years of age who are deprived of parental care. The overall objective (see Methodological guidance) is to guarantee better quality of life, human development and social integration.<sup>2</sup> The Methodology does not specify what is the benchmark against which the quality is measured. A systematic interpretation of the rules and regulations for protection of children leads to the conclusion that an appropriate family environment is the best alternative. FTPCs should provide better quality of life than inappropriate family situations and other institutions. Nevertheless, it should be mentioned that the interest of the child is key in every case and each concrete situation has to be assessed individually.

Children younger than 3 can be placed in FTPC only under extraordinary circumstance and if an older sibling has already been placed there. Each FTPC is deemed to host from 6/8 to 15 children. In an interview with social worker the size of the inhabitants is emphasized as a positive characteristic of the residential care institutions. The respondent tells the story of a 15 years old boy who reluctantly is placed from an older type institution into a transitional accommodation. Despite the initial resistance the child in fact likes the new environment mostly because of the small number of inhabitants. This is associated with more personal attention which leads to less conflicts. (IDI-T-C-RC2-FC2-SW-V) Other interviews indicate that the number of inhabitants is closer to the lower limit (9-10 children) set in the Methodological guidelines for FTPC.<sup>3</sup> However, there are also FTPCs where the reported number of inhabitants is above the prescribed maximum – i.e. 18.<sup>4</sup>

It is important to note that children are only placed in FTPCs if there are no other ways of re-integration with the biological family, relatives or foster-care family. The key objective of the

<sup>2</sup> According to the Methodological guidelines for providing the social service “Family-type Placement Centre for children” (FTPC), the essence of the service is to provide a “living environment for the full growth and development of children deprived of parental care, for which, at the time of placement, the possibilities of return to the biological family, placement with relatives and close friends or foster family have been exhausted.”

<sup>3</sup> StZ-FTPC-SW3.

<sup>4</sup> VR-M-HAS.

FTPCs is to provide high quality individualized care and development of skills and abilities for independent life.

The advantage of the FTPC arrangement is that the environment is closer to a family setting compared to the institutions.<sup>5</sup> . From the perspective of social worker, the **key disadvantage** of FTPC is that all auxiliary services (i.e. healthcare, education, psychological consultation) are physically outside of the FTPC.<sup>6</sup> Particularly for children with disabilities the institutions are seen as more capable service provider compared to FTPCs.<sup>7</sup>

Several exit options from FTPC are possible. Re-integration with the family, if in the best interest of the child, is the most desirable development. Children placed in FTPC can also be adopted or transferred to foster care. The least desirable situation is when the child is placed in correctional school or socio-pedagogical boarding school.

### 1.3. Actors, structures and protocols

#### 1.3.1. Foster care

Foster care in Bulgaria is mostly provided under the “Accept me 2015” Project<sup>8</sup>, where the municipality is the provider of the service Foster care, but in some the service is provided through the SAD, with social workers from CPDs taking up the responsibilities for selection, training and quality control of the service Foster care. Under the Project, Foster care units (FCUs) have been appointed at the regional level and employed by the municipality which is a district center to the specific region. These teams serve all municipalities on the territory of the region, which are also partners of the project. In order to have quality level Foster care, there must be quality and professionalism in these teams, which have become the prime capacity-building authority in this type of service. These teams work with the foster parents, not with the children themselves – **the whole process must involve cooperation between the social worker from the Foster care team and the social worker from the CPD**, as one is familiar with the profile of the foster parent and the other has a closer understanding of the case of the child. There seems to be friction between CPDs and FCUs, as social workers at CPDs have greater workloads and no maximum case standards, as well as different employers – the weakest link in the Foster care model is the connection between the FCUs and ASA’s regional and local structures.<sup>9</sup>

In the Foster care cases the social worker at the CPD and the social worker from the Foster care team must pay monthly visits to the family and monitor the child and foster parents, as well as the overall quality of the service provided. Additionally, a care plan is prepared for the child, and is reviewed every six months. In this review the social worker from the Foster Care team, who leads the case, the social worker from the CPD, the foster parent, and the specialist from the Centre for Social Support - the psychologist who works directly with the child, go over all aspects of the child’s upbringing such as health, safety of the environment, education, emo-

5 StZ-FTPC-SW2.

6 StZ-FTPC-SW3.

7 K-ASA-RDSA-CP.

8 The initial regulation of Foster Care in Bulgaria dates from 2001, but there has always been little interest. Foster care, and especially professional foster families gained traction, with the introduction of the Project „I Have a Family, too“ in implementation of the National Strategy „Vision for deinstitutionalization of children in the Republic of Bulgaria“ funded under the Operational Programme „Human Resources Development“ by the European Social Fund and the Republic of Bulgaria. The project was implemented in partnership between the Agency for Social Assistance and 81 municipalities in the country and had a duration of 26 months and the funding amounted to BGN 14 989 454,30. Its continuation, the “Accept me 2015” Project will continue for 63 months (until the end of 2020), and its funding is capped at BGN 136 404 000 for 140 partnering municipalities. By the end of “Accept me” a legislative framework should be prepared to ensure the provision of the service as a state delegated activity. ([http://www.asp.government.bg/about/-/asset\\_publisher/gGchKUMwkm0t/content/priemna-griza-po-proekta-priemi-me-2015-se-ima-do-kraa-na-2020-g-/maximized](http://www.asp.government.bg/about/-/asset_publisher/gGchKUMwkm0t/content/priemna-griza-po-proekta-priemi-me-2015-se-ima-do-kraa-na-2020-g-/maximized)).

9 SF-ASA-AD.



tions and behavior, leisure and recreational activities, preparation for independent living, identity, relationship with the birth family, and update the plan as needed.

The introduction of Foster care teams under the “Accept me” Project has seemingly brought confusion between the actors at the local level. The municipality is the provider of the social service “Foster care” under the Project, and the Foster care teams are employed by the mayor of the principal municipality in the region, but they are not part of the municipal administration. Furthermore, respondents from two different Centres for Social Support state that with the introduction of these teams their obligations regarding the social service “Foster care” have been limited. They are no longer asked to provide training or measure parental capacity of foster parents,<sup>10</sup> and whenever a foster family is directed to work with a CAC, the foster parents feel as though the recommendations and opinions of the social workers and psychologists there matter less than those of the social workers from the Foster care teams. However, according to the **Methodology for the conditions and means for providing the social service “Centre for Social Support”** the CSSs are still supposed to provide training for candidates for foster parents, risk and needs assessments etc.

Under the “Accept Me” Project supervision is provided for both foster parents and foster care teams every six months. Additionally, the social workers from the Foster care teams must provide support to parents for all issues which arise during the period in which the child is placed in the family.

### 1.3.2. Residential care

Actors in the FTPC community service are the CPD, social workers, service providers (the provider of FTPC service), municipality, and providers of educational, health care and other services. The process of placement in FTPC is thoroughly regulated in the **Methodological guidance**. In municipalities in which there is no FTPC foster care seems to be preferred alternative to FTPC.<sup>11</sup> Such a decision might be in fact dictated by the fact that there is no FTPC nearby and foster care is the only alternative available.

For various reasons FTPCs do not exist in many municipalities. Usually FTPCs are not present in smaller places because of lack of scale and/or funding. This leads to two negative effects. First, placement in FTPC in another municipality can create a distance barrier for the contacts between children and their parents. This directly contravenes the preposition that FTPCs aim to provide environment which is as close as possible to the family environment and facilitates the family relationships. Second, the lack of FTPC in the particular place will most likely lead to preferences for other options.

In total 11 persons are employed in one of the FTPCs were interviews with social workers were conducted.<sup>12</sup> A social worker or counsellor and a babysitter are present in FTPC during day time. At night there are two babysitters present. There is a medical worker taking shifts.

An interesting case was identified when an NGO supplies FTPC with various professionals. This NGO enrolled psychologist, therapist and physical therapist in two FTPCs functioning in one regional center.<sup>13</sup>

Funding of FTPCs from public budgets is seen as “the bare minimum”.<sup>14</sup> Additional funding for extra activities is raised through projects.

People working in FTPC interact with other institutions – mainly the SAD, CPD, Agency for

10 K-CSS-SW, VR-CSS-H.

11 K-ASA-CPD-H, K-ASA-CPD-SW1.

12 StZ-FTPC-SW2, StZ-FTPC-SW3.

13 VR-M-HAS.

14 VR-ASA-CPD-H.

Social Assistance and others in the context of regular controls. Methodological guidance is also seen as part of the monitoring and control mechanism rather than as a pro-active and positive action to improve the quality and impact of the service. An example is an account of control conducted by the State Agency for Child Protection – the controlling authority came, checked the paperwork, gave feedback regarding the paperwork and then checked for the implementation of the feedback. This indicates focus on the formalistic side of the service rather than looking at the substance.<sup>15</sup> In other cases the control and monitoring gets into greater depth. To a certain extent the personality of the people involved is what determines how control is exercised.<sup>16</sup>

Another dimension of cooperation is the individual work with children. CPD provides a general action plan tailored to the needs of the specific child, the FTPC social worker prepares a detailed care plan, the FTPC director checks the plan and submits it back to CPD. However, another social worker reports that the individual care plan is discussed on a daily basis with CPD.<sup>17</sup> Identical process is used to identify the needs of the children placed in FTPC.

There is somewhat re-active understanding of the quality of the services delivered by FTPC. One social worker from FTPC says that so far there have not been controls based on submitted complaints which is tacitly indicating lack of issues with quality.<sup>18</sup>

## 1.4. Effectiveness and impact of social intervention

### 1.4.1. Foster care

The specific foster care case involves multiple measures taken over the course of several years. The child was initially placed under kinship care after the mother abandoned her and moved abroad. She later returned back to the country, but their local CPD discovered that the mother's family had trafficked the mother for sexual exploitation purposes. As this part of the child's history had transpired in a CPD in a different municipality, it is unclear how no threat or risk to the child was identified before it was placed under kinship care in that family. Once the risk was finally identified, the child was taken out of the family and placed in a local institution, but later moved to another one near the mother's new address in a different municipality (the one where the fieldwork was done), but that institution was scheduled to be closed. The lead social worker from the CPD imposed the measure "Foster care" instead of trying to place the child in a Family-type placement centre. The fieldwork shows that foster care is preferred to FTPCs usually for one of two reasons: there are no FTPCs on the territory of the municipality and no openings in FTPCs in neighbouring municipalities, so the child would have to be removed from the environment it grew up in; or Foster care is preferred as it provides an upbringing in an environment close to that in an actual family. It was the latter reason in the current case.

The foster family the child was placed into was a voluntary foster family at first. The interviewed foster parent mentions having long-term experience in foster care, and is currently looking after the interviewed child and another girl who is several years older and has been placed in their care for a longer period of time. During the initial 3 years of the stay the child became attached to the foster family. The foster parent notes that children who are placed in foster care from residential care suffer from fear of abandonment, as they have already been left by their biological family and don't want to be separated from the foster family as well. This highlights an issue with foster care in Bulgaria – it is treated as a long-term solution rather than a temporary measure.

15 StZ-FTPC-SW3.

16 VR-ASA-CPD-H.

17 StZ-FTPC-SW2.

18 StZ-FTPC-SW3.

After some time, the foster family transitioned from voluntary to professional. Because of this the child had to be formally taken out of the foster family and placed there again. During this procedure the biological mother of the child had been summoned to court where she expressed oral intent to care for her child. This prompted the court to issue an order for reintegration measures to be taken in order for the child to be returned to its biological family, despite the mother having been a victim of (and possibly still being involved in) trafficking for sexual exploitation purposes by her family. There is no mention of this risk. At this point the child had not seen her family in over 2 years and expressed reluctance to being reintegrated.

The child was placed in short-term foster care with the same family while the reintegration procedure went on. The social workers from the CPD and the Foster care team, the CPD at the mother's current address, the mother and the foster parents drafted a plan for reintegration. A plan was elaborated for the mother to visit the child twice a month during the 6-month stay. The mother did not appear according to the plan. In fact, there was a total of three meetings between the child and her mother. The meetings were extremely difficult as the mother could not establish a connection, could not predispose the child. The child refused to come to the meetings. At one point the mother disappeared and the CPD discovered that she had left the country once more. She was offered support measures within the community both by her local CPD, and by the CPD in the municipality where the child was placed, but she declined citing inability to travel to the complexes for social services. While the mother could provide what was described as "extremely good" living conditions, her lack of parental capacity was the reason for the failed reintegration attempt. The child was subsequently placed into the foster family long-term by the court.

The reintegration process impacted the child in a negative way – she felt anxiety and would sometimes go into hysteria, a behaviour which the foster parent calls 'institutional' – as other foster children have shown similar symptoms. In addition, the child would act out in public and right after the second scheduled meeting during which the mother did not show up, the child threw a tantrum in the presence of the psychologist from the CSS. They've tried different approaches to dealing with this problem, including direct work (with a psychologist), but what ended up working the best was talking to the child and building a schedule for when it is allowed to have a temper tantrum. Once it became a regulated activity, the child stopped doing it. In this particular instance, the training and experience of the foster family, along with their proactiveness and their interest in best practices from other countries, was a key factor in building the best possible approach towards the child.

A further development to the case came when the child had to be enrolled into the adoption register years after it entered the CP system and after she had built an emotional bond with her foster family. According to Art. 89(1), p.4 of the Family Code, and stated in the **Methodological guidelines for the preparation of a child for adoption**,<sup>19</sup> children over the age of 14 should personally consent to adoption before the court but younger children, 11-years-old in the current case, can voice an opinion (Art. 90(1) of the Family Code) which should be taken into consideration by the social worker, but cannot refuse adoption. However, ignoring a child's opinion and resistance to certain measures could have overall negative effects on the outcome of the case. In the current case, when the social worker from the CPD came to inform the child of this fact, the girl was in shock. She reacted very negatively, as her emotional bond with the foster parents had been growing for 7 years. Since then she has begun to showcase dislike for the social workers.

An adoption attempt was made, and one meeting was organized between a potential adoptive family and the child, but the candidates backtracked, and the procedure fell through. While the

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19 Source: SACP, available at: <https://sacp.government.bg/sites/default/files/regulatorybase/normativna-baza-503.pdf>

child did not really want to get adopted and only went to the meeting out of sheer curiosity, she still felt abandoned and rejected after the potential adoptive parents gave up.

Aside from feelings of uncertainty, abandonment and rejection, the girl's negative attitude towards adoption is formed based on her social circle which includes other children in foster care and adopted children. The girl believes that adoptive and biological parents are allowed to beat their children, while foster parents cannot do that. Because of this negative attitude the 'direct work' with the psychologist from the CSS has since been directed towards the topic of adoption and as of now the child is slowly warming up to the prospect of adoption.

Overall, the social worker from the CPD predicts a positive outcome for the child: while the foster family has no intent to adopt the girl, but the social worker believes that the child will end up in a decent adoptive family.

#### 1.4.2. Residential care

There is little outcome and impact data with regards to the functioning of the residential care and namely FTPCS. On the one hand side, this is effect of the relatively short time period and the lack of critical amount of cases. On the other hand, there are gaps in the institutional information systems. Most of the indicators in these systems are focused on inputs and processes rather than on outcomes and impact.

Re-integration is an indicator of success of the residential care. However, the success rate of reintegration is low.<sup>20</sup> It should be noted that the success of the reintegration is function of both the willingness of the child and the readiness of the biological family. Interviewed experts note Very often the latter is not well prepared to support the re-integration process. There are parents who look at residential care as an alternative to parenting. Such parents apply every 6 months for placement of their child in residential care.<sup>21</sup>

The fieldwork discovered that it is a regular occurrence for parents to misuse FTPCs: their children are placed there while they work and travel abroad. They refuse the child to be enrolled in the adoption register and apply requests for reintegration at regular intervals, but do not come back and work with the CPD and other social services in the community towards reintegration. There are concerns that FTPCs' capacity is being used as a type of semi-permanent childcare service.<sup>22</sup> This feeds into the other big issue of FTPCs, which is that **the predominant exit strategy tends to be reaching the age of majority**: either because the parents are using the service as an alternative to parenting, because they refuse to allow the child to be adopted, because the child is over the desired age-range for adoption, or due to other factors such as disability.

The case study shows that the biggest gap is the failure to reintegrate the children with their biological family. In several stages of the case the mother is engaged according to the protocols but this engagement is not successful. Her situation apparently deteriorates. The chances of reintegration seem meagre from the very beginning. There is no indication from the case data that the family has been coherently targeted with social services. In the specific case the circumstances indicate that the reintegration was sought as part of the child protection measures but not really as part of the work with the family.

**Key challenge:** at the moment FTPCs provide secure and protected environment for the children placed there. A key challenge is whether this form of residential care fulfils its other key objectives - support for human development and social inclusion. For the former the children need close contact with the community, participation in social, sport and cultural life. With their limited resources FTPCs focus on providing for the basic needs. The wider spectrum of

20 K-ASA-CPD-H, K-ASA-RDSA-CP.

21 K-ASA-CPD-H.

22 STZ-ASA-CPD-H .

participation is a challenge. It should be made clear that this participation depends not only on the institutions of residential care such as FTFC. The community organizations where the children socialize also need to reach out and facilitate access for children from FTFCs.

**Table 1: Identified gaps and challenges to the functioning of FTFCs for children and youth with disabilities**

This case study focuses on FTFCs for children without disabilities, however, during the fieldwork a series of crucial gaps and challenges to the functioning of FTFCs for children and youth with disabilities were identified:

While most cases of children with disabilities involve both physical and mental disability, not all cases do. However, there is no division of FTFCs for children with particular types of disability. Children with disabilities of various natures (i.e. children with aggressive episodes and bedridden children) are cared for in a common environment which might help with socialisation but could prove to be detrimental for the development of children.<sup>1</sup>

“It would be beneficial if at the entrance of this service there is an expert who would judge which children can cohabit together, in view of the fact that there are currently children with mental and physical disabilities living together.”<sup>2</sup>

Another issue is that there are no available openings in residential care for adults with disabilities, and as there is no place else to accommodate youths once they turn 18 and persons over 35, so many of their stays at FTFCs for children and youth with disabilities are prolonged.<sup>3</sup>

The only form of medical control at FTFCs for children and youth with disabilities comes from the GPs of the children. The MoH and the Regional Health Inspections only monitor the quality of the nutrition at the FTFCs.<sup>4</sup>

## 1.5. Human resources: staffing, training, incentives, oversight

### 1.5.1. Foster care

The Foster care case showcases a tendency which has been emphasized by respondents on both national and local level, and is proven by multiple analytical reports so far: there is a lack of voluntary foster families, and those foster families who have started out as volunteers later request to become professional foster parents. A specific issue within the current model of foster care, pointed out during the fieldwork, is the remuneration of professional foster parents. This remuneration is probably the reason why there are hundreds of professional foster families and why the number of voluntary ones has been dropping – the amount that is paid is at least 150% of the minimum wage standard for the country (and at least 10% increase for the second and third foster child, if they are staying with the foster family at the same time).

However, foster parents do not have a permanent employment contract, they only get paid when there is a child placed in their care, so while foster care is a profession in itself, it offers no financial stability for those who practice it, unless they provide long-term care for a child. This could be a potential challenge to the primary purpose of foster care, as it seems to have become an alternative measure against unemployment and the biggest motivation of some foster parents could be earning money. This compromises the current model of foster care as it not only creates demand for children into the foster care service that may affect the proper assessment and determination of the best interest of the child, but it also might prove to be unsustainable once this model becomes funded by the state budget rather than the ESF. Foster care as a ‘profession’ could have potential negative outcomes from a political perspective, as it could be argued that more emphasis is put on reimbursement and remuneration of the foster

family instead of support for the natural/biological one.

Foster care cases require multi-institutional coordination between the CPD, the provider of the foster care service (in most cases – the municipality and the representatives from the Foster care team), the regional Foster Care Committee (which is led by the head of the RSPD and includes the Child Protection expert at the RSPD, a representative from the Regional Foster care team and the social worker from the CPD visit the family once a month, but the family lives with the child 24/7 and has to be able to respond to every possible situation. The Foster family must be able to provide proper care for the child, which is why the process of selection and training is key. The fieldwork uncovered some deficits involving the low criteria for foster families: there is no upper age limit and according to multiple respondents the majority of foster parents are aged between 40 and 70-75. According to interviewed social workers, this generational gap is not optimal for children’s development as older people have an outdated pedagogical approach and they may lack a general understanding of child development, modern culture, technology etc. Additionally, the difference in the environments in a smaller village and a bigger city plays a role in the socialization of the child. Education is a factor the importance of which was stressed at national, regional and at local level, as there are currently no minimal educational requirements for foster parents. It should be noted that the main difference between voluntary and professional foster families, aside from remuneration, is tied to the training of the foster parents. Both voluntary and professional foster families go through mandatory initial training, but according to the **Ordinance on Conditions and Procedure for Application, Selection and Confirmation of Foster Families and Accommodation of Children in them**<sup>23</sup> professional foster families must receive additional qualification for raising and upbringing of children by training, comprising of at least 24 hours, under a programme approved by the Minister of Labour and Social Policy upon a proposal by the Chairperson of the State Agency for Child Protection and the Executive Director of the Social Assistance Agency. In turn, this makes them more appropriate for caring for children aged 0-3, children victims of violence and in conflict with the law.

The number of foster parents is a key part of the ‘staffing’ aspect of foster care, as the majority of foster families are professional foster families and get reimbursed for their services.

**Table 2: Foster families data from 2013 to 2016**

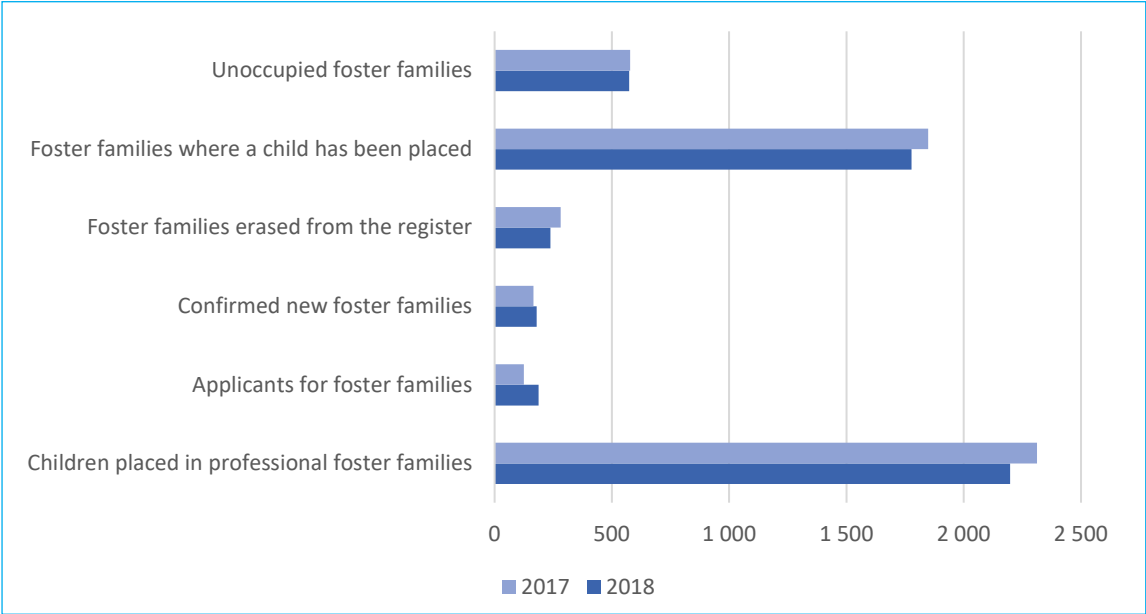
	Children placed in foster families	Total number of foster families	Foster families where a child has been placed	Unoccupied foster families	New foster families			Foster families erased from the register	
					Applied	Confirmed (professional)	Confirmed (Voluntary)	Professional	Voluntary
<b>2013</b>	<b>1441</b>	<b>1955</b>	<b>1496</b>	<b>459</b>	<b>870</b>	<b>750</b>	<b>25</b>	<b>156</b>	<b>34</b>
<b>2014</b>	<b>2275</b>	<b>2322</b>	<b>1767</b>	<b>555</b>	<b>550</b>	<b>483</b>	<b>9</b>	<b>171</b>	<b>27</b>
<b>2015</b>	<b>2323</b>	<b>2452</b>	<b>1862</b>	<b>626</b>	<b>369</b>	<b>303</b>	<b>9</b>	<b>228</b>	<b>13</b>
<b>2016</b>	<b>2355</b>	<b>2552</b>	<b>1887</b>	<b>665</b>	<b>364</b>	<b>374</b>	<b>9</b>	<b>222</b>	<b>13</b>

Source: Estimations made on the administrative data provided by ASA

23 GoRB. 2006.

In 2017 and 2018, there have been only 7 children placed in voluntary foster families. Applications for foster families have gone significantly down in 2017 to 124, but in 2018 they seem to be going up again.

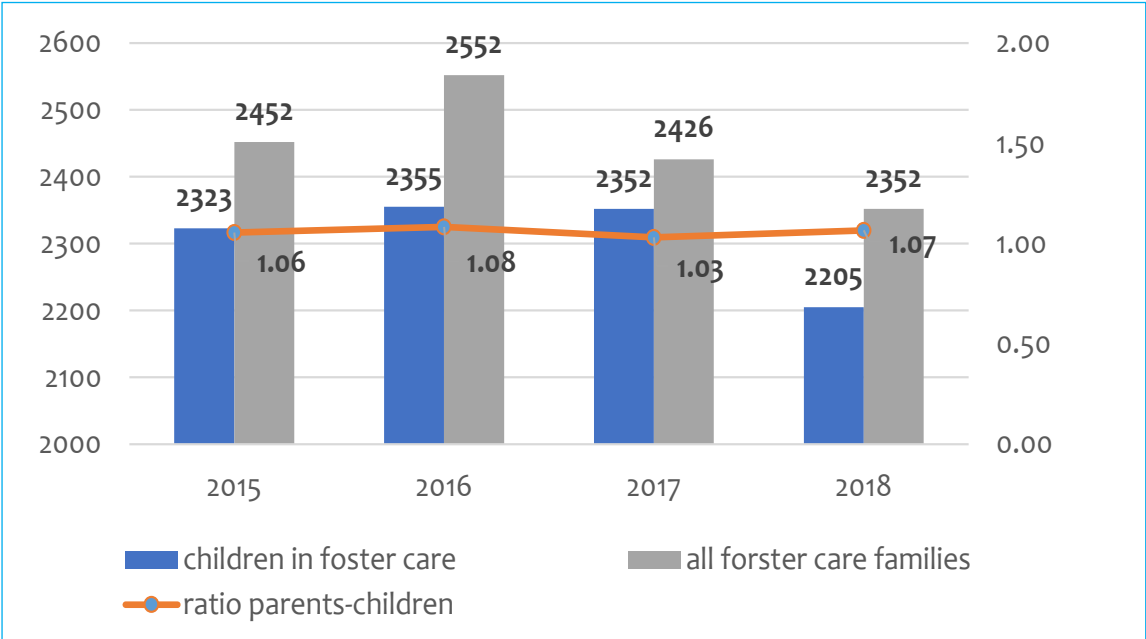
**Figure 1: Data on foster families (2017 v 2018)**



Source: Estimations made on the administrative data provided by ASA

On average 24% of all foster families are unoccupied. This is due to the fact that foster parents are allowed to express preference towards the age group of the children which are placed in their care, and those preferences don't always comply with the specific need in the municipalities.

**Figure 2: Number of children in foster care and number of foster care families**



Source: Estimations made on the administrative data provided by ASA

The interviews undertaken during the fieldwork identified the age group 0-3 as a priority<sup>24</sup>, as there is a severe lack of foster parents who want and are trained to care for newborns and babies. This factor prompts social workers from CPD to either reach out to neighbouring municipalities to look for available foster families with this specific profile<sup>25</sup>, or to place infants in Homes for Medico-Social Care for Children<sup>26</sup> – residential institutions to which entry is banned for all other healthy children 4-18 years-old as part of the country’s deinstitutionalization efforts.

**Table 3: Numbers of children placed in foster families provided by municipalities**

In 2017, 2088 children have been placed in foster families provided by the municipality, and this number is distributed as follows:

Reason for placement/ age	Victims of Violence	Parental Neglect	Victims of Trafficking in Human Beings	Unaccompanied minors	Total number
0 - 3	10	622	0	0	632
3-6	9	446	0	1	456
6-14	40	738	2	2	782
14-18/20	19	199	0	0	218

Source: Estimations made on the administrative data provided by ASA

**Table 4: Numbers of children placed in foster families provided by the SADs**

While an additional 182 children are placed in foster families provided by the SADs:

Reason for placement/ age	Victims of violence	Parental Neglect	Total number
0 - 3	1	39	40
3 - 6	0	51	51
6 - 14	3	70	73
14 - 18/20	2	16	18

Source: Estimations made on the administrative data provided by ASA

Availability of foster families is of key importance, as foster care is supposed to be provided as near to the original environment of the child as possible, but the service might not be readily available or might not exist at all in some municipalities. Since the beginning of the “Accept me” Project, 140 municipalities have become partners. There are children placed in foster care in 204 municipalities in the country, and in 61 municipalities there are no children placed. Calculations of ASA statistics show that there are only 12 municipalities with high availability of foster families, 7 of those municipalities are considered small and 5 – medium.<sup>27</sup> No big municipality has an abundance of foster families. Low availability of foster care mirrors this as 7 medium-sized and 10 small municipalities have lower availability. A total of 174 municipalities fall into the medium range of availability of foster families, with 15 large, 94 medium and 65 small municipalities.

24 (VR-M-HAS;VR-ASA-CPD-SW1;VR-ASA-CPD-SW2)

25 (K-ASA-CPD-H; K-ASA-CPD-SW1)

26 (VR-ASA-CPD-SW1)

27 For the purpose of the calculation municipalities with less than 10 000 inhabitants are considered “Small”, between 10 000 and 70 000 – “Medium”, and over 70 000 – “Large”.



**Table 5: Availability of foster families in different-sized municipalities**

	Total	Large municipalities	Medium-sized municipalities	Small municipalities
High availability of foster families	12	-	5	7
Medium availability of foster families	174	15	94	65
Low availability of foster families	17	-	7	10
No children in foster care	61	-	15	46

Source: Estimations made on the administrative data provided by ASA

Human resources are a key factor for the functioning of the Foster care model. Both the social workers from the Foster care units (FCUs) and the foster parents (as majority of them are professional ones) are remunerated for their efforts, they receive trainings, supervision, and are subject to checks and oversight.

The Foster care units are formed at the regional level under criteria provided by ASA and the social workers and head of unit are hired via competition. They are formally subordinate to the municipality, but implementation of CP policies is a prerogative of ASA through the RDSAs. RDSAs have a leading role in coordination of the Units and synchronization of all CP authorities.

In every regional city (plus Botevgrad) there is a Foster care unit. The number of social workers in the Units is not set, but they rather have a standard workload of 12 families per social worker, and whenever all available capacity is filled, procedure for a new Unit member is open. The number of children placed in a foster family do not affect the workload of the social workers at the FCUs. The head of the Unit is not a de facto social worker at the FCU, they have a coordinating role.

While FCUs are regional entities, they have a deconcentrated structure and members of the unit are based in different cities (external workplaces). The social workers in those external workplaces are hired on a part-time basis. For example, in a town which is a regional centre an FCU is formed. The hiring competition is conducted in this town, the members of the FCU are officially hired by the mayor of this town, but they cover the whole territory of the region. Because of this it is more logical that some of them are based in other cities in order to be able to cover more territory. These external workplaces are a means of shortening the distance between foster families and social workers and hiring experts from the community who might have a better understanding at the local level.

One of the biggest issues of this project is that it does not provide money for transportation of the FCU members. While the external workplaces help alleviate this problem in a way, there are still remote villages which are hard to reach, public transportation is sparse, if there is any, and the Units don't have their own cars. They have to rely on joint visits with CPDs, their personal vehicles, or other authorities or the municipality helping them out with travel and logistics, but the only responsibilities mayors in both the regional centre and smaller cities have to these units is providing office space.

Oversight in Foster care is performed on several levels: the members of the FCUs oversee the actions of the foster family and pay them monthly visits. Every month the families are given a checklist regarding the care they provide to the children placed there. Additionally, monitoring

teams from the CP Directorate at ASA have an obligation to visit the FCUs and monitor the quality of their work, and every 3 months the head of the FCU performs an effectiveness evaluation of the members of the team. In the regional centre there is an administrator of the project (usually the Head of Social or Health Department at the municipality) who administratively supports the teams, while the Head of the FCU methodologically guides the members based on the instruments and procedures in the present legislation. There is no constant direct control over the FCUs.

### 1.5.2. Residential care

Gaps in human resources is a significant problem for the effective operation of FTPCs. First, the remuneration of the staff is not sufficient according to the interviewed experts and this is demotivating many. Particularly for social workers there is little if any opportunity for personal and professional development.

*“There is discrepancy between workload and remuneration.”<sup>28</sup>*

*“In order to advance in the social services career somebody has to make room for you by leaving, promotion or retirement.”<sup>29</sup>*

Social workers are not paid for overtime work which is particularly demotivating. Many say that overtime is a constant part of their performance.<sup>30</sup> This impacts quality of performance and increases turn over.<sup>31</sup> Specific gap is the fact that in some cases professionals (for instance psychologists or social workers) are appointed as non-professional staff. For instance, a psychologist works in FTPC as a babysitter.<sup>32</sup>

Second, the staff must be increased. The caseload is significant and limits the performance. In an interview, a social worker reckons that each social worker should work on up to 20 open cases per month in order to be effective.<sup>33</sup> Particular challenge is the amount of paperwork which exceeds the time that social workers spend in the field. At least two social workers must be employed in each FTPC so they can rotate the shifts and ensure that the children are not only left with the less qualified babysitters.

The above mentioned two trends – low remuneration and high workload make the profession of a social worker unattractive. Inevitably this discourages talent from applying for open positions and increases the turnover rate among the current staff.<sup>34</sup>

Issues with the initial and ongoing training of FTPC staff are another challenge related to the human resources. There is no initial training for some social workers – they are simply attached to a more experienced staff member.<sup>35</sup>

Lack of operational support limits the effectiveness of the staff working in FTPCs, namely the social workers. For instance, there are very few cars or even tickets for public transport that can be used to travel for work.

At a positive note, the capacity of the FTPC staff is increasing since the shift from institutions to residential care. This indicates accumulation of institutional expertise which is an important success and asset of the deinstitutionalization reform.<sup>36</sup> As of 2018 there are 145 FTPCs in Bulgaria with a total capacity for 1753 children. Geographically the FTPCs are distributed quite

28 StZ-FTPC-SW1.

29 VR-ASA-CPD-SW2.

30 VR-ASA-CPD-H.

31 StZ-FTPC-SW3.

32 VR-ASA-RDSA-CP.

33 StZ-FTPC-SW1.

34 StZ-ASA-CPD-H.

35 StZ-FTPC-SW1.

36 VR-ASA-RDSA-CP.

unevenly at both regional and municipality level. From all 289 municipalities and districts of Sofia, there are FTPCs in 84. This means that in 71% of the administrative units (municipalities and districts of Sofia) there are no FTPCs. If children from such municipalities need to be placed in such institutions they need to be sent to another municipality where such an institution is present. From the data supplied by ASP it is not clear what is the total number of children placed in FTPCs.

## Conclusions and recommendations

There seems to be a consensus among the interviewees that foster care and residential care arrangements for children are better in terms of the interest of the child compared to the institutional arrangement. The two options discussed in the context of the case studies -- foster care and FTPC provide community-based children-focused care which is intended to replicate the family environment, maintain the family relationships, promote reintegration and ensure social inclusion and integration.

Nevertheless, there are challenges. Some of these challenges are result of the relative novelty of non-institutional care and the need to develop capacity, accumulate knowledge and adjust institutional practices. Other challenges, however, show that there are systemic issues which need to be addressed.

**The key challenge** is that reintegration with the family is successful in only 38% of cases between 2014 and 2016<sup>37</sup>. They're very few examples of such an exit from child protection measures. On the other hand, given consideration to the best interest of the child and the specifics of each case – the reintegration with the family usually should be the best possible scenario. The case studies and the interviews with actors and stakeholders show that this is the exception. In practice, the main exit strategy is adoption (for younger children) or keeping children in foster care or residential care until turning 18. The measures to help the families are not sufficient or not effective to lead to successful reintegration, and the survey with social workers at the CPD conducted for the purpose of this analysis shows that according to social workers parents do not wish to comply with their recommendations or orders from the SADs for work with social services towards building parental capacity and bettering living conditions. A common opinion is that the lack of serious (financial) sanctions is the reason why parents continuously neglect their parental responsibilities, which leaves their children in these two forms of alternative care. However, financial sanctions might not be an optimal approach, because as mentioned throughout the report, poverty and poor living conditions are some of the driving factors for family-child separation, child abandonment and placement of children in alternative care. Instead, a multi-institutional integrated support mechanism might be more effective, with positive and supportive rather than negative responses, depending on the nature of each case.

Another **major challenge** for the systems of foster and residential care is that the focus of the care is on the basic needs of the children. Foster families and to certain extent FTPCs are assessed mainly on their abilities to meet basic and acute needs such as shelter, food, clothes. There is less focus on the socio-emotional and cultural development. This gap is a direct result of shortage of resources in the systems of foster and residential care. Both foster care, and the residential services should be supported by other services that address more specific problems of the child, and their lack actually creates an overwhelming burden on both services - to deal with all the child's problems. This creates an image of alternative care as a

<sup>37</sup> Analysis: Performance of deinstitutionalisation through implementation of activities for child protection for the period 2012 – 2016.

permanent solution instead of as a temporary measure. At the municipal level schools and recreation centres could offer educational and leisure activities, inclusive programmes, prevention and awareness-raising.

A **specific challenge** is present in smaller municipalities which do not have and/or cannot afford such providers of residential care. In cases where residential care cannot be avoided, children from such places are sent for placement in other municipalities which can sever the ties with the biological families. Likewise, the lack of foster families with the desired age profiles (mostly 0-3) prompts social workers from the CPD to seek appropriate foster care in neighbouring municipalities, again severing the connection between parent and child and child and community, which in itself negates all further reintegration efforts. In many situations such an arrangement will not be in the best interest of the child. A related risk is that in such situations the decision makers might prefer other alternatives which in certain instances might not be in the best interest of the child.

As a whole, the problem with alternative care (both foster and residential) is that both are sometimes used as a permanent solution instead of a temporary measure. And there are deficits in providing educational, spiritual, social development to the child, as the basic physical needs seem to be established as the minimum quality criteria in both types of alternative care.

A **major challenge related to the human resources** is the capacity of the social workers. The role of the social workers is key throughout the whole process of child protection. From the very beginning when the risk of neglect is identified until the exit from the system. Care in the best interest of the children requires highly motivated and committed professionals and namely social workers throughout the whole system. Low remuneration, lack of career perspectives and inconsistent training are endemic and limit the effectiveness of the social workers. High turnover weakens the system and impedes effective knowledge management.

**The following recommendations can be formulated:**

- [foster care-specific recommendations to be completed upon receipt of additional data]
- FTPCs are supported to provide services that promote close contact with the community, active participation in social, sport and cultural life.
- FTPCs in smaller places are funded with priority so that children are not placed far away from their families. Certain criteria for maximum remoteness from family can be developed.
- Given the demand for residential the geographical presence of the services available should be diversified and increased. This will reduce the negative effects of placing children far away from their families and environment
- Residential care is better paired with social services and support for struggling parents so reintegration becomes attainable goal.
- Motivation and capacity of the workforce of social workers are significantly expanded.

## 2. Case study – Family-Child Separation

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### 2.1. Description of the specific case

The field research accompanying the analysis encountered two cases involving prevention of family separation in two of the selected municipalities. **The cases described here are family-centred**, they don't focus on a single child but rather on work with the whole family, and **often-times involved more than one child at risk** of family separation.

The first case (**Case A**) revolves around a 12-year-old boy, his mother and his eight siblings. **All the children in this family are at risk of family separation and child-abandonment.** The case involves the work of **three CPDs in two different cities**. The interviews were undertaken only at one of the relevant CPDs, where the mother and the six children were placed in a crisis centre at one of the municipalities targeted in our research. Due to the complexity of the case – a timeline of this case is provided **Appendix 1** to this case study.

The second case (**Case B**) involves several aspects of child protection actions by the CPD. The interviewed child is a girl who is 14 years-old and has 4 siblings, one of which is over 18. The children live with their biological father who has formally acknowledged 3 of the other children and has been assigned custody over them by the court. He tried to formally acknowledge the other two (including the interviewed girl) but **the mother** blocked the procedure. The mother has abandoned the family, lives in another city and has a new family, but pays child support for the three acknowledged children. She **contacted CPD in the municipality where she lives with a request for the children to be put into foster care or institutions**. The child-respondent is currently living with the father as a measure undertaken by the CPD – 'placement in the home of relatives or close people' (**kinship care**), which means that this is an open case. The father receives an allowance for raising the child, and a social worker must pay monthly visits until the child reaches 18 years of age.

Aside from the custody battles, the CPD is in regular contact with this family because one of the daughters gave birth when she was underage. The timeline of this case cannot be properly established as there are numerous contradictions in the family members' stories which cannot be verified by the interview with the social worker who seemed to be unaware of multiple aspects, including: (1) the fact that the child is currently working with a resource teacher, (2) the father has suspicions that the child suffers from intellectual disability, and (3) both the father and the child raised sexual violence allegations during the interviews.

### 2.2. General definitions of the issue

The legal base for the work on cases of prevention of family separation is CPA. The CPA uses the term "abandonment of the child" but this term is not defined in the legislation. Art. 36 of CPA mandates that anyone who identifies risk of abandonment of a child needs to inform the Social Assistance Directorate. Family separation or "child abandonment" can be the result of many reasons, and interviewees could systematically rank which are the most common, as there is overlap of the reasons. These include:

- Poverty and lack of means to support or raise the child
- Sexual or physical abuse of the child
- Risk for the child to be sold by parents (for purposes of prostitution, begging, or marriage)

- Lack of “parenting capacity” – lack of sense of responsibility to raise the child
- Lack of skills or conditions to care for children with physical or mental disabilities
- Parents in conflict with the law (a single parent is imprisoned; or one parent kills the other parent)

Cases of family-child separation and “child abandonment” are generally further complicated by factors that include:

- Underage parents (the mother or both parents may be underage)
- The child is abandoned at birth
- One or more of the parents live abroad or the family lives abroad (i.e. they are in effect outside the “sight” of the CP system – this is particularly a problem with certain Roma communities, where there is high level of mobility within the country, seasonal mobility, or labour migration).
- Refugee or migrant families and children.

## 2.3. Actors, structures and protocols

There are three key categories of stakeholders involved in the prevention of family separation, the work of each of which is regulated by:

- The CPD at the SADs
- Social service providers at municipal level: the “Mother and baby units” (targeting specifically children 0-3) and the Centres for Social Support
- Other units or institutions that partner with the CPD depending on the particular situation: educational, law-enforcement, or health institutions, or other units of the ASA

### 2.3.1. Gaps and challenges in the regulatory framework

While explicit prevention activities and procedures are not outlined in the CPA, Art. 23 of the CPA and Chapter Three of the Rules for the Implementation of the CPA, stipulate the use of social services or support, [financial] assistance for prevention of abandonment (Art.47 & 48). Art. 36.b and 36.v specifically outline the procedures for new born children (including new born children with disabilities) arrange the cooperation between health authorities and CPD. Further measures and procedures are stipulated in the ***Ordinance on the Conditions and Rules for the Implementation of Measures to Prevent the Abandonment of Children and Their Placement in Institutions, and for their Reintegration***<sup>38</sup>.

#### Box 1: Key issues identified with the Ordinance

- The Regulation arranges only the general procedures regarding the family separation, concerning new born children or ‘children left in health institutions’.
- The list of conditions provided in Art. 4 or Art. 6, which constitute grounds to undertake measures for prevention of abandonment of the child, is neither exhaustive, nor sufficiently instructive, to provide guidance for actions by CPD staff.
- Beyond health-care institutions and Social Assistance Directorate the Regulation, does not specify the role of any other stakeholders (such as providers of social services or Mother and Baby Units).

<sup>38</sup> GoRB. 2003. Ordinance on the Conditions and Rules for the Implementation of Measures to Prevent the Abandonment of Children and Their Placement in Institutions, and for their Reintegration.

The substantive work of the CPD staff on prevention of child abandonment or family separation is guided by the ***Methodology for management of a case for protection of a child at risk by the Child Protection Unit***.<sup>39</sup>

#### Box 2: Key issues with this methodology

- Insufficient level of detail on various aspects of risk assessment (e.g. 'parenting capacity', relations, emotional and intellectual development). The interviews showed, that CPD's or other institutions involved in preventive efforts have their own interpretations on how exactly to assess these aspects of the risk;
- Lack of an overall risk assessment method – while the methodology lists a number of risk factors, there is no specific methodology either how to 'score' or assign 'risk' (high, medium, or low) on any of the factors, or how to bring together an overall risk assessment score, and conclude if the level of the risk for the child. There are no 'weights' attached to the different risk indicators or an overall method to assess the risk. As result, the outcomes of these assessments often focus on simpler and observable factors, such as living conditions, or income;
- There methodology does not include specific instructions as to how to handle more complex cases, where parents or children are under the jurisdiction of different CPDs;
- The methodology differentiates only to a small extent the different types of cases and categories of risks (e.g. risk of involvement in prostitution);
- The 'best interest of the child' and 'child participations' are fairly well defined, but the cases indicate that in practice they are not applied, when developing the child-specific 'plan' by the social worker;
- The methodology does not provide guidance as to the use of Centres for Social Support, as an instrument for risk assessment.

As explained above, the Centres for Social Support (CSS) and Mother and Baby Units (MBU) provide the social services and consultation to prevent child abandonment. The general standards for social services for children are provided in the ***Ordinance on Criteria and Standards for Social Services for Children***.<sup>40</sup> This ordinance, though, provides only general standards and procedures, and does not specifically stipulate the provision of preventative services of CSS and MBU. The "standards" for the provision of CSS and MBU are provided in two other methodologies, discussed below.

The ***Methodology for conditions and approaches for the provisions of social services at the Centre for Social Support***<sup>41</sup> is the key document regulating the activities of CSS. The methodology mandates, that each CSS should develop a *Programme for prevention of abandonment / separation of children from biological family and accommodation in alternative care*. Each programme is supposed to include ten different aspects of work on prevention<sup>42</sup> and six different stakeholder groups<sup>43</sup>. The methodology also provides a 'framework' guidance on As-

39 SACP 2010

40 GoRB. 2013. Ordinance on Criteria and Standards of Social Services Provided to Children. [www.mlsp.government.bg](http://www.mlsp.government.bg)

41 SACP. (n.d)c. Centres for Social Support not only care for children at risk, referred to them by the CPD for whom there is an 'open case', but also as a measure of 'risk prevention' purpose, without CPD opening a case, or for the purpose of risk assessment: 'assessment of parenting capacity, needs assessment, assessment of the case [проучване], psycho-social support' (p.7). Centres for Social Support need to have as many as 32 different procedures regulating all different aspects of their activities.

42 Early intervention, consulting of parents, provision for professional care at home, designation of case-lead social worker and cooperation with CPD, needs and risk assessment, assessment of parenting capacity, assessment of risks of parent alienation, tracking of child development and family environment, use of mediators, provision of 'mobile' services (i.e. family visit).

43 These include pregnant women, families at risk of abandoning their children, pregnant women at risk of abandoning a child, post-natal mothers still in maternity care; General support for all aspects of good parenting

*assessment of the Individual Needs of the Child, Assessment of Parenting Capacity, Factors in the Family and the [social] Environment.*

### Box 3: Key issues identified with CSS methodology on prevention

- Only three aspects of the prescribed components of the CSS programmes for family separation are further developed in the Annexed Framework to the methodology. The guidance therefore is too generic, and which in turn makes assessment of quality of the programme impossible.
- The framework provided for assessment of needs of the child, parenting capacity for family environment only lists factors, without a prescribed methodological approach how to develop and overall assessment prioritise or interlink factors. CSS, therefore, develop their own (different) methodologies for the various components (e.g. child assessment needs; assessment of parenting capacity), which makes assessment of quality of these methodologies and related services very difficult.
- The programme does not explicitly ask for development of separate approaches to the different types of cases and categories of risks.

The other aspect of family separation and child abandonment concerns new born children and children from 0-3 years of age. The social services supporting the work of CPDs are the Mother and Baby Units (MBU), whose work is regulated by the **Methodology for conditions and approaches for the provisions of social services “Mother and Baby Unit”**.<sup>44</sup> This work on prevention of abandonment of new-borns is also complemented by the **Methodological Guidance on the Prevention of Abandonment of Children in Maternity Wards**, which arranges the roles of CPD and health authorities.<sup>45</sup>

### Box 4: Key issues identified with Methodology on “Mother and baby unit”

- The overall methodology focus of the methodology is procedures rather than substantive approach to preventative work on child abandonment / family separation.
- The guidelines for the “specialised assessment” (Standard 2.4) of mother and child are generic (includes components such as ‘analysis of the situation or needs assessment’) and without specific methodology for prioritisation of risks and factors.
- The “plan for delivery of social services” (which is based on the specialised assessment) (Standard 2.5) is generic without specific components being outlined. Only three aspects of the prescribed components of the CSS programmes for family separation are further developed in the Annexed Framework to the methodology. The guidance therefore is too generic, and which in turn makes assessment of quality of the programme impossible.

### Box 5: Key issues identified with Methodology for Prevention of abandonment in maternity wards

While the 5-page document captures the main issues and responsibilities of the different stakeholders (maternity ward personnel and social workers), the document remains generic without well detailed description of the procedures or sufficient level of guidance on the actual substantive work that needs to be undertaken by the personnel.

<sup>44</sup> SACP. 2018c. the legal basis is Art. 36, para. 2, Rules for Implementation of the SAA, Additional Provisions, p.30

<sup>45</sup> SACP. (n.d)d.



Beyond the specific issues identified in each of the above methodologies, the overarching issues, identified in the regulatory framework of the work on prevention of family separation include:

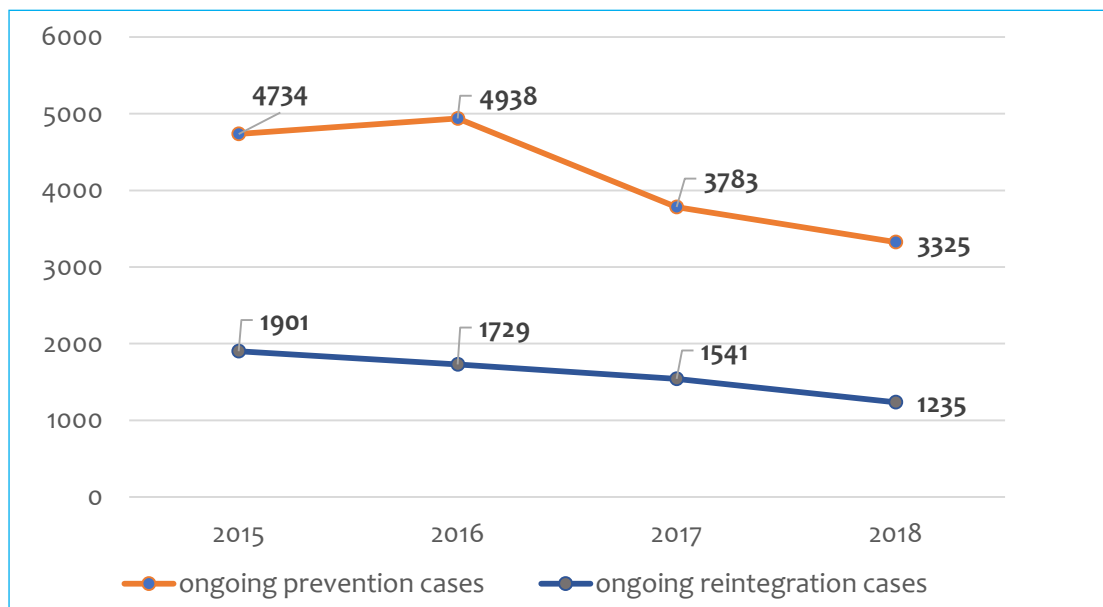
- The methodologies or ordinances do not establish a **system for institutional cooperation** that regulates the roles and responsibilities of the relevant stakeholders – ASA, social services providers, or other external stakeholder institutions involved (health-care, educational, or criminal justice institutions) **of mechanisms for early identification of children at risk**.
- The regulation of this cooperation as well as the work of social workers and social services providers at the level ‘methodology’ rather than a sub-normative documents such as ‘Ordinance’. All methodologies clearly state they provide a “recommended”, not mandatory approach. In addition, the lack of detail for specific aspects of the substantive work that social workers or social services providers need to undertake, makes **enforcement of strict quality and professional standards difficult** for oversight bodies and structures (e.g. the Inspectorate of ASA, SACP, regional Directorates of the ASA).
- The **long-term monitoring and support, as well as links with broader social infrastructure** (e.g. social housing, post-institutional / long-term social services support, education or law-enforcement institutions) beyond the time limitations of services at CSS or MBU are not considered at all in any of the methodologies or regulations.

While two cases reviewed only partially address these issues, the interviews with social workers and social services providers support the above observations.

### 2.3.2. Availability of social services

A substantial part of the open cases of the social workers concern family-child separation – on average 36% of all cases<sup>46</sup>. In absolute numbers, however, the number of cases of prevention of family-child separation has decreased (Figure 3).

Figure 3: Number of cases on prevention of separation and reintegration in families in the period 2015 - 2018



Source: Estimations made on the administrative data provided by ASA

At the same time, the administrative data shows that there are significant territorial differences both in the share of prevention cases in Child Protection Departments and the availability of social services. Some Child Protection Departments deal almost exclusively with child separa-

46 Estimations made on the administrative data provided by ASA.

tion cases – Sliven, Ruse, Hisarya, Haskovo, Popovo, while other hardly work on such cases – Dzhebel, Kirkovo, Momchilgrad. At the same time, in 130 municipalities there are no social services<sup>47</sup> that could support the work of the ASA social workers. Relative to the municipalities' population under working age, the developed indicator showed that the number of municipalities, in which there are no sufficient social services increases to 141. In six municipalities, there was low availability of social services for prevention cases<sup>48</sup> - Sliven, Stara Zagora, Dimitrograd, Simeonovgrad, Haskovo, Straldzha. The unavailability of social services might influence not only the quality of the work on such cases, but also the decisions of social workers to open prevention of family-child separation cases. Thus, in several municipalities (Tryavna, Opan, Suvorovo, Galabovo) with no social services and a higher ratio of foster families, there were almost no prevention cases in 2018.

## 2.4. Implementation and challenges

In **Case A** the reason for the family's initial contact with the CPD was a case of sexual violence by the uncle of the child rather than identified risk of family-child separation or abandonment. The initial contact with the child protection system was a result from the child being taken to the emergency room at the hospital, where the medical personnel signalled their local CPD which then immediately opened a case. The case was later transferred to a different CPD in the city as under the CPA the departments cover cases based on the clients' current address. A report was filed to the police. The CPD triggered the **Coordination Mechanism** for cases of child victims or at risk of violence and crises intervention: the participating authorities were alerted, and a team meeting was scheduled and attended by the social worker at the CPD, a police representative, a representative from the municipality, the General Practitioner of the child, the doctor from the ER who alerted the authorities, the headmaster of the school and a representative of the social service provider. The social worker from the CPD who opened the case began their investigation and met the class teacher and headmaster of the school of the child-victim and they shared that the mother was neglecting the children. However, they hadn't alerted the authorities of this prior to being specifically asked.

The authorities under the **Coordination Mechanism** held a meeting and the multi-institutional team took a decision to direct the two children (the victim of sexual violence and one of its siblings who witnessed the act of violence) to a psychologist.

In the course of the work with the children the psychologist received information that the grandfather of the children blamed the mother for being "guilty" for the sentence of his son [the uncle who violated the child-victim], and pressured her to withdraw the complaint, which she did not comply to do. As a result the grandfather expelled the mother [who was pregnant with her 9th child at the time] and her 8 children from the family house. They were forced to live in a nearby hut in appalling conditions. The psychologist from an NGO with delegated services who was seeing the child called the CPD and they discussed opportunities to place the family in a crisis centre and to provide a report to the leading social worker at the CPD with this recommendation.

As a result, the CPD reached out to CPD in another town (where the fieldwork for this current research took place). The mother was consulted about the opportunity to be placed there together with the children. She had to lodge two separate requests to be placed in the new city: one for the children to the CPD, and one for herself, to the People with Disabilities and Social Assistance Department.

47 Such social services include Mother and Baby Units, Centres for Social Support, Centres for Social Rehabilitation and Integration, Centre for working with children on the street.

48 Classified on the basis of the ratio between the family-child prevention cases and the capacity of the local prevention social services

The family was directed to the CPD's office upon arrival and after several meetings was transferred to the crisis centre and accommodated there.

Over the course of the following 4 months the mother gave birth to her 9th child. Under the guidance and support from the personnel of the crisis centre she had been taking adequate care for all of her children. The crisis centre provided accommodation; food; medicines and hygiene materials; psychological support for all members of the family; honoraria for a lawyer; support for school enrolment and registry at GP; social consulting; volunteers who help children with the homework. It is the mother's obligation to ensure all educational aspects of the children's upbringing, with support from the crisis centre.

A letter from the crisis centre was sent to both the CPD in the new city and the CPD in the home city of the family, because in February 2019 the term for accommodation expired. A meeting between the staff at the crisis centre and the social worker at the CPD was organised to discuss how the family could be further supported and **how the CPD at their current address in the city of origin could be again engaged. A risk of family separation was identified due to the poor financial situation of the family**, as they do not have their own accommodation and are dealing with legal issues (the mother had sham marriage with a third-country national whose present location is not known), preventing her from the receipt of child-related allowances. The family is due to be returned to their city of origin. While the trial against the mother's brother continues, she will live with her aunt in a house down the street from her father who has been sending her threats. A possible course of action according to the interviewed social worker would be for the original CPD to support the mother in securing municipal dwelling.

In **Case B** it is unclear whether the initial contact of the family with the CPD was due to the legal dispute between the parents or because of the case of underage pregnancy, but it is most likely the result of the separation of the parents.

The father has been awarded custody of three of the children by the court – two younger and one older child over 18. He is the biological father of all 5, and is written as such in the birth certificates, but had not formally acknowledged the interviewed child and the oldest brother who is now over 18.

When the parents initially separated, according to the interviewed child, the mother came to the school and tried to take the children away with her. There was a dispute at the school between the older brother, the mother, her new husband and the father of the children. There is no confirmation of this, however, as this information is only present in the interview with the child. According to the father and the social worker, the mother abandoned the children and wanted to put them into foster or residential care. Measures under the CPA and Rules for the Implementation of the CPA, however, are supposed to be imposed in a specific order, starting with measures within the family, and kinship care as the next option. As this specific child was not formally acknowledged by the biological father, it was placed in the father's home via a **court order for temporary kinship care**, and then an order for **permanent placement**. The older brother went through the same procedure, as he was not acknowledged, but has since reached the age of majority.

The case, however, does not just come down to placement measures. It is further complicated due to the fact that the father does not currently have a job. While the social worker believes that the father is able to provide for the children, the **lack of stable income is a risk factor**. He was assisted by the Social Assistance Directorate in finding work as a garbage collector but according to him the work was too hard and it didn't leave him with enough time to study, as he has recently enrolled in school in order to obtain primary education.

As mentioned, one of the siblings of the child gave birth at a young age, ran away from home,

and then returned with the baby – the CPD is continuing to monitor this situation. On multiple occasions the father says that he feels the staff at the CPD ‘as my own sisters’ because they are very supportive of him.

## 2.5. Effectiveness and impact of social intervention

At a first glance, both cases seem to have (up to a certain point) achieved the goal of keeping the families together, meaning that the prevention of family separation has been successful. However, both **Case A** and **Case B** lacked any proper prevention activities, and were not under any risk monitoring, remaining without forms of social assistance (both financial and from a family-planning perspective).

Both cases show various gaps in the implementation of child protection measures.

**Case A** especially shows that not only is there a gap at the entrance of the system (no real prevention), but at the ‘exit’ as well – the family, after their stay at the crisis centre, will be returned back into the same neighbourhood, near the family which expelled the mother and her children and threatened their lives. The CPD in the city, where the crisis centre is situated, cannot work with the family in the city of origin, and it was not made clear in the interviews whether the CPD back in their hometown has closed the case or has tried to reach out to the abusive family members and direct them to social services for consultations etc.

There are multiple questions regarding the work of the CPD in the town of origin – the mother and the 8 (now 9) children received social assistance; she was involved in legal action; there were observations from teachers at the school that she was neglecting her children. And yet, this family was not registered as a family at risk at any point and no prevention measures were taken. It fell into the scope of the CPD after the act of sexual violence against one of the children.

Additionally, while on paper the Coordination Mechanism seems to have worked flawlessly in the sexual violence case, an analysis of the timeline shows that the children began seeing a therapist at a social service as directed by the CPD 6 days before the first official meeting of the multi-institutional team. Multiple respondents in the CP system so far have said that in cases of violence their priority is to act, get the child to safety, call whomever (representative of other institutions) they need immediately, and once the child is out of harm’s way – coordinate the official mechanism and do the paperwork. The overall assessment of the mechanism is that it is a good thing, but some authorities are not as dedicated as others, not all members of the multi-institutional teams have received training or are even familiar with their responsibilities under the mechanism, and some representatives only formally participate.

Another gap within Case A is the fact that the psychologist from the social service was the person who found out that the family was expelled from the home and forced to live in a hut almost 5 months into working with the children. It is unclear when exactly they were forced out of their home, but the social worker at the CPD is supposed to have monthly visits with the family and assess the living conditions, and they’ve failed to notice this development in the case. The mother has not signalled this as well.

These new living conditions are what prompted the CPD to look for temporary placement options for the family. The social worker at the CPD and the mother agreed that it would be better if the family was placed as far away from the grandfather who had expelled them as possible. The workers at the CPD decided to use a crisis centre in another municipality.

The NGO-run service provider proved to be invaluable because it also provided further support to the CPD and paid for the bus tickets to place the family at a type of residential service. The

**CPD does not dispose with budget to cover expenses of children or families for transportation, medicines, or crisis events etc.** Additionally, the SADs have at their disposal one car for the three departments which has a limit of 700 km. per month. They could only provide **one-time support allowance** that is received one month after a **written request** is lodged by the applicant.

According to the **Methodical Guidelines for the Crisis Centre Service**<sup>49</sup>, placement in a crisis centre is offered to children and their families who have been victims of violence, and the centre is supposed to offer recuperation and consultation services, as well as legal counsel. Additionally, the maximum allowed stay is 6 months, but the Methodical Guidelines say that it should be no longer than 3 months. However, this family was placed there months after the act of violence took place, and for a period of 6 months.

This case was presented as a case of prevention of family separation, but the risk of family separation itself was identified 2 months before the family was to be returned to the city of origin. There is little information about what is being done by the CPD in the town of origin. The CPD in the municipality where the family has been placed is in constant contact with the social workers from the crisis centre and with the NGO which had provided social services and legal counsel to the mother in the initial stages of the case. They are trying to create a plan for aid after she is returned to the neighbourhood – the option on the table is to try and secure municipal dwelling, but that is a difficult task. When applying for municipal dwelling, having children at risk, or being a family at risk of family separation, does not give priority. Aside from this, there are not enough living units for all the applicants.

If we look at this case through the prism of violence against children, then the measures undertaken would be appropriate and for the most part – efficient. The child-victim has made progress due to the work with psychologists, as has the child who witnessed the crime. The family was taken away from the abusive environment and legal action has been taken against the offender. However, there are two separate cases here, and while coordination between the three CPDs was effective in the violence case, the communication between the two cities does not seem to be as smooth regarding the family separation issue.

On the surface **Case B** seems to be the more successful of the two cases, as the two children who are not formally acknowledged have been permanently placed in the care of their biological father. The CPD is very supportive of the family, it has aided the father in finding work, it encourages the interviewed child to go to school, and has helped mend the relationship between the father and the sister who gave birth at a young age, as he was not pleased with her actions.

The CPD could not have done much to prevent the separation of the parents, but they could have worked with the children more closely in order to prevent the early pregnancy, as those tend to put new-born babies at risk of abandonment from the underaged mother, too.

On multiple instances the father made comments that the child-respondent does not bathe, does not study or listen to authority, has attention deficiency. He maintains that everyone on the mother's side of the family suffers from intellectual disability as does the child, but then contradicts himself and states that she is just lazy and uninterested. In the interview with the child it is evident that her speech patterns are not developed enough for a 14-year-old, she has an obsession with owning a phone, which was the tool that was used to entice her in a situation which put her in great risk. She cannot read or write and refuses to do housework. She goes to school but does not attend classes. She mentions being bullied by other children, getting into fights, and says she is living with her biological parents – things which are denied by the father and the social worker. These characteristics of the child could be result of trauma, but the child has not been directed to work with a specialist. Additionally, no social services are available in

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49 SACP.2012b.

the municipality, so even if the CPD had directed the family to consult a psychiatrist at a Community Assistance Centre, it is under question whether they could or would afford to go.

A more attention-worthy revelation was the fact that the interviewed child claimed to have been raped by an older man living in the family’s old neighbourhood. The father confirmed the sexual harassment claims and explained that the man wanted to take the girl, who was 10 or 13 at the time (it is unclear from the interviews), and ‘care for her, and have her care for him’, or as the girl put it ‘he wanted to buy me as a wife’. The father mentions that he called the chief of the police force in the municipality, but he was told that this should be handled via lawsuit in court, not by the police, so no further legal action was taken. The social worker made no comments about this situation, even though the father said that he had sought council at the CPD.

In this instance no further case was opened for sexual violence against the child and no measures were undertaken by either the CPD or the police. No coordination mechanism was triggered. The research team was unable to trace the signal given from the father to the police or whether the social workers are planning to take any measures, especially since the last point of contact between the child and the presumed assailant seems to have been in the week of the interview. As there is no case or signal to the CPD regarding sexual abuse, this case would go unnoticed in an assessment of the work of the CPD. This means that the supervising authorities would not be able to identify this gap and determine whether the decision to not open a case was valid or a gross oversight.

Yet another gap in the work of the CPD is that the social worker is not aware that the child is working with a resource teacher.

An overarching issue discussed by interviewees was the reluctance of parents to participate in preventive activities, and the lack of real sanctions against non-compliance with CPD recommendations - CPDs have the right to impose administrative sanctions / actions on parents, but they are usually revoked in court. Also, there is no tighter control over parents in relation to their obligations under the family code and no sanctions for parental irresponsibility. The lack of such sanctions acts as a driver for the non-compliance by parents.

**2.6. Human resources: staffing, training, incentives, oversight**

The work on the prevention of abandonment is the main focus of Social Workers. The surveys showed that 23% of all current open cases that social workers are working on, are cases of prevention of abandonment. The data also, shows that there is a great degree of concentration and specialisation of the work on such cases. Based on survey it could be concluded that 14% of the social workers are responsible for 61% of all prevention of abandonment cases. On the other hand 29% of social workers do not work on any prevention cases at all, and another 36% have less than 5 cases. For these highly specialised social workers, cases on prevention constitute on average 63% of their cases.

**Table 1: Prevention of abandonment cases workload**

Number of respondents	Share of all respondents	Number of cases per social worker	Total cases	Share of all cases
158	29%	0	0	0%
196	36%	1-5	557	14%
111	21%	6-15	1008	25%
75	14%	15+	2433	61%

Source: Online Survey (n=540)

In the situation of **Case B**, the social worker had nearly 50 individual cases including family separation, foster care, violence etc. In a department of 4 people, without receiving regular training and supervision, the workload could prove to be detrimental to the outcome of cases. The added disadvantage of not having any form of social service in the municipality (aside from foster care, which is not applicable in this case), further increases the work pressure on the social worker as communication or logistics with services in other municipalities is more time consuming.

In municipalities without social services, where the social worker cannot direct the family to consult a psychologist or other specialist, he/she often has to provide counsel, work with the parents and children, or external stakeholders – they must be able to provide services which are usually provided by the CCS and MBU. The social worker also appears in court and does monthly visits with the family. They provide support to the father in seeking job opportunities and help him whenever he has any questions and problems. They keep track of all documentation for the child support and social assistance which the family receives.

The human/staffing issue seems to play a key role in the gaps in **Case A** as well, as this case requires the coordination of three CPDs in two different cities, as well as involves two types of social services.

The city of origin has some of the busiest CPDs with the largest workloads and turnover rates. The first CPD opened a case immediately after being contacted by the medical personnel and then sought out the CPD which covers the address of the family. The lead social worker was the one who assembled the representatives of the institutions under the coordination mechanism. The child started visiting a psychologist 2 days after the assault. An investigation was immediately launched by the social worker. All in all, the initial response under the sexual violence case was adequate, with the exclusion that the measures were given prior to the first meeting of the multi-institutional team (see Appendix 1 for timeline).

The most notable gap in the work of the CPD in the city of origin was the fact that they failed to identify on time the change in living conditions which the family experienced. Here the role of the NGO psychologist was crucial, as without the support of the service provider the CPD would have found this out at a much later point (or maybe never?). Again, this oversight might very well be a result from the excessive workload and limited resources which social workers at CPDs have to deal with.

The interviews with both the mother and the social worker from the city of placement indicate that after opening the case, the lead social worker in the new city was very attentive and kept regular contact with the social workers at the crisis centre, despite not having the time and resources to make in-person visits at the residential service.

## 2.7. Voices of the children: participation and protection

In **Case A** the 12-years-old child was not asked whether it wanted to move to a different city or not. While its opinion was not taken into consideration, the child ended up being happy with the change in environment and liked the new school and town. Overall, the move away from the abusive family members seems to have been good for the family, as the mother has become more attentive to her children and claims that she has got positive feedback on her parenting skills from the staff at the crisis centre. Their stay at the crisis centre has had the effect of a family-bonding experience, so it can be presumed that the best interest of the child has been observed.

The mother, on the other hand was consulted, and while she wasn't given a different option for

residential service, she agreed with the social workers that being placed as far away from her family as possible would be beneficial for her and her children.

The change of environment was rather sudden – the CPD found out about the change in conditions on the 9<sup>th</sup> of August, and in the following week, the CPD reached out to the CPD in one of the municipalities where we conducted our research and enquired whether there were openings at the NGO-run crisis centre in the city. The mother was consulted about the opportunity to be placed there together with the children on August 21<sup>st</sup>. The original CPD that opened the case was responsible for getting in touch with the Department in the new city and the crisis centre and to inform them that the family would arrive 2 days later. The CPD in the new city opened a case based on oral signal.

The mother was very glad and very thankful that so many people have been kind and thoughtful. She believes that the personnel at all CPDs and service providers has truly cared for the best interest of her and her children.

In **Case B** the interviewed girl is 14 years of age. It says that it is happy to be living with its father and his new partner, that they take good care of it, and that it is glad to be living along with all of its siblings. However, the child claims that it was not informed of the interview for the present research, did not know anything about the project, was not shown any information list and didn't sign any declarations. Some of the documents did not support these statements by the child.

No viable explanation was provided by the respondents as to why no case has been opened regarding the rape allegations which the child has raised, and which have been confirmed by the father.

The father is extremely pleased with the work of the CPD. He heavily relies on them for all of his problems, seeks advice from them on all issues. While the staff at the CPD seems to be incredibly helpful and open to providing this type of support, it raises the question of how many people go to them with mundane issues. This provides additional workload and requires time and attention, which can be instead spent on cases.

## 2.8. Social infrastructure and institutional coordination

Beyond the preventative work of the social services institutions (CCS or MBU, Crisis Centre) reviewed in the two cases, the interviews (and secondary literature) indicate the many cases of prevention of child abandonment fail because of limited availability or issues related to the broader lack of social infrastructure and support. Civil society advocates have argued that the issue with family separation requires “a holistic approach to addressing the individual needs of children and families through different sectoral policies including employment, housing, health-care, education, social assistance.”<sup>50</sup> The underlying factors for family separation are outside the immediate scope of responsibilities of the child protection system: the low social and economic status – which impact living conditions, educational or other needs of the child.<sup>51</sup> Poverty continues to be a key factor for removal/separation of children from their biological families. Many interview respondents find that their work on prevention of family separation is impeded due to the lack of tools and mechanisms to support parents in combating poor living conditions, poverty, low education and unemployment. The following broader issues were identified in literature and interviews:

- **Housing policies:** Housing policies in Bulgaria have been a challenge for a long time. Families with children of risk of abandonment are not treated preferentially by municipalities, and do not automatically qualify for municipal housing. Municipal dwellings are

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50 Ibid.

51 НМД 201.



very limited in number. Lack of affordable housing was quoted in several interviews, as reasons for extensive stay of mothers with children at MBUs or Crises Centres.

- **Financial support for families and children at risk** that the CPDs can offer to help parents is one-off and not enough according to employees (BGN 375). Most of the family separation cases are related to the poor financial condition of the parents or because the mother [or both parents] is a minor. The financial support does not take into account the overall situation. Cases where the mother has many children, are practically not addressed with the present assistance policies.
- **Access to work** – many of the parents with children at risk are uneducated or low-skilled and cannot find a job; Labour Office opportunities of programmes to increase competence or qualifications rarely can serve the needs of illiterate parents or single parents, who need to care for multiple children. The success of such programmes have been found to have limited success
- **Risk identification by other institutions** – although legally anyone is supposed to report a child at risk case A, as well many other cases discussed during the interviews indicate that the system largely fails to provide early warning and identification of children at risk. In Case A, where a mother has 9 children from 3 different fathers, none of them paying child support, only comes into close contact with the child protection system before the birth of the 9<sup>th</sup> child. The “criteria” for identification of children at risk listed in maternity wards, discussed in the part 2.1 of the present case study, indicate that most of the children should have been identified as children at risk again and again for many years. Regular visits and contact with child protection officers could have prevented the abuse of the child. Such issues contribute to the large number of unsuccessful prevention cases where the child ends up in foster or residential care.<sup>52</sup>
- **Access to health system** – issues of preventative and maternity health.
- **Access to education** – access to resource teachers

## Recommendations

Create mobile teams similar to those under the Ministry of Education which are responsible for prevention of school dropout and retention of children in schools – teams for early identification of risk and prevention. Those teams, however, should not be formed using social workers at CPDs who already have enough responsibilities and cases. They could be modelled after the Foster care teams under the “Accept me” project. This way they can assist the CPDs with prevention of family separation ante- and not post-factum

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52 НМД, Бележник 2017, стр. 40.

Appendix 1 - CASE A	Timeline
One of the sisters of the child becomes victim of sexual violence by her uncle; and the mother took her to emergency. The doctor called SPD <sup>5</sup> in one region of the city and they opened a case. It is immediately transferred to SPD in another region of the city (because the family lived at their territory).	April 4, 2018
SW <sup>6</sup> from SPD visited the address of the family but the mother was not there. She visited SPD office in the same day and was consulted about the opportunity to use social services. The Coordination mechanism was started and team meeting scheduled. SW also met the class teacher and director of the school of the child victim and they shared that the mother is neglecting the children.	April 4, 2018
The mother gave a written request for social service – visits to psychologist at service provider, for the sister-victim and one of the brothers of the child (who witnessed the act of violence). The children visit psychologist from April 5 to August 22	April 4, 2018
The first team meeting is held with: SW from SPD; Police representative; rep. of the municipality; the GP <sup>7</sup> of the child victim; the doctor from emergency who gave the signal; the school director; rep. of service provider. The team took decision to direct the two children to psychologist (and they already started visitations)	April 11, 2018
The psychologist receives information that the grandfather of the children has blaming the mother for being “guilty” for the sentence of his son and pressured her to withdraw the complaint. He also expelled the mother and <b>her 8 children</b> from the family house and they lived in a hut. The psychologist gives written signal to SPD on August 10 and they discuss the opportunities to place the family in a crisis centre and elaborate a report with this recommendation.	August 9, 2018
The mother is consulted about the opportunities to be placed in a crisis centre together with the children. SPD identifies available spaces in town X. Mother gives two requests to be placed in X.: one for the children, to CPD, and one for herself, to PDSS <sup>8</sup> Department.	August 21, 2018
SPD that opened the case calls SPD in town X. and the crisis centre that the family arrives 2 days later. SPD in town X. open a case based on oral signal.	August 21, 2018
The service provider where the children visited psychologist provided bus tickets for the family to travel to X. CPD does not dispose with budget for transportation, medicines, crisis events etc. They could only provide one-time support allowance that is received one month after the written request.	August 22, 2018
The family arrives in X. A meeting with the family is held by the SW: in some parts with the mother separately, in others with children separately, and in some parts with the whole family. Representative PDSS Department is also present. After the meeting the family is transferred to the crisis centre and accommodated there.	August 23, 2018
<p>The mother gives birth to her 9-th child. With the guidance and support by the personnel fo the crisis centre she takes adequate care for all of her children. The CP SW receives information on regular basis from a person from the crisis center who is responsible for this specific case. CC provides: psychological support for all members of the family; honoraria for a lawyer; support for school enrolment and registry at GP; social consulting; volunteers who help children with their homework.</p> <p>The obligation of the mother is to take care for all aspects of education and upbringing of the children, with support of the CC<sup>9</sup>. The CP SW shared that visited the family <b>only once</b>, to receive agreement for our survey. She commented that would like to visit her clients but could not dedicate time (it would take at least half a day because the CC is located outside the city, and SWs do not dispose with budget for transportation)</p>	August-December 2018
<p>A letter from the CC is sent to CP in town X. and CP in the home city of the family, because in February the term for accommodation expires. A meeting between CC and CP SW was organised to discuss how the family could be further supported and how SPD in another town could be again engaged.</p> <p><b>A risk of family separation is identified due to the poor financial situation of the family; legal issues (sham marriage of mother with a migrant) preventing the receipt of child-related allowances; lack of family planning; lack of accommodation.</b></p>	December 2018
The mother declares she wants to move back to her home city and does not want to search accommodation opportunities in X. A contact is made with her aunt living there who confirms that will accept the family at her place.	December 2018
CC informed CP that they received information request from CCCD <sup>10</sup> according the address registration of the mother, concerning the place of residence of the child. Further details are not provided. Elaboration of an exit plan for each child separately is forthcoming shortly. If they stay in X., that means tracking engagement for CP in X.	January 2019

## 3. Case study – justice for children

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### 3.1. Description of the specific case

The case is about a 10 year old boy – A. – who lives in a village in V. (Ratza) region.<sup>53</sup> He is placed in a foster family by the CPD (municipality of M. and municipality of R. involved) but the case has been transferred by the municipality at the child's residence (address) to another municipality (K.) because of the lack of appropriate foster family. The foster family consists of a woman who is trained as a professional foster parent but not specifically to provide care for a child with behavioural problems. A. is the first child placed with this foster parent.

The boy entered the public care system at infant age due to coming from a dysfunctional family: the mother left the family when the child was 11 months old and the father was in prison (serving a 10 year sentence for an unspecified crime – likely a serious crime given the length of imprisonment). A. knows his father, he met him in the court hearing for his placement in care and is attached to him. There is plan to place A. with his father after his release from prison, following some additional work with the father.

A. has long-term experience in public care. He was with two different foster families as a baby and an infant until the age of 6-7 years. He was then placed with his grandparents (father's parents) at kinship care (art. 4 point 2 CPA) for a period of 3 years. During that time A. started to adopt a problematic behaviour – he got involved in a group of older boys and started to commit petty crimes – stealing from homes in the village. He had concentration problems in school. The boy was on the police register – with 3 registrations, resulting in a case being filed at the Local Commission on JJ.

A. has been in his current placement since 28 June 2018 and the duration is for a year. He is healthy, physically fit and has basic sanitary skills. He is in grade 4 at school but lacks basic skills in reading and maths. His foster mother says that he could not read at all at the beginning and did not have elementary learning skills but was rather attracted by other activities (e.g. manual and physical). A. seems to know that he has rights (e.g. a right to play and a right to food) and insists that his rights are respected. He has not made any attempts to steal from his foster house. He does not show particularly aggressive behaviour towards other children and classmates. A. has progressed in school during the stay with the foster mother.

The placement was triggered after a CPD report found that the grandmother could not take care for the boy. The interview with the social worker from that CPD reveals that only by chance – because of that report – the child entered the child protection system but not the JJS since the grandmother was declared unable to care for him. Due to this 'erroneous' registration of the case with the CPD as an emergency protection case (the Implementing Regulations of the CPA), the case developed in the best possible scenario for the boy. There is regular monitoring of the case by the CPD Foster care project and the Local

### 3.2. General definitions of the issue

This is a typical case of a neglected child, who spent years in public care, with limited educational and life skills and at the start of his "criminal career" (around the age of 8-10 he started committing offences).

<sup>53</sup> The case resume is based on 3 interviews taken by NOEMA experts: with the foster mother, with the child and with the social worker from CPD in V.

The case illustrates the gaps in the two systems in Bulgaria designated to provide public care, support, rehabilitation and reintegration of children – the Child Protection System (CPS)<sup>54</sup> and the Juvenile Justice System (JJS).

The main “pillar” of the Bulgarian JJS is the Juvenile Delinquency Act (JDA) (in force from 1958, last amended in 2016).<sup>55</sup> This Act was a positive step at the time of its adoption and for some time later, mainly due to its aim to handle child offending within a separate system (based on divergence from the penal justice system enshrined as an option in the 1968 Penal Code (PC)). The system built under the JDA was the only institutional system dealing with children although perceiving them mostly as a threat (objects of concern) to society rather than as rights holders.

The adoption of the Child Protection Act (CPA)<sup>56</sup> in 2000 that introduced the principles and rights enshrined in the Convention on the Rights of the Child (CRC) to the national legislation, featured the inconsistency between the JDA and CPA. Since 2001 both systems coexist without explicit coordination mechanisms. Moreover, despite the amendments to JDA taking place after 2001 the JJS remains outdated and punitive, and lacking appropriate remedies for the child’s rehabilitation and reintegration needs.

The coexistence of the two systems for 19 years has led to tensions and attempts for their adjustment. The main issues debated recently with the view of establishing a rights based and friendly child justice system coordinated with the child protection system are as follows:

### Ages

The CPS works for all children, who are persons at the age 0 to 18 years (articles 1-2 CPA). The juvenile justice system is dealing with children that are above the age of 14, which is the minimum age of criminal responsibility (MACR) in Bulgaria.

The PC stipulates that children under the age of 14 are minors and are not subject to criminal responsibility (article 31, par. 1). With respect to minors who have committed socially dangerous acts (offences), only educational measures may be applied.<sup>57</sup> The JDA (article 12 para. 1) establishes another minimum age at 8: cases of *“... minors who are aged between 8 and 14 and have committed anti-social acts”* are to be investigated by the LJDC. Thus, theoretically, minor children (from 8 - 14 years of age) do not bear criminal responsibility, but in practice, since the most common behavioural problems with children start around age 8 and not before, those children could easily become ‘clients’ to the JJS and in the worse cases could be placed in educational (correctional) institutions.<sup>58</sup> In this way, Bulgaria has legislated two categories of underage children that, according to the PC, are not criminally liable: from 0 to 7, and from 8 to 14. It is important to make this distinction, because the first category of underage children in case of behavioural problems will be subject to the CPA, while the second category is subject to the JDA.<sup>59</sup> The legislative approach of envisaging several age categories of children in conflict with the law, with different standards set in the national legislation has been interpreted several

54 Child protection, as defined in CPA, is a system of legislative, administrative and other measures for guaranteeing the rights of every child (para 1, 1 of the Additional provisions, CPA).

55 The correct title of this law is: Combatting the Antisocial Acts of Minors and Juveniles Act.

56 For more about the Child Protection Act, see Chapter 1.

57 By “educational measures” the Code denotes the measures envisaged in article 13 of JDA.

58 The legislative approach of envisaging several categories of children in conflict with the law, with different standards set in national legislation, has been criticized, in particular by the CRC Committee: “The system of two minimum ages is often not only confusing, but leaves much to the discretion of the court/judge and may result in discriminatory practices.” UN CRC. 2007, para. 30. The same critique has been expressed by the Deputy Minister of Justice (2013-2016). Juvenile Justice in Bulgaria. In: Micheva, V. 2016, p.110

59 See more in Institut International des Droits L'enfant. 2014, pp.7-10 - produced in the context of the Framework Agreement between the Government of Bulgaria and the Swiss Federal Council concerning the implementation of the Bulgarian - Swiss cooperation programme (<http://swiss-contribution.bg/en/projects/security/strengthening-the-legal-and-institutional-capacity-of-the-judicial-system-in-the-field-of-juvenile-justice> ).

times as being against the principle of supremacy of the best interests of the child (article 3 CRC). The CPS is the system designed to work for all children, including minors (below the MACR) in conflict with the law. The old (two ages) system becomes redundant because as it is now, the same child might be in a position to be treated differently depending on which system responds first.

### 'Anti-social behaviour'

The issue of "minimum age" is linked to the JDA concept of "anti-social behaviour" defined as "an act that is socially dangerous and illicit or contradicts the morals and the good manners" (article 49a of the JDA Additional provisions). This general definition allows for a very broad interpretation of the behaviour of children that could institute a ground for intervention from the JJS.

In addition it allows certain behaviour of growing children, the so called "status offences" -such as running away from home, playing truant, drinking alcohol, and for activities such as vagrancy and begging, which are more of a social problem - to be considered as a ground for their penalization in contrast to reactions to similar behaviour of adults. The regulation on "status offences" has been determined as discriminatory by the Commissioner for Human rights of the Council of Europe in 2015.<sup>60</sup> Therefore the Commissioner urged the Bulgarian authorities "to drop status offences as they constitute discrimination against children on the grounds of age. Behaviour such as vagrancy, roaming the streets or runaways should be dealt with through the implementation of child protective measures, including effective support for parents or other caregivers and measures which address the root causes of this behaviour, as established in international standards".

The UN Committee on the Rights of the Child has also recommended several times to "reform the Juvenile Delinquency Act and the Penal Procedure Code with the view to withdraw the notion of anti-social behaviour".<sup>61</sup>

Keeping the "two minimum ages" system, justified by the 1958 concept of "anti-social behaviour", does not correspond to the CRC and the CPS in Bulgaria built after the adoption of CPA in 2000. For 19 years the CPS has been providing the necessary care and the measures for rehabilitation and re-integration of children below the MACR that may come in conflict with the law, a conclusion well illustrated by the current case.

### The concept of "child at risk" in the two systems

The concept of „child at risk“ is another conflicting area between the CPA and JDA. It is defined in §1 point 11 of the additional provisions to the CPA as – "the lack of parental care or violence, which invites for public intervention of the CPS to provide protection to the child" – the so called "special protection" (article 5 CPA). However, the two definitions of the CPA are also inclusive for children below the age of 14 that are subject to measures under JDA: for which there is a danger for impeding his physical, psychic, moral, intellectual or social development or regard-

60 CoE. 2015a, para 61. In addressing the same issue, the CRC Committee explicitly states that: 'It is quite common that criminal codes contain provisions criminalizing behavioural problems of children, such as vagrancy, truancy, runaways and other acts, which often are the result of psychological or socio-economic problems. It is particularly a matter of concern that girls and street children are often victims of this criminalization. These acts, also known as Status Offences, are not considered to be such if committed by adults. The Committee recommends that the States parties abolish the provisions on status offences in order to establish an equal treatment under the law for children and adults. In this regard, the Committee also refers to article 56 of the Riyadh Guidelines which reads: "In order to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person." CRC Committee General comment N 10 (2007) on Children's rights in juvenile justice, para 8 and UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines). UN GA Resolution 45/112 of 14 December 1990.

61 UN Committee on the Rights of the Child, Concluding observations on the second periodic reports of Bulgaria, CRC/C/BGR/CO/2, 2008.

ing whom there is a risk of dropping out of school, or who has already dropped out of school (in §1 point 11 of the additional provisions to the CPA). All the measures under CPA are available for these children (article 4 CPA) depending on the assessment of their best interests.

The JDA does not explicitly use the concept of „child at risk“. There are, however, numerous references to children that can be considered at risk, in the JDA such as article 8, para 4: “risk situations within which children may be involved in committing crimes...”, article 35: “(1) Minors are placed in temporary housing when: a) their permanent or current address cannot be established, b) they are captured in vagrancy, begging, prostitution, alcohol abuse, distribution or use of drugs or other intoxicating substances; [...]” Articles 40, para 2 and 43, also deal with serious treats for children. The approach to children in such situations within the CJS is different – in light of article 35 and the consequent provisions, it is possible for a prosecutor to authorize the confinement of children at risk up to 2 months.<sup>62</sup> Educational measures could be imposed within the other contexts, most frequently – appointment of a public educator. However, the above-mentioned provisions speak about social, educational and behavioural factors and not about the conflict with the law. The conclusion might be that similar factors that are given different value in the two systems.

If the expression „children at risk“ is flexible, it still is important to have a standard or a reference point for clear communication between authorities in charge, service providers and policy makers, about what “at risk” means, having to be careful with the concept of “children at risk” as it is often stigmatizing.

### Children responsible for committing crimes

Children from 14 to 18 years of age („adolescents“ or “juveniles”) who commit crimes (as defined by the PC) are assumed to be criminally responsible, only conditional upon the outcomes of the evaluation of personal circumstances of the child in order to understand his/her capacity to understand the act and its consequences (article 31(2) PC and article 387 of the PPC). This means that every child above the age of 14 would be considered as responsible for committing crime only after assessment of his/her concrete ability to understand and evaluate his/her behaviour.

For children found to be responsible for committing crime, the **PC**, General Provisions, and Chapter IV - **Specific Rules for Juveniles**<sup>63</sup> as well as the **Penal Procedure Code** (2015, PPC) provide for a specialized regulations, different from those for adults, such as:

- Diversion from the formal criminal justice system;
- reduced system of penalties;
- specific procedural guarantees to make the procedures child friendly.

It is worth mentioning also that the PC establishes an aim of the penal sanction for children that is different from the one for adults. Article 60 PC sets forth that punishments are imposed on underage persons above all with the objective to re-educate and prepare them for socially useful work.<sup>64</sup>

<sup>62</sup> Article 35 (1), (2) and article 37 (1), (2) of Title VI Temporary Homes for Uncontrolled Children, JDA.

<sup>63</sup> The penal legislation does not use the term ‘child’ or ‘children’ but rather ‘minors’ and ‘juveniles’.

<sup>64</sup> For adults the aim of the punishment is: 1) correcting and re-educating the convict to comply with the laws and good morals, 2) exerting warning impact on him and depriving him of the possibility to commit other crimes, and 3) producing an educative and deterring effect on the other members of society. The punishment may not have as purpose the causing of physical suffering or crushing of human dignity. There shall be no capital punishment in the Republic of Bulgaria (article 36 PC).

## **Diversion**

Diversion is an option being regulated by the PC as a discretionary measure at the disposal of the prosecutor or of the judge. As article 61 PC stipulates: “with respect to an underage person who has committed a crime carried away by circumstances or because of thoughtlessness, which does not constitute great social danger, the *prosecutor* may decide to *abstain from instigating pre-trial proceedings or to terminate the instigated proceedings, or court may decide not to have him/her brought to court or not to have him/her tried, provided that with regard to the perpetrator educative measures can successfully be applied pursuant to the Juvenile Delinquency Act.*” In such cases the court may impose an educative measure, informing thereof the local Commission for combating juvenile delinquency. The prosecutor should forward the file for imposition of such a measure to Local Commission on Juvenile Delinquency (LCJD).

This system, although, formally comprising features of diversion, deviates from the modern concepts of diversion that takes children out of the formal justice system.

## **Penalties**

Article 62 PC stipulates for reduced types and terms of penalties *that may be applied to juveniles*. These are:

1. deprivation of liberty;
2. probation;
3. public censure;
4. deprivation of the right to practice a certain profession or activity under article 37, point 7.

Article 63 PC stipulates also as *the maximum duration of imprisonment* which can be imposed on juveniles is up to ten years for children aged between 14 and 16 and up to 12 years for those ones between 16 and 18 years of age. Persons under 16 years of age may also be punished with an administrative punishment - detention at the units of the Ministry of the Interior for a term of 15 days or a fine for minor hooliganism.<sup>65</sup>

Article 63 PC provides for the replacement of the punishments for juveniles, or rather *their reduction with respect to length and severity*. A life imprisonment sentence cannot be imposed on children under the age of 18. In cases where the determined punishment is deprivation of liberty for less than one year and its serving has not been suspended, the underage convict shall be exempted from serving it and the court shall accommodate him/her in a correctional boarding school or shall impose on him/her another educational correction measure provided by the Juvenile Delinquency Act. The specific rules for juveniles (article 64 PC) also provide for the *automatic replacement* of a prison sentence of maximum one-year duration by placement in a boarding school for corrective training. Art. 65 regulates the way that underage persons serve the punishment – deprivation of liberty, before and after reaching full age. Pursuant to paragraph 1 of article 65 before reaching full age underage persons shall serve punishments by deprivation of liberty in correctional establishments. According to the second paragraph of the abovementioned article, after reaching full age they shall be transferred to prison or prison hostel. In view of completing their education or vocational training, upon proposal of the Pedagogical Council and with permission of the prosecutor, they may be admitted to correctional establishment until completion of 20 years of age.

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65 Decree for Combating Minor Hooliganism, article 1 (1).

## Right of the child to fair and friendly procedures / trial

The child alleged to have committed, or accused of a crime is entitled to all the fair trial guarantees as stipulated by the Penal Procedure Code (2015), article 385 – article 395. The Code is under revision now in order to introduce Directive (EU) 2016/800 of the European Parliament and of the Council on procedural safeguards for children who are suspects or accused persons in criminal proceedings (by 11 June 2019). The revised Code should extend the safeguards for the child involved in criminal proceedings, e.g. – legal aid, individual assessment, medical examination, notification of a parent or a closed person, speedy proceedings, specialised judges etc.

## Institutional framework

The child justice system consists of three types of institutional settings: 1) the regular courts and prosecution dealing with children aged 14-18 years accused or tried for having committed crimes; 2) administrative system (central and local commissions) particularly designed to deal with prevention and reaction (combat) to offending behaviour of children aged 8-18, and 3) child protection system (Agency for Social Assistance to the MLSP and municipal CPDs to the Social Assistance Directorates).

**(1) Regular courts:** Judicial proceedings involving children in conflict with the law are assigned to common courts – providing civil and criminal justice. The following criminal proceedings dealt with **by the common criminal court** may involve children aged 14-18:

1) Cases of penal-administrative nature: where the child has infringed the Regulation on minor hooliganism or the Protection of public order during sports events Act or appealed such cases;

2) Private criminal cases:

- as determined by the Penal Code that are examined on the basis of the victim's application and without police and prosecutor's investigation;
- on pre-trial custody measures;
- based on a proposal by the LCJD to apply the most severe measures under the JDA – placement into specialized institutions;
- based on appeals against the decisions of the LCJD to apply educative measures under the JDA.

3) Common criminal cases initiated on perpetration of a crime of general nature. The case develops in two phases: the first one is *pre-trial* where the investigation takes place performed by police investigators or investigation officers supervised by a prosecutor. Based on a file of the prosecutor the case goes to the court. The court phase develops in three instances. Proofs could be collected in the first two phases of the court proceedings as well as the child could be interrogated too. At this stage the court guides the criminal proceedings and decides on all matters of the case. Rules on confinement measures, including detention in custody.

There is no specialization within the court system to deal with children. The **UN Committee on the rights of the child** directly recommended Bulgaria to “set up an adequate system of juvenile justice, including juvenile courts with specialized judges for children, throughout the country”. This specialization is linked also to another recommendation of the Committee - to train judges and all law enforcement personnel who come into contact with children from the moment of arrest to the implementation of administrative or judicial decisions taken against them<sup>66</sup>.

<sup>66</sup> See UN CRC. 2016a, para 7 and UN CRC. 2008, paras 68-69.



The Prosecutor raises and maintains the accusation for crimes of general nature, guides the preliminary proceedings, takes part in the legal proceedings as a state accuser, and exercises legality supervision. Within the framework of pre-trial proceedings, the Prosecutor can order detention in custody for up to 72 hours; he/she takes part in the work of the Local Commission on Juvenile Delinquency. Since 2012 by virtue of Order of the General Prosecutor some specialization started in the public prosecutors with regard to cases involving children.

Both the judge and prosecutor could divert the child from the justice system and refer him/her to the Local commission to apply educational measures.

**(2) Local Commission on Juvenile Delinquency (LCJD):** The administration under the JDA is the second institutional setting to deal with children in conflict with the law. The system is (local commissions) particularly designed to deal with prevention and imposition of measures concerning 8–18 year olds that have committed status offences as well as with children in conflict with the law (14-18 years old) that have been diverted from the justice system (article 12 JDA). The local commissions (LJDC) are set up at municipality-level, but are guided by the Central Commission.<sup>67</sup>

**(3) Local level child protection system (CPDs):** The child protection system is the third one addressing various social risks that affect children and offering care and protection. Children aged 8-14 could become clients either to the local commissions or to CPDs depending on the circumstances, not rarely – by chance. The two systems are not integrated neither coordinated.

#### Procedures on individual cases before the local commissions

The **procedure** before the LJDC is as follows: imposing an educational measure (under art. 13 JDA) follows reviewing *of an educational case* by the commission in a specialized composition, including the chairman and two members. The chairman of the commission determines the composition.<sup>68</sup> In the case of A. there has not been a case filed in the LJDC.

Two types of **measures** can be imposed to the child aged 8 – 14 who is in conflict with the law: non-custodial measures, which are executed in the community/family environment; and custodial measures, involving the placement of the child in institution.<sup>69</sup> The non-custodial measures could be imposed by the local commissions.<sup>70</sup> Placement in the institutions used to be in their discretion too until 2004 when it was transferred to the court.<sup>71 72</sup> The most **frequent measures** imposed on children by the local commissions are reprimand and supervision either by public educator or by the parents. In 2016, 189 children in total were placed in the two Socio-Pedagogical Boarding Schools (63 children out of 189) and in the four Correctional Boarding

67 See Article 8, para. 2 of the JDA. As the Report of the Central Commission reads, 297 local commissions are functioning in 2017; more at: <<http://www.ckbppmn.government.bg/localCommission/>>accessed 23.03.2019.

68 One of the weaknesses of the JDA is the conflict between functions of investigation, imposition of measures, monitoring and prevention concentrated in the local commissions.

69 Difference is to be made among placements under the JDA and CPA. The JDA placement is a measure for education/ correction/ discipline the child whilst the CPA placement is for the provision of care or protection of the child being at risk.

70 These are: reprimand; obligation to apologize to the injured person; admonition; placement under intensive supervision by the parents or person who replaces them; placement on educational supervision by the corresponding work team; placement on educational supervision by a public educator; obliging the juvenile to compensate for the damage caused if this is within his/her capacities; obliging the juvenile to perform community work.

71 Socio-Pedagogical Boarding School (SPBS) are established under the articles 2, 28-33 of the JDA and the Regulations on the Socio-pedagogical Boarding Schools of the Ministry of Education and Science of 1999. It is an institution for corrective or preventive placement for children above the age of 8. The grounds for placement of children are two types: 1) delinquent behaviour or 2) or living in environment conducive to become delinquent. The major critique to this measure is that it allows for children to be mixed up – children committed anti-social acts with simply children from socially disadvantaged families. The main reason for SPBS to stay is the need to fill the gap of missing services for children and families at certain communities.

72 Correctional Boarding Schools (CBS) are established under the articles 2, 28-33 of the JDA and accommodate children above the age of 8, having committed antisocial acts and adolescent offenders for whom the non-custodial disciplinary measures have proven insufficient and no appropriate social environment exists for their normal development. Placement in CBS is a measure at the disposal of the court or of the prosecutor to divert the juvenile from the formal criminal justice process (articles 61 and 64 of the Penal Code).

Schools (126 children out of 189).<sup>73</sup> Although those Schools are institutions according to the definition of the CPA (p.10, para 1 of Add Prov) they were not included into the National DI Vision and strategy due to their specific function and type – as primarily re-educational structures and alternatives to penalty. The SPBS are more specific – they are a place for so called ‘preventive detention’ – a concept conflicting with the CRC.

### The issue of prevention

The prevention of “delinquent behaviour” of children is one of the major functions of the central and local CJD under the JDA (articles 1, 8 and 10). It is regulated as a set of activities of those structures without any reference to the existing current institutions, structures and policies. For instance, the Central commission is supposed to draft, take part in drafting and propose to the Council of ministers programmes for education, vocational training, employment etc. (article 8 JDA), which nowadays is a mandate of different bodies and there is no such programme submitted to or adopted by the Government.

The way prevention of child offending is regulated under the JDA leads to **marginalisation** of the issue. The JDA administration has the confidence to be responsible for the prevention and the other administrations – education, social, health – seem to accept this. However, such a regulation and policy perception does not correspond to the concept of prevention as enshrined in Riyadh Guidelines (1990) for the Prevention of Juvenile Delinquency.

### 3.3. Actors, structures and protocols

This part aims to analyse the involvement of the two systems – CJS and CPS in a case of A. as well as the mode of their cooperation with reference to the related legislation. The analyses will generalise the problems illustrated by the case.

A. becomes known to the Child protection system first after being left without the care of his parents (article 25, para 1, points 2 and 3 CPA). He was placed in foster care and after some years the CPD moves A. into the care of his grandmother (kinship care). The boy starts committing offences and enters also the Police registry probably at the age of 7-8 years (6 registrations so far). The Police did not signal the CPD about A. although he has a history in public care, at least.

According to the JDA the case of A. (who is 10 y/o and not criminally responsible) should have been registered and decided by the LCJD. It is not clear if the Police informed the LCJD and if the case has been registered also by the LCJD at that moment or later on (article 16 JDA).

The legal framework is not sufficiently clear with regard to the information flows and coordination between the police officer first detecting the offence, the so called inspector at the Child Pedagogical Room at the Police (article 26-27 JDA) as well as the LCJD and CPD. The review

73 Due to the constant critique to these institutions the Ministry of Education and Science closed down most of them and the number of placements decreased dramatically. The general public shares the concern for their serious contribution to the criminalizing of the children placed there. The most widespread opinion about them is that the children increase “their qualification to commit crimes”, that they are “an instrument to punish and to segregate the children”, i.e. the care is directed towards protecting the community from the children, rather than creating conditions for prevention of re-offending and social reintegration of the child. The State Agency for Child Protection has suggested several times until 2014 when the Chairperson was changed, the SPBS to be closed down and the CBS to be reformed. It is proposed that resource of the SPBS and CBS (financial and human) should be used for the development of new services, but not at the facilities of the old institutions. Presently, the national budget provides about 3 million BGN yearly for SPBS and CBS. Planning a simultaneous closure of SPBS and reform of CBS would mean available financial and human resources that could be referred to the new services, for prevention and protection. The fact that the majority of children come from family environment indicates the need for new measures and services that include extensive work with the family. At: <https://sacp.government.bg/%D1%81%D1%82%D0%B0%D1%82%D0%B8%D1%81%D1%82%D0%B8%D0%BA%D0%B0/%D0%B2%D1%8A%D0%B7%D0%BF%D0%B8%D1%82%D0%B0%D1%82%D0%B5%D0%BB%D0%BD%D0%B8-%D1%83%D1%87%D0%B8%D0%BB%D0%B8%D1%89%D0%B0> , accessed on 21.04.2019.

of offences committed by a minor child (8-14 y/o and thus not criminally responsible) within an educational case takes place on the proposal of police authorities, by citizens or officials as article 16, para 1 JDA stipulates. The 2015 Report of the Central Commission reveals that in 70% of cases the Local commissions are ceased by the Prosecutor and the Police is at the third place of frequency of signalling the LJDC.<sup>74</sup> The cases of minors in conflict with the law do not reach the prosecutor's office so the Police remains the first source of information.<sup>75</sup>

The Commission in the case of A. has become involved with the case later and it is not clear how and what were the actions initiated on the case. The social worker is wrong stating that the case has been submitted to the court. A. is a minor child and not criminally responsible. This detail however reveals again how little the two systems communicate between each other but also the lack of shared knowledge, experience and expertise within the two systems.

The Child protection system in this case performed much better. It was involved (again) by the report to the CPD of the grandmother stating that she cannot take care for the boy. The interview with the social worker from that CPD reveals that only by chance – because of that report – the child entered the child protection system but not the CJS- the grandmother declared inability to care.

*'It was very interesting from a legal point of view, really interesting, he had a case for anti-social behavior which was brought to the court and at the same time, we placed him in a foster family. It was very strange. In Bulgaria many things happen in a strange way... This option with foster care placement during that period, it was very strange to me at that stage, but maybe it was a favourable option for the child himself. These were the circumstances. When the case came to our territory, the local commission was notified as the colleagues from M. sent the file with all anti-behavior acts to our local commission. We organized a meeting.'* (social worker of the child, CPD).

The CPD managed the case very much in line with the legal standards. The case was registered by the CPD (see articles 10-23 of the Implementing regulations to CPA) - as "urgent placement" according to Article 25 para 2 of the CPA and art 23 of its Implementing regulations. It remains not very clear why the case has been qualified as 'urgent' - probably has to do with the grandmother's report:

*'It was a strange case – there was no need of police, because she (the grandmother, n.m.) stated she couldn't take care of the child. The colleagues set up a team jointly with the 'Foster care' team, they search and match with an appropriate foster care family, issue an order and the child is placed in foster care. This happened within a few days...No, there wasn't an educational court case, there was a case for placement outside of the family'* (social worker, CPD).

The case illustrates that the CPS is inclusive for children below the age of criminal responsibility exactly on the basis of their best interests – to be provided first and foremost by care, which is the main task of the CPS.

As a next step, a multidisciplinary team has been established involving social workers from the CPD and from the social service – Foster care.<sup>76</sup> The GP (a new GP was selected at the new place) was also part of the team. The option of reintegration with the mother has been explored – she has refused in writing. A foster family was selected from another village in order to brake the contacts of A. with the criminal environment at his own village but also due to a

74 "Status and trends of crime and antisocial behavior of minors and juveniles Crimes against them. Activity of the Central and the local commissions combating minors and juveniles' antisocial behavior, 1999, p.21.

75 Or citizens or officials which reporting rate is rather small.

76 Foster care service is not part of the CPD but is a separate project based entity/service funded under the EU structural funds.

lack of appropriate local foster family. The placement was done finally by the court; the timing seems to have been perfect; the court ordered a short term placement. A meeting between A. and his father was arranged during the hearing, which was assessed as very successful and good for A. The question remains whether the CPD at child's residence plans to work with the father for reintegration of A. There was no mention about that.

The child was enrolled to the local school and regular visits to the foster family and the child were held by the social workers (monitoring). The time for placement has been adjusted to the father's prospect to reintegrate with the child – end of the penalty, plus some time for his recovery and employment. There have been also services prescribed to the boy implemented in Centre for public support as well as at the school.

The other actors – the foster mother and the school revealed different involvement. While the foster mother performed to the highest possible standards, the school seemed to have zero role in child's reintegration. There is no info about additional literacy classes provided or about any other additional support offered to A. aiming to help him to overcome the bad achievements. It could be attributed though to the omission of the CPD to require such (a speculation only). The municipality is a potential actor but does not have any role in this case.

### 3.4. Effectiveness and impact of social intervention

What worked well in this case were the care measures and services provided by the CPD under the CPA. The case proves that for children committing offences at this age, the provision of intensive individual care, supervision and education are the better option in comparison to the imposition of educational measures under the JDA. A public educator was also provided under the JDA who was seeing the child regularly in coordination with CPD.

The interviews with the social workers also suggest that they are very clear about their objective – to protect the rights of the child concerned. However this should not be a mere declaration. As the Head of the CPD Vr. declares:

*“In the case of children in conflict with the law the responsible institutions are the police and the Child Pedagogical Room. The CPD is potentially involved in an educational/correctional case when such is formed. They are asked to do the assessment for the child. The role of the social worker during the educational/correctional case is to attend and protect the child's interest. Social workers also participate in interrogation of children. The educational case determines what measure is to be imposed on the child. The social worker must protect the rights of the child. Recently, it's been rare for the toughest measure to be implemented – (Correctional boarding school or Social-pedagogic boarding schools) because it is not an effective measure. The social worker must work with a child after he / she leaves these boarding schools.”*

In the case of A. the role of the CPD has gone beyond that. In practice the successful provision of a caring and safe family environment, contributed to stimulating of the boy's education and life skills training. That was also a long term support for a possible reintegration with the father as well as to minimise the risk of reoffending. Prevention of reoffending is not an immediate or explicit task of the CPS, but is a natural outcome of their effective performance. The social worker from CPD also shares that this development of the case has been much better for the child – has produced much better outcomes for A.

The overall policy objective of the CJS is to prevent and react to the anti-social behaviour of minors and adolescents and to ensure their normal development and education (article 1

JDA). The crimes prevention is one of the objectives of the Police too. The case of A. though, exemplifies numerous gaps in the role of the Police both in investigation of the case and in prevention of the offending behaviour of A. The case also demonstrates the limited capacity and effectiveness of the Local Commission although they were not involved in this case by chance.

The Police did not investigate the initial signals for petty crimes A. was involved in, which weakened the chances for prevention of reoffending. A. committed new offences.

The interviews with the foster mother and the social worker tell that at some later stage it was proved that the boy entered a criminal group of older boys committing petty thefts. An adult was also discovered to be in contact with the boys and motivating and encouraging them to steal. That man was buying all stolen things for a small money. Boys were able to earn some small money that has made a huge change in their self-esteem – they were able to feel grownup and autonomous. The Police failed to investigate and initiate prosecution of the adult and other children. So, the Police even did not fulfil its major function related to crime reaction and prevention.

What did not work also was the coordination and cooperation between the institutions. The interviews reveal a good level of knowledge in the CPS about the other system: mandate, procedures and the responsibilities of the social workers under the JDA. The CPS staff declares also that a cooperation exists between the two systems that, however, is not supported by the facts under the case of A.:

*'We have had placements in correctional institutions, but these are cases where all other measures have been exhausted and it has been found out that the child had repeated offences and was dangerous for other people. Initially with joint efforts of the local commission and the public educator who has been appointed on behalf of the commission and the child pedagogical office, we work to resolve the concrete case. When this is not possible and following an assessment of people close to the child and relatives who could be a resource in talking care and control, and it is found out that they could do this, we use this as a measure. However, there are cases, when all of this is lacking. In a certain moment, it's a risk for the child not only in terms of concrete situations, but they are the ones who carry the risk for the child himself/herself.'* (social worker CPD)

There is also a lack of willingness to go beyond the knowledge, a kind of self-defensive attitude within the CPS. It seems that the system values the boundaries between two systems. To the question – “What is the role of the public educator”, the social worker reply is:

*'I cannot say, this is a job for the Local commission. My task is to monitor, to seek assistance. They are under the management of the secretary of the Local commission, they are under his/her control. What is important for me when there is a problem and it is identified that there's a need for support from a representative of the local commission, when I call and ask for assistance, for example multi-disciplinary, to get such assistance'.*

This is the basis for the tension in the CPS related to the process of the reform in the child justice system drafting of the new CJLaw<sup>77</sup> but also for the resistance of the CPS to recognise the need for inclusion of children under 14, which could be explained by the workload of social workers, lack of appropriate rewarding of their work etc.:

*'..the children under 14 years are even now responsibility of CPD and if commissions are removed, then we'll be working only with the inspectors from the Child pedagogical office. Many of the children who are with suggestion or have a measure related to art. 13 from the*

77 See Chapter 1.1.

*Law for Juvenile Delinquency Act are registered by the Child pedagogical office as prophylactic case and it's the inspectors from the office who work with them. So, we'll continue working with them by all means.' (social worker CPD)*

There are other reasons also that relate to difference between structures and the lack of basic building blocks for a coordinated and cooperative systems (inclusive) working for the welfare of children. First, *there have not been information flow among responsible actors*. This could be attributed to the unclear regulation at the level of legislation that is reflected in the secondary legislation as well as in the job descriptions of the police officers. Consequently, presumably the training of the police neglects the need of coordination and cooperation. Moreover, the Police has the image of more powerful institution that is not really expected to communicate with CPD – being part of a rather new and weak system.

There is no explicit legal obligation of the Police to inform the CPD apart from the general obligation for mandatory reporting of a child in need of protection to the SAD (article 7, para 1 CPA). Neither there is an obligation for the Police under their sectoral law – Law on the Ministry of Interior to signal the case to the CJS (art. 68 speaking about the Police registration following committing an offence). So, the Child protection system was not informed about the offences. The responsibilities of the Minister of Interior under the CPA (art. 6, para 4, point 2) do not comprise coordination in case of child being in conflict with the law. This is a clear legal gap notwithstanding the position of CPA not to include this case in risk situations for children.

Although the Child Pedagogical Room is the major actor belonging both to the Police and CJS, its role is ambiguous. As the officer from the General Directorate National Police to the MI states – the inspectors do not have access to operational information. It means they are not involved with the crime but rather with the child – registration of the case (maintaining the registry), supporting the interrogations and engaged with prevention. Again, their functions are not clearly stipulated thus it is hard for any outsider to understand them but also to keep them accountable.

### **3.5. Human resources: staffing, training, incentives, oversight**

The CPS consists of structures that are staffed by professionals. The social worker is a profession that should be equipped by certain standards, job description and clear accountability. Social workers are supposed to have numerous protocols, guidance and forms to ensure quality standards and interests of the child.

Although the management of the case of A. was in conformity with the legal standards certain gaps are clear. The social worker of the CPD to which the child has been transferred to be placed in foster care did not demonstrate clear knowledge about the case neither she was feeling obliged to use the files during the interview. The social worker also failed to speak about any individual planning for A. No information about best interests of the child assessment and hearing of A.

In contrast, the CJS is built around the old (dated of 1958) repressive criminal justice system. The only innovation is the amendment to the JDA of 2004 to introduce a procedure to impose measures (although called educational – repressive by their nature – and ineffective and due process rights of children coming before the Local commissions. This modifies their original design to be a social alternative of the formal judicial system – which today is connected to the principle of diversion.

The Local commissions do not have a full time professional staff apart from a secretary that

fulfils also other tasks in the municipality.<sup>78</sup> Representatives of the municipal administration in charge of education, health care, social welfare, of the police, non-governmental organisations, psychologists, pedagogues, lawyers, medical doctors, public figures are members under the JDA. The chair is the Deputy Mayor of the municipality.<sup>79</sup> The local commissions function on session's basis that should be attended by a public prosecutor from the Regional Prosecutor's Office. Although the JDA stipulates that the Central commission should guide and control the local commissions there is no mention how these functions should be performed. The Central commission does not have a clear obligation to adopt any quality standards for the work of the Local commission neither to provide specific training to their members.<sup>80</sup>

Contrary to its scarce human and financial resources (non-permanent staff and lack of budget) the JDA attributes important functions to the local commissions. These comprise functions e.g. of policy development and implementation; of case management (imposition of educational/disciplinary measures) and their implementation; coordination, after care of children released from detention and placement in institutions etc. The JDA stipulates for involvement of lawyers in deciding of cases but it is problematic too. The *educational case* by the commission in a specialized composition, including the chairman who should be a lawyer and two members.<sup>81</sup> The lawyer seems the only usually is the legal counsellor of the municipality who is not trained in child rights matters. In the case of A. there has not been a case filed in the LJDC.

The accountability of the local commissions is problematic so are the results of their decisions. Those concerns have been articulated for many years and particularly the fact that the local commissions cannot be qualified as an independent and impartial authorities since they carry out proceedings and exercise both guidance/resolution and charging/prosecution functions, which violates the principle of division of powers.<sup>82</sup> Amendments to the JDA of 2004 provided for (some) due process rights of the child and procedure similar to those in the common criminal justice system that supports the view of local commissions functioning as *quasi jurisdiction*.<sup>83</sup> A similar conclusion was made by the ECtHR in 2011.<sup>84</sup>

One of the most frequent measure imposed by the commissions is supervision by a **Public educator**. The measure is well known and considered as one of the most effective ones by the CPDs.<sup>85</sup> The facts of the case make it very probable to predict that such a measure could have been imposed to A. It is a feasible development in light of the information that grandmother has not been able to control the behaviour of the boy and his progress at school that has been very bad. There is no information neither by the social worker nor by the foster mother about any involvement in the case of the schools attended by the boy: the Foster Mother has underlined several times how illiterate the boy was, how much efforts she has put to help him to start studying.

There is neither profession nor a job "public educator" (PE). The PEs are hired on civil contracts by the Local Commission on case to case basis. There is so called 'Statute of the PE' accessible on the web<sup>86</sup> but it is not clear who has issued or approved it. It is anonymous. This

78 According to the 2017 Report of the Central Commission, in 2017 there have been 206 full time secretaries, which is 69% of the total number of commissions (297) against 232 in 2016. The decreased number of the professional staff is explained by the financial status of some municipalities, underestimation of the Local commissions as well as by the decreasing of image of the profession due to the negative public opinion towards the CJS created by the NGOs.

79 See Article 6 of JDA.

80 The lack of training and standards of the profession were mentioned by V. Micheva, Deputy minister of justice. Juvenile Justice in Micheva, V. 2016, p. 116. About the training see the 2017 Report of the Central Commission.

81 See article 11, para 2 JDA.

82 See Article 10 JDA.

83 Articles 20-21 of the JDA, amended in 2004. Still, the procedure is inquisitorial and offers weak guarantees that the process of gathering and presenting evidence will lead to the establishment of truth, fair justice and assuring the respect of the right of the child to be heard and his/her rights to have his/her best interests taken as a primary consideration.

84 See ECtHR. 2011. Case A. and others v. Bulgaria, para.107

85 See also the Report of the CJDC 2017.

86 [http://detskasiqurnost.bg/wp-content/uploads/2015/10/statut\\_na\\_obshto.pdf](http://detskasiqurnost.bg/wp-content/uploads/2015/10/statut_na_obshto.pdf)

statute vaguely suggests that the PE should have 'appropriate qualification', there are no quality standards for performance. The accountability of PE is problematic. There is a problem also with the personal data protection related to the status of the PEs. According to the respondent social worker from CPD:

*“..the public educators with the LCCJD are not effective and are just an additional expense. There are 16 public educators to the local commission in town X. According to her, there is nepotism in the system of hiring public educators at the local commission. Police-men, teachers, psychologists, and others who are closer to the government are appointed. Chief of the CPD regrets that „we think we can rely on them to work in some direction,“ and ultimately the educators do not.*

*Their role however, as the JDA and its implementation suggests, is very important - public educators should hold: regular meetings with the child, home visits without notice, meetings with parents, school visits. They have special interview techniques. The intervention of the CPS is limited to submitting of a social report providing information about the social status of the child and his/her family. The mere process of re-education is an obligation of the Local Commissions.*

*The idea of these educators is to manage children's cases and work in the family. The Commission decides the correctional measures (the Local Commission together with the Secretary decide on which measure under the JDA to be taken with regard to the child). When there is a problem child with deviant behaviour, the CPD suggests that the Commission appoints a public educator. This happens when a social worker feels that the family has no capacity to cope with such behaviour. There are cases where the parents themselves want to appoint a public educator. The employee's observations are that parents in modern conditions easily give up due to „low intelligence, poverty, lack of values“, disintegration of the patriarchal family, etc.”*

This statement raises many questions. Nothing of the procedure accords the JDA. The PE should not be appointed by the commission but by the specialized composition, it is not clear what this letter to municipality by the CPD means.

The positive information of the statement relates to the aligning the functions of the PE (as an educational measure) and the services provided at the Public Support Centre (as a social service). In the case of A. he was provided services at the centre in Vr. (although not very clear what exactly). In contrast to the PE the Public Support Centre provides services that are managed and implemented under strict standards for the profession, quality and rights of the clients. Accountability is clearly defined in the law. The Director of the Centre in V shares that:

*‘When the child is with a measure public educator, then the public educator, the psychologist, and the pedagogue from the centre work with him/her. We work with the families of such children, they have consultative sessions with a psychologist, that's where the specialist himself/herself manages to identify the problems in the family and successes to direct the consultative work in certain directions. By all means, when we have children with behavioral problems, 100% of the cases the reason is in the family relationships or there's some misunderstanding in the family or one of the parents is absent or the child is looked after by the grandmother or great grandmother.’*

So, without the professional support of that Centre any effective work with the child is impossible – the PE seems redundant.



Based on the above the conclusion is that the two systems demonstrate a clear conflict between professional case management and nonprofessional system that imitates activities do not provide effective change regarding the child case.

There is almost complete lack of coordination based on the very limited contacts as prescribed by the law<sup>87</sup>, the systems do not talk to each other – each one has its own legitimate reason. For the CJS – it is the older one, somehow preserved behind concerns regarding criminality and public order. That is why it has specific area and mandate and methods of work. CPS suffers from workload, lack of resources and institutional and public support.

### 3.6. Voices of the children: participation and protection

The way the case of A. has developed demonstrates that the CPS has well established standards for the care provision (it is also a public service to children). The case management formally corresponds to the standards, all steps follow the accepted algorithm and it is assumed that the files are properly done – so to be ready for the checks from ASA. The interview with the SW suggests that she cannot properly work with the files. Services were available for the child in the municipality – Centre for Public support as well as at the local school. There was no need of measures under the JDA.

The long term effectiveness of the interventions are rather questionable. Neither system applies a standard on the best interests of the child assessment and determination. The field material does not provide information to assess if all the decisions have been taken based on the best interests of the child in the case of A. While the need of immediate care has been obvious at the age of 11 months the motivation of the next decisions for the boy to change two foster families and then to go back to the extended family, which again has failed to provide the necessary care and education, are not clear. The boy moved at the start of his education and seemingly no services to support his schooling were provided. The last point – the start of offending could be attributed to the lack of control over his behaviour, lack of authority of the carers and inability to support his specific needs. Could be concluded that there has not been a proper BIC assessment. The CPD has insufficient capacity to work on such a complex case. Against this, the BIC right and principle remains intuitive concept, with little knowledge and practice on it.

The major gap in this direction is the *participation of A.* or more correctly – the lack of it. The child was not properly informed about the decisions taken for him. Nor has he been heard by the CPD and by the court. We do not understand what are the wishes and desires of this child in order to include that in the BIC assessment and determination.

Another instrument for ensuring child friendly participation in the proceedings – the so called Blue room – has not been used properly: *‘There’s a blue room, but it’s not being used. The blue rooms were developed in 2000 and something, I think the court did it.’* (Chief CPD).

The social workers well understand the purpose of the ‘blue room’ but also admit of no information on trainings how to use it and express doubt of their value: *‘In principle, a child is better protected if he/she is not in the court and is in more child-friendly environment....many projects were implemented, but with no significant impact.’*

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87 To draft and submit the so called “social report” on the child and family situation.

## Conclusions and recommendations

Bulgaria regularly receives recommendations to reform its juvenile justice system from the UN human rights treaty bodies and mechanisms<sup>88</sup> and also from the Council of Europe.<sup>89</sup> There have been several attempts to start the reform during the last 20 years. The debates produced some legal amendments in 2004 but the overall structure and the ideology of the system remained untouched. The current attempt<sup>90</sup> to initiate changes is prepared by the:

1. policy documents adopted by Government: Justice for the Child State Policy Concept (2011);<sup>91</sup> the Roadmap for the implementation of the Justice for the Child State Policy Concept (2013)<sup>92</sup> and the Updated Strategy to Continue the Judicial System Reform (2015).<sup>93</sup>
2. Investments to the system and its improvement by the Swiss Bulgarian project implemented by the Ministry of justice (2012-2017).
3. Advanced stage of drafting of Diversion of Underage Offenders from Criminal Proceedings and Implementation of Educational Measures Act (DUOCRIEMA) at the Ministry of Justice that resulted from the unprecedented dialogue between the main governmental and non-governmental stakeholders, including the judiciary in 2013–2016.<sup>94</sup>

The case of A. as well as the analyses of the legal and policy frameworks well illustrate the major gaps in the CJS:

- The definition of anti-social behaviour and status offences that are against international standards;
- The possibility for children below the age of criminal responsibility and as of the age of 8 to be deprived of liberty as a correctional measure;
- The deprivation of liberty is not used as a measure of last resort;
- The lack of free legal aid to children in order to guarantee due process;
- The lack of protocols and procedures (beyond the blue rooms) to guarantee the safeguards of child victims and witnesses of crime;
- The lack of specialised juvenile justice courts/chambers separate from those dealing with adult cases.

88 In 1997 “a comprehensive reform of the system of juvenile justice” was recommended (CRC/C/15/Add.66, 1997) – the same in 2008 (CRC/C/BGR/CO/2, 2008), and in 2016 (CRC/C/BGR/CO/3-5, 2016). In 2011 the Human Rights Committee recommended that Bulgaria “consider, as a matter of priority, the adoption and implementation of the reform of the juvenile justice system in compliance with the rights protected under the Covenant” (UN CCPR, Human Rights Committee. 2011, para. 23). See also: A/HRC/16/9; A/HRC/16/L.41.

89 Two Commissioners for Human Rights of the Council of Europe have made similar observations following their visits to Bulgaria: inviting the Bulgarian authorities to “to reform the juvenile justice system and bring it into line with international and European standards” CoE. 2010, para 148, see also CoE. 2015a, para. 61.

90 About the critical observations of the civil society organisations and experts towards the current system see: Baeva, S. 2014; Margaritova, S. V. 2011, pp 49-53. See also NMD. 2017, pp.47-50.

91 GoRB. 2011.

92 GoRB. 2013. See also Micheva, V. 2016, pp. 114–116.

93 GoRB. 2015.

94 A coalition of non-governmental organisations implemented a public campaign to support the process, see more at: <[http://www.capital.bg/politika\\_i\\_ikonomika/obshtestvo/vsichko\\_za\\_pravata\\_ni/2015/09/24/2615375\\_shans\\_za\\_spravedlivo\\_detsko\\_pravosudie/?](http://www.capital.bg/politika_i_ikonomika/obshtestvo/vsichko_za_pravata_ni/2015/09/24/2615375_shans_za_spravedlivo_detsko_pravosudie/?)> <<http://deca.bg/act-now-item/childhood-with-no-bars/>> <<http://nmd.bg/natsionalna-mrezha-za-det-sata-izrazi-stanovishte-otnosno-zakon-za-izmenenie-i-dopalnenie-na-nakazatelniya-kodeks/>> accessed 30.05.2019. See CoE. 2015b and more at: <<http://www.socialplatform.org/blog/civil-dialogue-in-bulgaria-two-versions-of-the-same-story/>> accessed 05.03.2019.

Those gaps call for reform that should also aims to:

1. Establish a new Justice for Children System which is coordinated with the Child Protection system and is built on the principles of:
  - professional knowledge, regular training and specialisation of all actors;
  - diversion to alternatives to formal court proceedings (mediation, family group conference);
  - implementing adequate standards for BIC assessment and determination.
2. Establish a meaningful educational measures that ensure rehabilitation and reintegration of children in conflict with the law in the best interests of the child.
3. Build a friendly to children in contact with the law Justice System.
4. Enhance the CPS to be inclusive for all children below the age of criminal responsibility.
5. Adapt the sectoral legislation on health, education and social protection to ensure prevention, early detection of children at risk situations, immediate referral to the CPD, and appropriate care and protection services.
6. Establish guidelines or protocols for child participation at all stages and for best interest of the child to be properly assessed and determined.
7. Ensure by law and job descriptions clear information flows and accountability for all actors – police, CPDs, carers and services providers.
8. Adopt standards of quality and performance of specialised and intensive individualised care and services for rehabilitation and reintegration of children (Public protection centres etc.) and invest in their human and material capacity.
9. Develop and invest in school mechanisms for prevention and early detection of offending or any other situation of risk as well as in additional language and educational support and life skills training.

