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ASSESSMENT OF JUVENILE JUSTICE REFORM ACHIEVEMENTS IN THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA

UNICEF Regional Office for Central and Eastern Europe/Commonwealth of Independent States

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“If you violate a child’s rights even once, it will be hard to repair the damage.”
– President of the national bar association

“A law is not a good law if it can’t be implemented.”
– Coordinator of a CSW juvenile justice team

**Note on the Assessment Mission**

The assessment mission took place from 17 to 28 May 2010. The team consisted of Dan O’Donnell, international consultant, and Marina Kovacic, national consultant. Support was provided by Biljana Lubarovska and Olimpija Grozdanovska of UNICEF.

The team interviewed the President of the State Council for Prevention of Juvenile Delinquency, the Director of the Institute for Development of Social Work, the Head of the Human Rights Department of the Ministry of Justice, the Director of the Department of Execution of Sanctions, the Head of the Alternative Measures Section, the Deputy Ombudsperson responsible for children’s rights, the Advisor on Juvenile Justice of the Ministry of Labour and Social Policy, and the Director of the Academy for Training of Judges and Public Prosecutors.

The team met with the President of the Basic Court in Skopje, the two juvenile judges, an investigating judge and two prosecutors attached to that court, as well as the juvenile justice team of the Inter-Municipal Centre for Social Work (CSW) in Skopje, the team of police investigators in Skopje specialized in juvenile cases, and another juvenile judge.

Visits were made to the juvenile prison in Ohrid, the educational-correctional institution for juvenile offenders located in Skopje prison, the pretrial detention unit of the Skopje prison, the women’s department in Idrizovo prison, the open educational facility ‘Ranka Milanovic’, and the open residential centre for children at risk, known as ‘25th May’.

Meetings were also held with the presidents and other representatives of the Association of Mediators and the national bar association, a representative of the Organization for Security and Co-operation in Europe (OSCE), a representative of the local branch of the Helsinki Committee for Human Rights and a professor of the Institute of Social Work and Social Policy of the University Saints Cyril and Methodius as well as the co-director and project coordinator of the Centre for Human Rights and Conflict Resolution, an NGO.

The lists of persons interviewed and documents consulted are attached (see Annexes 2 and 3).

In July 2010, the assessment team prepared a memorandum concerning certain draft amendments to the Law on Juvenile Justice that it considers incompatible with the rights of children, and provisions of the Law that it believes should be amended to bring them into greater harmony with international standards on juvenile justice. The text of the memorandum, which was forwarded to the Ministry of Justice, can be found in Annex 4 to this report.

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1 Basic courts are trial courts, i.e., courts of first instance, having competence over a wide range of cases (e.g., criminal, civil etc.).
Background

Independence from Yugoslavia was declared in 1991, and was obtained without armed conflict. In 2001, however, a short-lived insurgency broke out in western and northern parts of the country.

The population is 2.04 million, of which 469,000 (23 per cent) are below 18 years of age. Some 25 per cent of the population is ethnic Albanian, and other ethnic minorities (including Turks, Roma and Serbs) make up another 10 per cent.


The first report on the implementation of the Convention on the Rights of the Child was examined by the Committee on the Rights of the Child in 2000, and the second report was considered during the assessment mission. After examining the second report, the Committee expressed concern about poor conditions, including overcrowding, in the educational-correctional institution and in the juvenile prison in Ohrid, about the compulsory drug testing of juvenile prisoners and about the confinement of juveniles and adults in the same facilities.

The number of ‘reported’ juvenile offenders increased during the years immediately following independence, but fell by more than half from 1992 to 2002. Since then, it has fluctuated in two-year cycles: in 2008, it was 1,355 offenders, far lower than any year from 1986 to 2000. In 2009, it increased to 1,519 offenders. Similarly, data on the number of convicted juvenile offenders show a decrease of 36 per cent from 1995 to 2009.

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4 United Nations Treaty Collection, Database on the Status of Treaties, Chapter IV.
5 A committee of the same name was established in 2001, but did not become operational.
6 Committee on the Rights of the Child, Consideration of reports submitted by States parties under Article 44 of the Convention, Concluding Observations on the second periodic report of The former Yugoslav Republic of Macedonia, CRC/C/MKD/CO/2, 2010, para. 79. (The Committee also expressed concern about practices that appear to have been discontinued, or that the assessment team saw no evidence of, such as solitary confinement, corporal punishment, the application of correctional measures by the Centres for Social Work, and treating juvenile offenders as adults [paras. 38 and 79].)
7 Number of reported juvenile offenders: 1,809 in 1990; 2,668 in 1992; 1,266 in 2002. See Arnaudovski, L., Chacheva, V., and Choneva, L., Efficiency of Measures in the Juvenile Justice System, Institute of Sociological, Political and Juridical Research and UNICEF, Skopje, 2004, p. 64. (Reported offenders include those not prosecuted as well as those prosecuted, whether or not they were convicted.)
Executive Summary

The structure of the juvenile justice system that existed at independence, in 1991, was similar in some respects to the system that exists today. There were no juvenile courts, but there were judges and prosecutors specialized in cases involving children and accused juveniles. There were police officers having special responsibility for matters involving children, including offending by juveniles. There was a special prison for older juveniles convicted of an offence, a closed ‘educational-correctional’ facility for juveniles who committed offences while aged 14–18 years, and two facilities under the Ministry of Labour and Social Policy: an open facility for convicted juvenile offenders and a residential facility for children at risk. The Criminal Code and the Code of Criminal Procedure contained sections applicable to accused juveniles and the sentencing of convicted juveniles. The minimum age for prosecution as a juvenile offender was 14 years, and no one was prosecuted as an adult for offences committed while under age 18. There was no procedure for diverting accused juveniles from adjudication, however, and no lawyers specialized in the defence of accused juveniles.

Reported offending by juveniles increased immediately after independence, but fell by more than half from 1992 to 2002. Since then it has fluctuated, without a significant upward or downward trend.

A situation analysis prepared during the 1990s led to a national seminar in 2000 that adopted a number of recommendations, including one calling for the adoption of a law on juvenile justice. In 2003, the Ministry of Justice convened a working group to draft the law on juvenile justice, and in 2004 three studies by national experts intended to inform the law were published. The Law on Juvenile Justice was finally adopted in 2007, and came into force in 2009. The government adopted an Action Plan for Implementation of the Law on Juvenile Justice that coincided, to a large extent, with the period between the adoption of the law and its entry into force. About half the activities envisaged by this plan were carried out. A new plan covering the period 2009–2012 was adopted subsequently.

The law established a State Council for Prevention of Juvenile Delinquency, which was appointed in 2009. The Council has adopted a work plan covering 2009–2012.

Other changes introduced by the Law on Juvenile Justice include the following:

- the introduction of diversion, a non-judicial procedure for the resolution of minor cases;
- the introduction of a sentence of attendance in a community-based rehabilitation centre/placement for no more than 20 days;
- the requirement that a lawyer be present during the questioning of juvenile suspects;
- victim-offender mediation;
- limits to the duration of investigative and judicial proceedings;
- requirements on the training of specialized judges, prosecutors, police investigators, defence attorneys and mediators, and a requirement that the Centres for Social Work (CSWs) establish specialized departments or teams.

Many of the changes introduced by the law have not yet been implemented in practice, however. The municipal councils for the prevention of offending mandated by the law have not been established. The community-based rehabilitation centre is still not operational. Mediation is not yet being practised. At the time of the assessment mission, lawyers were not attending questioning of juvenile suspects because arrangements for payment of their fees have not been agreed. A fund for the compensation of child victims has not yet been set up.
At this writing, the law has been in force a little over a year, and it appears likely that some of these shortcomings will be overcome in the next year or so. Financial constraints have affected the implementation of the law and, more generally, the development of juvenile justice. The assessment team also concludes that political commitment, while strong in some sectors, is insufficient in others.

In addition, a few provisions of the new law risk being repealed. Judges and prosecutors are advocating relaxation of time limits, and the CSWs object to the mandatory participation of lawyers in diversion proceedings.

The assessment team believes that the provision of the new law concerning the diversion of minor cases to the CSWs is positive, in principle, but that consent to diversion should be required and the right of the offender to legal assistance should be maintained.

Progress has been made in training. Training for judges, prosecutors and correctional staff has been institutionalized. Considerable training of CSW staff also has been done, and a useful independent evaluation has identified areas where improvements are needed.

Progress has been achieved in the publication of data on offending by juveniles, and on juvenile justice and corrections. Valuable research has been carried out and is being conducted by independent, non-governmental institutions and organizations.

Some improvements in juvenile justice were made prior to the adoption of the new law. Police inspectors specialized in the investigation of crimes by and against children have been trained and assigned throughout the country. There is wide agreement that the level of physical violence by police against juveniles is very low. The population of the open residential centre for children at risk decreased by more than half since independence, due to changes in policy that now emphasize treatment in the family and placement only as a last resort.

Some positive developments are independent of the new law. Programmes for assisting the parents of juvenile offenders and children at risk are being piloted. A Deputy Ombudsperson in charge of children’s rights monitors the situation of children in residential facilities. Unfortunately, the impact of these initiatives seems limited, to date. For example, there has been no official reply to reports by the Office of the Ombudsman concerning abuse of children in two facilities operated by the Ministry of Labour and Social Policy.

One particularly negative change also took place: the transfer of the educational-correctional institution to the grounds of a prison for adults. This was triggered by events beyond the control of the government, but the temporary solution that violates the rights of the juvenile population has been allowed to continue for some nine years. A new temporary solution was agreed on after the assessment mission – transfer of this unit to the grounds of an open prison for adults and transfer of the adult population to other prisons.

Other concerns about correctional and detention facilities include the appointment of directors with no professional qualifications, the weakness of rehabilitation methods, the emphasis on work that is not designed primarily to facilitate rehabilitation and reintegration, the absence of standards on the care of juveniles in pretrial detention, weak links between residential facilities and the community, and the absence of programmes to assist prisoners after release. The lack of capacity of the CSWs, which have a large and multifaceted role in the juvenile justice system, is also one of the most important concerns of the assessment team. Other important concerns include the weakness of secondary prevention, and the lack of prevention and rehabilitation efforts that take into account the special needs of the Roma community, which is greatly over-represented in the correctional facilities for juveniles.
The recommendations made by the assessment team include:

- school- and community-based prevention should be strengthened;
- new standards on the treatment of juveniles in pretrial detention should be adopted;
- the right of the child to be heard in diversion proceedings should be recognized expressly and the role of his/her attorney clarified;
- responsibility should be defined for the payment of lawyers’ fees for representing children during the investigative stage of proceedings;
- the right to free victim-offender mediation should be recognized;
- priority should be given to the establishment of the community-based rehabilitation centre;
- more effective methods of rehabilitation in correctional facilities for juveniles should be introduced and steps taken to ensure that work by prisoners meets international standards;
- the policy of allowing young adults to remain in juvenile facilities should be revised to ensure that the best interests of prisoners under age 18 are the main concern;
- merit-based standards should be adopted for the appointment of directors of correctional facilities and standards for monitoring the finances of such facilities should be more transparent;
- indicators for data on offending and the functioning of juvenile justice should be reviewed and research undertaken on ‘what works’ in the prevention of offending and reoffending.
PART I. The Process of Juvenile Justice Reform

1. Policies and strategies

No national strategy on juvenile justice has been adopted. However, some plans and strategies related to juvenile justice have been adopted or are in the process of development.

The National Action Plan on Children’s Rights (2006–2015) contains a component on prevention, called “Development of a Comprehensive Approach to the Protection of Children with Upbringing-Social Problems and Behaviour Problems.” It envisages 10 activities to be carried out by the Ministry of Labour and Social Policy, the Ministry of the Interior, the Ministry of Justice and the Ministry of Local Self-Government. They include the creation of a network of community-based ‘day-care centres’ for the protection of children at risk, training in the identification of children at risk and support for parents who neglect their children. The reduction of offending by juveniles is expressly recognized as an aim and indicator of the implementation of the Action Plan. Strategic considerations include strengthening the capacity of the relevant institutions, developing standards and procedures for interdepartmental cooperation at national and local levels and collaboration with NGOs. Some of these activities have been or are being carried out (see the sections on training and on prevention, below).

The Law on Juvenile Justice adopted in 2007 provides for a State Council for Prevention of Juvenile Delinquency, whose mandate includes the preparation of a strategy for the prevention of juvenile delinquency. The creation of the State Council in November 2009 represents an important step in the implementation of this component of the National Action Plan on Children’s Rights.

After the Law on Juvenile Justice was adopted in 2007, the Ministry of Justice prepared an Action Plan and a budget framework for the implementation of the Law on Juvenile Justice for 2008–2009. Eighteen months of this period formed part of the two-year vacatio legis between adoption of the law and its entry into force and implementation on 30 June 2009. The Action Plan included some 30 activities, of which roughly half were accomplished. Most of the activities carried out concerned training or the adoption of ‘secondary legislation’ – regulations, guidelines and the like. Activities not accomplished include the establishment of a ‘disciplinary centre’ for the rehabilitation of offenders with emphasis on community-based treatment, the relocation of the educational-correctional institution now located within the grounds of a prison, the creation of child-friendly rooms in CSWs, the definition of the parameters and procedures of a database on children at risk and offenders, and making certain amendments to the Law on Juvenile Justice.

A second Action Plan for Implementation of the Law on Juvenile Justice covering the period 2009–2012 has been adopted. It reaffirms the commitment to implement some of the activities not accomplished during 2008–2009, such as relocating the educational-correctional institution and establishing a community-based centre for diversion measures and alternative sentences. Other activities are redefined in more concrete terms. Examples include the establishment of 10 municipal councils for the prevention of juvenile delinquency, the consolidation of a pilot project for parents of juvenile offenders and children at risk and its expansion to other communities, the development of standardized programmes for the treatment of specific groups of juveniles in closed facilities, and the preparation of the national strategy for prevention of juvenile delinquency.

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11 In The former Yugoslav Republic of Macedonia the term equivalent to ‘entry into force’ has a different meaning than it does in English and many other languages, referring to the point at which it is irrevocably incorporated into the national legal system, even if it is not binding at that time. In this report, intended mainly for an international readership, the term ‘entry into force’ is employed with its accepted meaning in the English language.

12 Referred to by the legislation as ‘disciplinary centre’.
The second Action Plan for Implementation of the Law on Juvenile Justice (2009–2012) is a good one, in the sense that the activities are all relevant and needed. However, it seems too ambitious to accomplish in two years, especially given the experience of the 2008–2009 Action Plan.

Since the Action Plan by definition aims to implement the Law on Juvenile Justice, which established the State Council for Prevention of Juvenile Delinquency and defined its mandate, it is inevitable that it overlaps with the mandate of the Council. However, neither the Council nor any other interministerial or intersectoral body has a mandate to coordinate the implementation of the Action Plan as such. The Council has adopted a five-year work plan and an annual work plan for 2010.

A strategy or plan for the rehabilitation of the prison system was developed recently, with the help of OSCE. The project includes the development of programmes for specific groups of prisoners, including drug addicts, sex offenders and juveniles. A €46 million loan from the Council of Europe Development Bank for the development of infrastructure was announced in May 2010. The construction of a separate and entirely new educational-correctional institution for convicted juveniles with a capacity of 84 persons is one of the four main components of the plan.

The creation of this urgently needed facility was envisaged in the Action Plans for Implementation of the Law on Juvenile Justice, as indicated above, and the incorporation of this component is a very positive development. The decision to build a facility with more than twice the capacity of the population confined in the existing institution at any time since 2001 does, however, seem out of harmony with the emphasis on prevention in other strategies, and the emphasis on diversion and alternative sanctions in the Law on Juvenile Justice.

In conclusion, there is a tendency to approach the development of juvenile justice strategically, and the Action Plans prepared have identified relevant objectives and activities. They have also helped to generate and maintain a degree of momentum, although thus far they do not appear to have created the political commitment necessary for their satisfactory implementation, and the short-term plans have also been somewhat overly ambitious.

2. Law reform

A new Criminal Code was adopted in 1996, and a new Code of Criminal Procedure in 2004. The new Criminal Code introduces community service as an alternative sentence, but this has not been implemented in practice. It also gives courts the authority to suspend criminal proceedings for certain offences for a period of two years, provided a juvenile defendant has expressed remorse and compensated the victim.

The Law on Juvenile Justice was adopted in July 2007 and came into force on 30 June 2009. It covers, in addition to juveniles aged 14–18 years alleged to have participated in a criminal act,
children aged 7–14 years who are ‘at risk’ of becoming offenders, and child victims and witnesses.\textsuperscript{17} The law also calls for the creation of municipal councils for the prevention of offending by juveniles, in addition to the State Council, mentioned above. The law aims expressly to protect, in the treatment of juvenile offenders, the rights recognized by the Convention on the Rights of the Child and “other international documents and standards.”\textsuperscript{18}

Important changes in juvenile justice made by the 2007 Law on Juvenile Justice include the following:

- it establishes a non-judicial procedure for the resolution of minor cases;
- it introduces conditional or suspended sentences for convicted juveniles;
- it calls for a community-based centre for diversion, alternative sentences and short custodial sentences;
- it requires the presence of a lawyer during the questioning of juveniles;
- it eliminates private prosecution;
- it limits the duration of proceedings;
- it requires judges, prosecutors, police investigators, defence attorneys and mediators to be specialized; and
- it requires CSWs to establish special departments or teams for juveniles.

The law also contains a section on children who are victims of criminal acts, or witnesses. It requires that all personnel participating in criminal proceedings involving such children have appropriate knowledge and experience.\textsuperscript{19} It provides that a child victim may not be examined as a witness if doing so would prejudice his/her “personality and development.”\textsuperscript{20} The number of times a child may be examined is limited, and examination may only be done in the presence of a psychologist, educator or other expert.\textsuperscript{21} The child must also have a legal advisor and, if poor, is entitled to free legal counsel.\textsuperscript{22} Such lawyers are required to have special training.\textsuperscript{23} The law calls for the establishment of a public fund for the compensation of child victims of crimes who are unable to obtain compensation from the perpetrator.\textsuperscript{24}

Implementation of the Law on Juvenile Justice has proven difficult, despite the delay of two years between adoption of the law and its implementation or entry into force.\textsuperscript{25} One difficulty, at present, is that the law did not establish who is to pay for the fees of lawyers for certain out-of-court services that are obligatory under the new law, such as being present during the questioning of suspects by the police. The law also requires juveniles to be represented by an attorney in proceedings in cases diverted to the CSW, without indicating which institution is responsible for paying the lawyer’s fees. Some of the CSW staff in charge of the implementation of the non-judicial procedure for minor

\textsuperscript{17} Law on Juvenile Justice, Part Two, Chapter Two; Part Five, Chapter 16. Some provisions of the law also apply to young adults aged 18–21 years, but since the Convention on the Rights of the Child and United Nations standards on juvenile justice do not apply to persons over age 18, this assessment does not address the provisions of law applicable to young adults.

\textsuperscript{18} Law on Juvenile Justice, Article 2.

\textsuperscript{19} Ibid., Article 137.

\textsuperscript{20} Ibid., Article 138.

\textsuperscript{21} Ibid.

\textsuperscript{22} Ibid., Article 140.

\textsuperscript{23} Ibid.

\textsuperscript{24} Ibid., Article 141.

\textsuperscript{25} The Law on Juvenile Justice was published in July 2007 and came into force on 30 June 2009.
cases believe that representation by an attorney is superfluous and can be dispensed with, although it is required by law. Difficulties also have emerged with regard to who should divert cases to the CSW, since the law does not expressly indicate whether this function belongs to the police or to the prosecutors. The law also does not establish who will pay for the services of mediators.

The innovative fund for the compensation of child victims of crimes, envisaged by the law, has not yet been set up. The relevance of this important fund is not limited to the juvenile justice system but extends to the criminal justice system and is beyond the scope of this assessment.

In short, the content of the law and the changes it introduces are very much in harmony with international standards and principles, but the actual impact of the law on practice will depend on the capacity of the relevant institutions and programmes. The problems that have emerged during the first year of implementation of the law are important ones. They have been recognized, and a consensus apparently exists about the appropriate solutions to most, but not all, of them. How soon the solutions will be adopted and how effective they will be shall be critical to the actual impact of the Law on Juvenile Justice.

3. Administrative reform/restructuring

Apart from the changes resulting from the Law on Juvenile Justice, no modifications in the structure or mandates of the institutions that form part of the juvenile justice system have had a significant impact on juvenile justice.

One exception was the transfer of the educational-correctional facility for juvenile offenders from Tetovo to a temporary location within a prison, in 2001. This administrative measure was not a reform, but an unplanned response to unforeseen circumstances that obliged the authorities to abandon the existing facility, which has had very negative consequences. They are described below in Part II on the Juvenile Justice System.

4. Allocation of resources

Lack of resources or unwillingness to allocate sufficient resources has been a significant obstacle to implementing the Law on Juvenile Justice and, more generally, to bringing the system into full compliance with the relevant international standards. For example, limited resources have had a significant negative impact on conditions in correctional facilities for juveniles. Courts do not have psychologists and social workers, as required by the Law on Juvenile Justice. Several important components of the 2008–2009 Action Plan, such as the establishment of the ‘disciplinary centre’, were not implemented because no funds were allocated. Indeed, the government allocated almost no funds for the implementation of the Action Plan, and the planned activities that were carried out were implemented with UNICEF funding.

The hiring freeze for all government positions, which came into effect in April 2009, after the law was adopted and shortly before it came into force, also has hindered the development of the juvenile justice system.

5. Training and capacity-building

Considerable training in juvenile justice has taken place during the last decade. Until recently, most training was done on an ad hoc basis, i.e., not part of a medium- or long-term training strategy based
on a needs assessment. National NGOs, including the State Council for Prevention of Juvenile Delinquency and the Centre for Human Rights and Conflict Resolution, have organized or participated in many such training activities.

A report on the training of CSW staff indicated that 12 distinct training activities specifically on juvenile justice were organized by the Institute of Social Activities between 2006 and 2009. Half of them were one-day events, and the other half three-day events. Three were held more than once, for different groups of trainees. The number of participants is not indicated, but another source reports that 50 staff of 17 CSWs have received specialized training in juvenile justice, and 21 staff members of the 7 teams providing counselling to the parents of juvenile offenders and juveniles at risk also have undergone training.

Unfortunately, the assessment concludes, somewhat paradoxically, that these training activities were “very relevant, needed and useful for most of the participants,” but “the impact of training is not very noticeable.” Specifically, “most of the participants [in the training activities] believe that the situation in their institution has not changed or has changed little in the previous five years” and that “This is the main impression of the beneficiaries as well.” Reasons for the poor impact of training identified by the report include an excessive focus on theory, insufficient use of practical examples, insufficient use of trainers from more diverse backgrounds, and long hours and poor attendance, due in part to inadequate logistical arrangements. The impact of training also was undermined by external factors such as the workload and staff rotation or ‘churn’. The exclusive focus on substantive issues was criticized, and the addition of courses on administration, team-building, conflict management, coping with stress and similar professional issues was recommended.

The Law on Juvenile Justice requires juvenile judges, juvenile prosecutors, defence lawyers and police investigators to “attend specialized training on juvenile delinquency in the country or abroad for at least four to ten days during the year.” A recent government report indicates that specialized training courses for the application of the Law on Juvenile Justice have been attended by more than 150 judges and public prosecutors, a basic training course has been organized for 80 uniformed police officers and 50 juvenile delinquency inspectors have attended more specialized training courses. More than 300 practising lawyers have been trained in juvenile justice and recognized by the Bar Association as qualified to represent and defend the rights of juveniles. The impact of this training has not been evaluated.

The 2006 Law on Execution of Sanctions requires staff of the correctional system to participate in in-service training, and a module on the treatment of juveniles has been incorporated into the two-day

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26 Training of CSW staff by the Institute of Social Activities, which is based on annual training programmes, was an exception, although an evaluation of such training covering the period 2005–2009 recommended that it should be more strategic. See Krzhalovski, A., Bitqi, F., and Stevanovska, B., Evaluation of Training for Child-Protective Services Conducted by the Institute of Social Activities, Macedonian Centre for International Cooperation, Skopje, 2009, p. 5.

27 Ibid., Annex 4. (This number does not include other activities that are related to prevention, but are not specifically about the prevention of offending as such.)

28 Committee on the Rights of the Child, Written replies by the Government of The former Yugoslav Republic of Macedonia to the list of issues (CRC/C/MKD/Q/2) prepared by the Committee on the Rights of the Child in connection with the consideration of the second periodic report of The former Yugoslav Republic of Macedonia (CRC/C/MKD/2), CRC/C/MKD/Q/2/Add.1, 2010, p. 19.

29 Evaluation of Training for Child-Protective Services, supra, p. 4.

30 Ibid.

31 Law on Juvenile Justice, Article 94.

32 CRC/C/MKD/Q/2/Add.1, supra, p. 19. (Thirty inspectors have participated in the ‘Juvenile justice: from paper to practice’ project. See Bacnanovic, O., (ed.), Juvenile Justice Collection of Papers: From Idea to Practice, Police Academy, Skopje, 2008, p. 335.)
in-service training course. A team of educators trained during a Council of Europe project on prison reform prepare an annual action plan for the training of the staff working with juveniles, according to the Director of the Department of Execution of Sanctions, and conduct training sessions three times a year. The impact of this training has not been evaluated, to our knowledge.

The Academy for Training of Judges and Public Prosecutors established in 2006 provides the in-service training that is mandatory for all judges and prosecutors as well as entry-level training for candidates for these professions. The subject of juvenile justice has been incorporated into courses on criminal law and international law. Questions on the Law of Juvenile Justice have been integrated into the admission exam for candidates. The teaching methods used include casework and lectures, and aim to develop skills and values as well as knowledge.

Some progress has also been achieved in introducing the prevention of offending, juvenile justice and social work with juvenile offenders into the curricula of relevant university departments, such as the Institute of Social Work and Social Policy of the University Saints Cyril and Methodius.

6. Accountability mechanisms

The police and prison services have codes of conduct, but neither code contains any provisions specifically concerning the treatment of children. There is no code of conduct governing the work of the CSWs, nor the residential facilities operated by the Ministry of Labour and Social Policy.

An Ombudsman was established in 1997. A Department on Child Rights Protection, headed by a Deputy Ombudsperson, was created in 1999. It receives complaints from children. The new Law on Ombudsman adopted in 2003 gives it the power to investigate situations involving the rights of children without having received a complaint.

The Ombudsman has published a number of special reports on juvenile justice, including reports on the educational-correctional institution in 2008 and 2009, and a 2009 report on physical and sexual abuse of children in three residential facilities, including the open facilities for children at risk and offenders operated by the Ministry of Labour and Social Policy (see below). Such reports perform a valuable service in documenting abuses, but the competent authorities have been slow to respond constructively to the Ombudsman’s concerns and recommendations, even in urgent matters.

The Office of the Ombudsman also contributed to the drafting of the Law on Juvenile Justice, and participates in the State Council for Prevention of Juvenile Delinquency.

7. Coordination


The State Council, by law, is composed of representatives of the Ministry of Justice, the Ministry of Education and Science, the Ministry of the Interior, the Ministry of Labour and Social Policy, the Supreme Court, the Public Prosecutor, the Bar Association and eight experts, including one representative of an NGO. The members of the State Council were appointed by the National

33 Department of Execution of Sanctions, Programme for training and education of the employees in the penal and correctional institutions and educational-correctional institutions, Ministry of Justice, Skopje, 2008.


35 Law on Juvenile Justice, Article 144.
Assembly in November 2009. Their mandate includes the adoption of a national strategy for the prevention of juvenile delinquency and annual programmes and plans to be based on the strategy, making proposals regarding law reform, initiating research on juvenile offending, and preparing annual reports on its activities and on child rights and juvenile offending.36 The activities of the State Council are to be financed from the budget of the Ministry of Justice.37

The Municipal Councils are to include representatives of the local units of the Ministry of the Interior, Ministry of Labour and Social Policy, CSW, judge, prosecutor, Bar Association, associations of parents and of secondary students and other representatives of civil society. Their mandate is to involve the local community in the prevention of offending and the treatment of juvenile offenders, to monitor the situation and to report annually to the municipal government. No municipal council had been established at the time of the assessment mission. The revised Action Plan for Implementation of the Law on Juvenile Justice adopted in April 2010 calls for the establishment of at least 10 municipal councils by 2012.

The State Council includes all the relevant actors, except the Ministry of Local Self-Government. Its mandate is defined in terms of prevention of offending, and not juvenile justice as such. If prevention is defined as including prevention of reoffending, then its mandate is quite broad. However, the fact that the Council is responsible for developing a national strategy for the prevention of juvenile delinquency in parallel to the National Action Plan for Implementation of the Law on Juvenile Justice raises a question as to the scope of its coordinating function. There is no other interministerial and intersectoral body responsible for coordinating other aspects of juvenile justice. Since the State Council is new, it remains to be seen whether in practice it will be able to assume a leading role in the coordination of most or all matters concerning juvenile justice, or whether its role will be narrower.

8. Data and research

Data

Since 1995, the State Statistical Office publishes a bilingual (Macedonian/English) yearbook entitled *Perpetrators of Criminal Offences* that contains data on juvenile as well as adult offenders.38 It comprises 17 tables on reported, accused and convicted offenders aged 14–18 years. Most data are disaggregated by the type of offence, based on the relevant chapters of the Criminal Code.39 Some are disaggregated by the actual offence. This is useful because it allows the monitoring of trends concerning the most violent crimes, such as homicide and rape. Since 2007, the yearbook is published on the website of the State Statistical Office.

One very useful table contains data on the number of juveniles detained on remand (i.e., before or during trial), disaggregated by the length of detention.40 Another contains data on the length of pretrial proceedings, disaggregated by six temporal units, from one month to more than one year, by the class of offence and the outcome.41 Yet another, on accused juveniles, contains data on the

36 Ibid., Article 145.
37 Ibid., Article 146.
38 In 2005 and 2006, the State Statistical Office published shorter reports called ‘Reported, Accused and Convicted Adult and Juvenile Perpetrators of Criminal Offences’. Similar data are available as from 1998.
39 Crimes against life and body; crimes against the freedoms and rights of humans and citizens; crimes against honour and reputation; crimes against marriage, family and youth; crimes against human health; crimes against the environment and nature; crimes against public finances, payment operations and economy; crimes against the general safety of people and property; crimes against safety in public traffic; crimes against the official duty; crimes against the judiciary.
40 *Perpetrators of Criminal Offences in 2008*, supra, p. 120.
41 Ibid., pp. 109–111. (Tables are not numbered.)
outcome of proceedings, including at least one category that can be considered diversion, namely “investigation terminated in the interest of the defendant or society.” Another valuable feature of the yearbooks is that data on offending are disaggregated by the ethnicity of offenders, as well as their sex and family and educational background.

The yearbooks are based on data provided by public prosecutors and courts. Consequently, they contain no information on the prison population and the population of other facilities for juvenile offenders. They also contain no information on offences committed by children under age 14 and the children who participate in them.

Another year book that provides data on social welfare for children, juveniles and adults published by the State Statistical Office does contain information on children with behavioural problems, including children under age 14 involved in criminal activity and juvenile offenders referred to the social welfare authorities. It is published in English and Macedonian. Data on children under age 14 are disaggregated to distinguish between those involved in criminal activity and those involved in other ‘antisocial behaviour’, as well as by sex and age bracket (0–7 years; 7–13 years). The information published contains statistics on the type of services provided or measures taken with regard to children and juveniles involved in offending or antisocial behaviour, including reprimands, supervision by parents, supervision by the CSWs, and placement in the juvenile prison, the educational-correctional institution and the open educational facility ‘Ranka Milanovic’. Data on juvenile offenders are disaggregated by age, but not by sex, nor by the measures taken. Unfortunately, the definitions and other criteria used in presenting these data are outdated, which limits the usefulness of the data.

The Department of Execution of Sanctions began to publish some data on an annual basis in 2008. Data on juvenile offenders and juvenile facilities include the population of the juvenile prison and the educational-correctional institution at the end of the year, the number of prisoners who entered and who left these two facilities during the course of the year, and the number of disciplinary measures taken against prisoners in these facilities as well as the number of prisoners who are ‘addicts’. The data on the population are disaggregated by age and ethnicity. Data on staff are also published, including disaggregation by ethnicity and gender, and information on the number of staff disciplined during the year.

None of these annual reports include an analysis of the data presented. This function is vested in the State Council for Prevention of Juvenile Delinquency. The Law on Juvenile Justice mandates the State Council to prepare annual reports on “its work and the conditions in the field of children’s rights and juvenile delinquency” to be presented to the legislature, the judicial authorities and the government. The work plan for 2010–2016 adopted by the State Council in April 2010 envisages four activities concerning research and analysis. At the time of the assessment mission, the State Council was still in the process of setting up.

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42 Ibid., pp. 118–119. (Other categories, in addition to conviction and ‘no proof’, include ‘not characterized as a criminal offence or trivial’, ‘in the interests of defendant or society’, ‘prosecutor withdrawn from charge’ and ‘circumstances which exclude criminal prosecution’.)

43 Ibid., p. 10.


46 Ibid., pp. 16–17.

47 Law on Juvenile Justice, Article 145.
Research

Some valuable research on juvenile offending and juvenile justice has been carried out since independence. The Survey on the Status of Children and Youth in the System of Juvenile Justice, prepared by an international expert and two national experts, contains useful analysis of the relevant national legislation at the end of the first decade of independence, the institutional framework and policies and data on offending and the sanctions imposed on juvenile offenders during the 1990s. Three studies were published in 2004: Efficiency of Measures in the Juvenile Justice System; Empirical Analysis of the Problems of Children at Risk and Evaluation of the Existing Factors of Prevention; and Comparative Analysis of Juvenile Justice Legislation.

The first study was particularly valuable, because it incorporated data obtained through field research that identified significant problems in the functioning of certain parts of the juvenile justice system, through interviews with juvenile offenders and their families. One of the authors concluded, for example, that in practice judges did not take the personality of offenders into account; that most of the offenders in residential facilities were dissatisfied with their relations with the staff responsible for their re-education or resocialization; and that supervision, the most widely used alternative measure, was not being implemented properly and had limited effectiveness.48

The publications mentioned above were supported by UNICEF. Some similar research is now being carried out by groups and institutions such as the Centre for Human Rights and Conflict Resolution.

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48 Efficiency of Measures, supra, pp. 86, 99 and 109–110.
PART II. The Juvenile Justice System in The former Yugoslav Republic of Macedonia

1. Prevention

The National Action Plan on Children’s Rights and the Law on Juvenile Justice both emphasize the importance of prevention and, as mentioned above, a State Council for Prevention of Juvenile Delinquency has been established and is in the process of preparing a national strategy on this subject.

The Law on Juvenile Justice calls for the creation of municipal councils for the prevention of juvenile delinquency. Their statutory functions include the following: to monitor the situation, to raise initiatives to improve the situation, and to develop programmes to involve the local community in the prevention of juvenile delinquency and the treatment of juvenile perpetrators of criminal acts and misdemeanours. Their membership is to include representatives of the police, the Centre for Social Work, the Bar Association, the designated juvenile judge and prosecutor, associations of students and parents and representatives of civil society. Their activities are to be financed by the municipality.

The plan to develop a network of community-based prevention councils is based in part on a non-governmental programme that was established in 1996 in the municipality of Kavadarci. Unfortunately, the assessment team was not able to visit it.

Each police station has an officer in charge of activities designed to prevent offending by juveniles, in addition to other responsibilities. Their activities are limited and consist largely in liaison with schools, ‘day centres’ for street children, local governments and the community.

One new community-based programme that has been created pursuant to the National Action Plan on Children’s Rights provides assistance to the parents of juvenile offenders and children at risk through ‘educational centres’ established by the CSWs in seven communities. Such ‘centres’ have also been set up in two open residential facilities for offenders and children with social and educational problems, ‘Ranka Milanovic’ and ‘25th May’ (see below). The centres organize group work with parents of children with problematic behaviour or disorders, such as hyperactivity, in order to teach parents identify problems at an early stage and respond appropriately to them. Programmes of this kind are important because the quality of the relationship between parents and children is a significant factor of risk or prevention. The response of participating parents reportedly has been positive, but the effectiveness of these centres, established in 2009, has not yet been evaluated.

Cooperation between schools and the CSWs should be an important element of prevention, but has decreased in recent years.

The disproportionate number of Roma children involved in offending highlights the urgent need for prevention programmes adapted to the needs of that community, and more generally, policies

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49 This assessment focuses on secondary prevention, in the sense of programmes designed to help children identified as having a higher risk of offending, including children who participate in criminal conduct while too young to be treated as juvenile offenders. It includes school-based prevention activities and programmes, community-based activities and programmes and residential facilities for children at risk. Covering primary prevention would not be feasible; the prevention of reoffending is covered in the sections of this report on diversion, alternative sentences and custodial sentences.

50 The English version of some documents refers to this as the ‘State Council on Prevention of Juvenile Delinquency’.

51 Law on Juvenile Justice, Article 148.

52 Ibid., Articles 147 and 148.
of social inclusion. The Ministry of Labour and Social Policy’s programme for socially excluded people does not identify Roma as a target group.\textsuperscript{53} At present, the only programmes directed to the Roma community are those operated by NGOs, whose capacity is limited. The national Roma Strategy for 2009/2011 does not include any activities specifically intended or designed to reduce offending. Greater support to NGOs and community-based organizations and closer government-NGO cooperation are needed.

In conclusion, although the importance of prevention is recognized and one promising new initiative has been taken, much more needs to be done to develop and implement a comprehensive programme of prevention.

2. The residential centre for children and youth with educational and social problems ‘25\textsuperscript{th} May’

The assessment team visited the open residential centre for children and youth with educational and social problems operated by the Ministry of Labour and Social Policy.\textsuperscript{54} Placement in the centre is a ‘measure of aid and protection’ imposed by the CSW on children or juveniles ‘at risk’.\textsuperscript{55} Children at risk include those aged 7–14 years who have committed an offence,\textsuperscript{56} although most children in the facility have been placed because they have run away from home or similar reasons. The Director did not know how many of the children had been involved in an offence. Street children are sometimes brought to the centre by the police. In this case, the local CSW is contacted to decide what to do with the child, because the police lack authority to place a child in the facility for any period of time.

The site in which the facility is situated also contains a centre for internally displaced persons and a women’s shelter, located there temporarily for the last six and nine years, respectively.

The present capacity of the residential centre is 90 persons, and the population at the time of the visit was 40 (28 boys and 12 girls). The centre has 36 staff, including 17 professionals. This facility, the only of its kind in the country, houses children aged 7–18 years.\textsuperscript{57} Before independence, it had received as many as 90 children. The number of residents has decreased due to the policy of the CSWs of using separation from the family as a last resort and trying to find substitute homes within the family.

Primary school courses are offered within the facility, by teachers from a local school. There is resistance to enrolling the children in the local school because of the stigma attached to placement in the home. The teachers who work in the facility lack special training for dealing with children with behavioural problems, which all of them have, according to the staff. (No details were given on the specific types of behavioural disorders diagnosed.) The population at the time of the visit included about seven children of secondary school age, but not all of them have completed primary education.

An individual plan is prepared for each child. It must be agreed to by the child, his/her parents and the CSW. The aim is described as ‘socialization’, and typical components include schooling, organized leisure activities, life skills education, craft and cultural activities, and ‘individual conversations’. The staff has direct contact with the child’s family for purpose of diagnosis of the child’s situation

\textsuperscript{53} Target groups include street children and their families, the homeless, victims of domestic violence and drug users.

\textsuperscript{54} This facility is formally known as ‘25\textsuperscript{th} May’, and sometimes referred to as such.

\textsuperscript{55} Law on Juvenile Justice, Articles 16, 17 and 20; Law on Social Protection, Article 118.

\textsuperscript{56} Law on Juvenile Justice, Article 12.

\textsuperscript{57} In practice, some children remain after their eighteenth birthday, if they have not yet completed school.
and development of a plan. The Institute of Social Activities informed the assessment team that an ‘educational centre’ to involve parents in the prevention of offending was established in this facility, but according to the Director the facility lacks the mandate or resources to involve the parents in the treatment. Children may visit their families on the weekend.

The facility was established at its present location in 1971. The residential area consists of five corridors. Each has four bedrooms with two or three beds, closets for the children’s personal effects, curtains and posters chosen by the children. Each corridor also has an activity room with a television, a bathroom and an office for staff. Staff (‘educators’) is present in each corridor 24 hours per day, in three shifts. Classrooms, the cafeteria, offices, a gymnasium and the nurse’s office are located on the ground floor. In general, the facilities appeared clean, but in poor repair, although not bad enough to raise safety concerns. Outdoor sports fields also were in poor repair. The children met by the assessment team appeared clean, and wore their own clothing.

Plans exist to establish separate units within this facility for three other functions: ‘observation’, a ‘crisis centre’ and what the Law on Juvenile Justice calls a ‘disciplinary centre’.58

In 2009, the Office of the Ombudsman carried out a study on this facility and two others, and concluded that physical violence and sexual abuse or harassment by staff had not been eliminated. The Deputy Ombudsperson informed the assessment team that, nearly one year later, no reply had been received from the responsible ministry.

3. Policing, the investigation of offences and pretrial detention

The police have established specialized teams for the investigation of offences committed by juveniles, as well as crimes against children. There are seven police stations in Skopje, each with two or three officers who have special training in juvenile justice and skills for interviewing children. All are women, although this is not deliberate policy. They are coordinated by two specialized investigators in police headquarters. All work exclusively on cases involving juveniles.

Outside the capital, there are two or three specialized investigators in each region,59 but there are not necessarily specialized officers in each police station.

Apprehension and interrogation of suspects by the police

Juveniles may be taken into custody by police in five circumstances: pursuant to an order for their arrest; if caught in the act of committing a serious criminal act; when caught in the act of committing any criminal act, if there is a risk of completing or repeating the crime; their identity is unknown; or circumstances indicate a need for protective measures.60 The juveniles’ parents and defence attorney, and a prosecutor or judge must be informed immediately.61 No statement may be requested or taken in the absence of a defence attorney.62 Juveniles must be taken before a judge “without delay, and not later than 12 hours” after being taken into custody.63

58 The functions of the ‘disciplinary centre’ are defined in Article 34 of the Law on Juvenile Justice. There appears to be a consensus that the term ‘disciplinary centre’ should be replaced, perhaps, by ‘youth centre’. The ‘observation unit’ appears to be envisaged to fulfil the functions mentioned by Article 100 of the Law.

59 That is, in each of the eight Sectors for Internal Affairs.

60 Law on Juvenile Justice, Article 109.

61 Ibid. (Article 91 specifies that either a parent or the CSW must be notified within two hours.)

62 Ibid.

63 Ibid.
A draft amendment to the Law on Juvenile Justice would eliminate the requirement that parents and defence attorney be informed ‘immediately’ of the apprehension (literally: ‘arrest’) of a juvenile. The assessment team’s memorandum on the proposed amendments to the law opposes the adoption of this amendment. Another draft amendment would require a judge to authorize pretrial detention for 24 hours if the prosecutor does not request detention, but the judge believes that the legal conditions for pretrial detention are met. Considering that a prosecutor must be informed immediately whenever a juvenile is taken into custody and the police may keep juvenile suspects in custody for 12 hours before taking them before a judge, the assessment team considers that authorizing an additional 24 hours of detention because of inaction by the prosecutor would not be compatible with the fundamental principle that no juvenile may be deprived of liberty except as a ‘last resort’ and for ‘the shortest appropriate period of time’.64

Although the Law on Juvenile Justice prohibits interrogation of juvenile suspects without the presence of a lawyer and indicates how the lawyer is to be designated, it does not provide who shall pay for such services. Consequently, at the time of the assessment mission, lawyers had stopped representing juvenile suspects unless their parents were willing to pay their fees.65

Sources interviewed agreed that the police rarely use physical violence against juvenile suspects. Independent sources also informed the assessment team that violence is not tolerated, and administrative action is taken against police officers who use physical violence against children. However, some sources report that psychological intimidation, including threats, is more frequent. When this does occur, the most common reason reportedly is to pressure a juvenile caught in the commission of an offence to confess to other offences.

**Detention of accused offenders**

Juvenile judges may authorize the placement of accused juveniles in an educational institution or substitute family, or place them under the supervision of the CSW, if “necessary for the purpose of separating the juvenile from his/her residential neighbourhood or for the purpose of providing help, protection or accommodation.”66

Juveniles taken into police custody, as indicated above, must be taken before a judge “without delay, and not later than 12 hours,” for a decision on whether detention should be ordered.67 A decision to authorize detention may be appealed to the full court, which must decide on the appeal within 24 hours.68

The grounds for detention before trial are those recognized by the Code of Criminal Procedure: unknown identity or evidence of risk of escape, risk of destroying evidence or influencing witnesses, or risk of further criminal acts.69 The initial detention order is valid for 30 days, which may be extended to 60 days. Detention orders may be appealed to the juvenile panel of the trial court, which must confirm or overturn the order within three days; further appeals may be made to the competent court of appeals.70

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64 Convention on the Rights of the Child, Article 37(b).
65 Another problem is that in some municipalities there are no trained lawyers, and lawyers are not entitled to payment for travel to represent juveniles.
66 Law on Juvenile Justice, Article 108.
67 Ibid.
68 Ibid.
69 Ibid., Article 110, incorporating Article 184 of the Code of Criminal Procedure (Article 199 of the Consolidated version).
70 Ibid.
Article 110 of the Law on Juvenile Justice expressly recognizes the principle of ‘last resort’. It also contains other safeguards, such as a provision to the effect that, if unknown identity is the reason for detention, the need for detention must be reassessed once the suspect’s identity is confirmed.

Juveniles in pretrial detention are to be separated from adults and provided with work or another educational activity designed to mitigate the negative impact of detention.\(^\text{71}\) The competent juvenile judge is required to visit every detained juvenile at least once, and every 10 days if detention continues.\(^\text{72}\)

Data on the number of juveniles in detention at the end of the year during the first half of this decade indicate a decrease of nearly 75 per cent, from 60 in 2000 to 16 in 2005.\(^\text{73}\) In 2008, the most recent year for which data have been published, 18 juveniles – less than 2 per cent of those accused of an offence – were detained during the course of the year.\(^\text{74}\) All but one were detained more than 15 days, and only one was detained for more than two months. Twelve of the juveniles detained were accused of theft, and seven were not convicted.

**The pretrial detention facility, Skopje**

The assessment team visited a pretrial detention facility that is part of the Skopje prison. The prison was opened in 1968, and became one of the main prisons in the country in 2007. The pretrial facility, with a capacity of 310, is located in a separate wing that was built in 2009. The population at the time of the visit was 238.

Most juveniles who are detained, as indicated above, remain in detention for a period of two weeks to two months. In 2008, one juvenile prisoner was confined in this facility for 18 months. The assessment team was told that this was due to his decision to remain in this facility during appeal of his conviction.\(^\text{75}\)

At the time of the assessment mission there were three juvenile detainees. Two were in a large cell with three beds, cupboard, and a table. The cell has a metal door, and windows that allow natural light to enter, but are too high in the wall to provide a view to the exterior. There is no radio or television.\(^\text{76}\) The showers are located down the corridor. The shower room, cell and corridors were clean.

The detention facility has several entirely separate exercise yards. This allows juvenile detainees to use one of them for two hours per day when no adult detainees are present. The exercise yard visited was large; the only equipment was free weights. Meals are eaten in their cell, where juvenile detainees spend the remaining 22 hours per day. Since detention is intended to be brief, there are no programmes for juvenile detainees.

The assessment team believes that the physical conditions in which the juveniles are detained meet international standards, and that juvenile detainees are effectively separated from adults. The main problem with the detention of juveniles is that, when there is only one juvenile in detention, or when the only juveniles in detention are co-defendants, they are detained alone to prevent contact

\(^{71}\) Ibid., Article 112.

\(^{72}\) Ibid., Article 112.3.


\(^{74}\) *Perpetrators of Criminal Offences in 2008*, supra, p. 120.

\(^{75}\) According to Article 371 of the Code of Criminal Procedure, a convicted person may be transferred to the juvenile prison at his/her request, if the request is approved by a juvenile panel.

\(^{76}\) According to the Director, access to radio or television must be authorized by the judge who orders detention.
with adult detainees. The Director informed the assessment team that, when this is the case, the staff makes a special effort to visit and spend time with the juvenile detained alone. This problem is a predictable consequence of reduced use of detention, which of course is desirable. Possible alternatives might be the confinement of juvenile detainees in the juvenile prison, or the closed educational-correctional institution. This would require changes in the legislation, and confinement with convicted juveniles would infringe the principle that unsentenced detainees should not be confined with convicted prisoners. There would also be practical disadvantages: the juvenile prison is located 240 km from the capital, and conditions in the closed educational-correctional institution, which is temporarily located in the same facility as the pretrial detention facility, are much worse. In the circumstances, the assessment team considers that it is not in a position to question the decision that the present arrangements are an appropriate solution. Regulations should be adopted, however, specifying the measures that should be taken to ensure that juveniles detained alone do not suffer adverse psychological effects due to their isolation from other detainees.

In 2006, two juveniles detained in Skopje prison made suicide attempts. This was before the construction of the new wing, and the Director of this detention facility was later replaced. However, the urgent recommendations made by the European Committee for the Prevention of Torture in response to these events have not been complied with, in particular, that guidelines should be issued regarding the conditions of detention of juveniles, and appropriate mental health assessment and care for persons at risk of self-harm or suicide should be ensured.

4. Diversion

Article 9 of the Law on Juvenile Justice establishes a presumption in favour of diversion:

“... the authorities shall not regularly initiate a court procedure, in order to avoid the harmful influence on the juvenile, unless the personal character of the juvenile and the circumstances under which the act had taken place indicate the need of initiating a court procedure.”

Article 9 also provides that juveniles shall not be prosecuted unless the offence they are alleged to have committed is punishable by a sentence of three years or more, or the aims of juvenile justice cannot be achieved without prosecution. Such cases, like those of children under age 14 who have participated in criminal activity or who are at risk, are referred to the CSW. The law does not expressly indicate who is to determine whether a given case should be referred to the CSW. This has led to some problems with the implementation of the law, but an amendment has been drafted to clarify that this responsibility lies with the prosecutor. Diversion to the CSW is further described below, in the section on ‘underage offenders’.

The law recognizes other alternatives to prosecution. In cases punishable by a sentence of less than three years of imprisonment, prosecutors have discretion not to prosecute if they conclude that

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77 See, e.g., Article 10.2(a) of the International Covenant on Civil and Political Rights, to which the country is a Party. This principle – like the principle that juveniles should be separated from adults – is not absolute and admits exceptions.

78 Report ... on the visit to “The former Yugoslav Republic of Macedonia” carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 15 to 26 May 2006, Council of Europe, CPT/Inf (2006) 5, Strasbourg, 2006, para. 47.

79 Report ... on the visit to “The former Yugoslav Republic of Macedonia” carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 June to 3 July 2008, Council of Europe, CPT/Inf (2008) 31, Strasbourg, 2008, Appendix II, p. 23 (citing earlier reports from 2006 and 2007).

80 Law on Juvenile Justice, Article 9, para. 2.

81 On one hand, the CSW reportedly sometimes rejects cases referred to it by the prosecutors and, on the other, some cases of more serious offences have been referred to the CSW by the police.
prosecution is ‘not appropriate’, given the nature and circumstances of the offence and personal characteristics and record of the perpetrator, and if the victim and offender have reached an agreement regarding reparation. Article 100 recognizes broader discretion not to prosecute because prosecution would be “inappropriate ... [given] the nature of the criminal act and the circumstances in which the criminal act has been committed, juvenile’s life experience and personality.” When this provision is applied, the injured party may ask the court to overturn the prosecutor’s decision. The prosecutor also may propose community service as an alternative to prosecution, for offences punishable by up to three years of imprisonment.

Some alternatives are conditioned on reparation of the damage caused. The prosecutor can postpone prosecution for six months, to provide the accused with an opportunity to compensate the victim. Similarly, the prosecutor may decide not to prosecute if the CSW reports that the juvenile and his/her family have agreed to compensate or make reparations to the victim.

No data on juvenile justice have been published since the Law on Juvenile Justice entered into force during 2009. Data for 2008 suggest that prosecutors exercise discretion not to prosecute in almost 20 per cent of all cases.

5. Mediation

In addition to the procedures on compensation and reparations described above, the Law on Juvenile Justice recognizes classical victim-offender mediation (VOM) and a procedure called ‘intermediation’ that may be done by the CSW. The latter is described below, in the section on ‘underage offenders’.

The prosecutor may refer a case for mediation when the offence charged is punishable by less than five years. Written consent of the accused juvenile, his/her parents and the victim is required. If the mediation does not lead to an agreement within 45 days, the case is returned to the prosecutor. If agreement is reached, it must be confirmed by the competent court, which in effect converts the agreement to a sentence.

Referral to mediation is obligatory for accusations of misdemeanours, under the procedures set forth in the Law on Misdemeanours.

The assessment team met with the President and two other members of the ‘Chamber of Mediators’ who stated that, although the law on mediation has been in force for two years, no cases involving juvenile offenders have been referred for mediation. The main reason for this is the delay in the organization of training in VOM for juveniles, but the Chamber is also concerned that the law does not recognize the right to free mediation, or does not provide who shall pay the mediator’s fees if the offender is unable to do so.

82 Law on Juvenile Justice, Article 68.
83 This provision applies to offences punishable by sentences of less than five years.
84 Law on Juvenile Justice, Article 100.
85 Ibid., Article 68 (literally: generally useful work).
86 Ibid.
87 Ibid. The prosecutor must meet with the accused and the victim to confirm the agreement.
89 Law on Juvenile Justice, Article 72.
90 Ibid., Articles 74 and 101.
91 Ibid., Article 101.
92 Ibid., Article 129.
The Chamber of Mediators believes that VOM should be free and obligatory in juvenile cases. The assessment team believes that the law should provide that VOM should be free in juvenile cases, at least when the offender lacks resources to pay, and that a fund should be established to cover the fees of mediators in such cases. However, it does not support the position that mediation should be obligatory in all cases involving juveniles. While mediation is a valuable part of any juvenile justice system, and it is important to refer all appropriate cases to mediation, there may well be cases in which the circumstances of the offence and the record and personal characteristics of the offender indicate that some other measure would be more appropriate, and judges and prosecutors should have discretion to impose the most appropriate measure in such cases. Furthermore, mediation may be inappropriate for some crimes in which the victim is not a physical person (e.g., vandalism of public property or drug offences) or is legally incapable of consent.

6. The adjudication of juveniles

Minimum age for prosecution (‘minimum age of criminal responsibility’)

Children aged 14–18 years accused of an offence have a right to be tried by the competent court, i.e., by a juvenile judge. In a sense, this right is limited to offences punishable by more than three years of imprisonment, since less serious offences are referred to the CSW. However, Article 10 of the Law on Juvenile Justice recognizes the right to appeal to the competent court for protection against “any decision delivered in an administrative procedure.”

Specialized juvenile judges and prosecutors

The Law on Juvenile Justice provides that basic courts of general jurisdiction shall have a specialized department for juvenile delinquency, consisting of one or more juvenile judges and a juvenile panel. Juvenile panels are composed of a juvenile judge and two ‘jurors’ having experience and knowledge about juveniles.

There are 27 ‘basic courts’, i.e., trial courts. According to the 2006 Law on Courts, 12 basic courts have specialized departments for particular types of cases, including juvenile cases. One of the two basic courts in the capital has two full-time juvenile judges; the juvenile court judges in the other 11 courts located throughout the rest of the national territory handle juvenile cases on a part-time basis, in addition to other cases.

Juvenile judges have what in the continental system of penal law are normally three separate functions (investigating judge, trial judge and judge for the execution of sentences). Some functions, including the preliminary proceedings, are assigned to the judge for juveniles acting alone; others, including the ‘main trial’, are assigned to the juvenile panel. Juvenile judges also have competence over misdemeanour cases.

Article 94 also provides that cases involving juvenile offenders should be handled by specialized prosecutors and specialized police investigators. All are required to participate in at least four days of training annually. In Skopje, there are four specialized juvenile prosecutors. The president of each court having a juvenile department shall also designate one staff member of the local CSW to handle juvenile justice cases.

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93 Ibid., Articles 11 and 12.
94 Ibid., Article 94.
95 Ibid., Article 95. (The unofficial English translation of the law uses the term ‘councils for juveniles’.)
96 Ibid., Article 96. (The unofficial English translation of the law uses the term ‘councils for juveniles’.)
97 Ibid., Article 117.
98 Ibid., Article 129.
99 Ibid., Article 97.
The Supreme Court should have a panel for juvenile offenders, although one has not yet been created. 99

Preliminary proceedings

Judicial proceedings have two stages: preliminary proceedings and the trial. Both are governed mainly by the Code of Criminal Procedure. 100 The preliminary stage is the most important; in many cases, the trial stage focuses largely on the appropriateness of the measures proposed by the prosecutor, not evidence concerning the commission of the offence. 101

When the prosecutor receives a case, if he/she considers that preliminary proceedings are needed, authorization of the competent juvenile judge must be requested and obtained. 102 The accused juvenile and his/her attorney have the right to be heard before a decision is taken on whether to authorize preliminary proceedings, or to impose a sanction without them. 103

During preliminary proceedings, the attorney for the accused juvenile must be present at all acts in which the prosecutor is present, unless excused by the judge. 104 The parents of the accused or representatives of the CSW also may be present, with the permission of the judge. 105 The judge in charge of the preliminary stage must make a monthly report to the president of the court on the reason the proceedings remain pending. 106

If the judge decides, during the preliminary proceedings, that the case should be dismissed for lack of evidence or other reasons, this decision must be confirmed by the juvenile panel, and is subject to appeal by the prosecutor. 107 If, on the other hand, the judge concludes that the investigation is complete and the case is ready for ‘trial’, the case is returned to the prosecutor, who may dismiss the charges, decide that further investigation is required, or make a recommendation to the juvenile panel as to the appropriate disposition. 108 In most cases, the ‘trial’ is a written procedure in which a panel determines, without hearing witnesses, whether to confirm the proposed judgment and disposition.

Accelerated proceedings

Preliminary proceedings and/or the ‘main trial’ may be skipped, in certain circumstances, when the facts are not in doubt and a custodial sentence will not be imposed. When the prosecutor requests authorization to open preliminary proceedings, the judge may deny the request if he/she considers proceedings to be unnecessary because the facts are already clearly established. In this case, the
judge requests the CSW to prepare a report on the juvenile and the circumstances of the offence.\(^\text{109}\) This must be done within 30 days, at which point the judge must present the case to the juvenile panel, within eight days, for judgment.\(^\text{110}\) Sentences imposed as a result of this expedited procedure may not include prison or any other custodial disposition.\(^\text{111}\)

This possibility also arises when the preliminary stage of proceedings has been completed. At this point, the juvenile panel decides whether a full trial is appropriate. Sentences not involving a deprivation of liberty, such as fines, community service or probation (see below), may be imposed without a full trial.\(^\text{112}\) The juvenile and his/her attorney may attend the meeting of the panel at which this decision is taken, but their presence is not mandatory.

**The ‘main trial’**

When the preliminary investigation has been completed, if the panel decides to proceed to trial, the trial must begin within eight days.\(^\text{113}\) Trial procedures are governed by the Code of Criminal Procedure, although the juvenile panel has discretion to depart from them when appropriate.\(^\text{114}\) Article 86 of the Law on Juvenile Justice requires that efforts be made to ensure that the atmosphere is appropriate:

“When undertaking activities where the juvenile is present, and especially during juvenile’s hearing, the authorities that participate in the procedures are obliged to act in a prudent manner, taking care of juvenile’s mental development, sensibility and personal characteristics, in order to avoid any harmful consequences in the juvenile development by the course of the procedures.”

The presence of the juvenile and his/her defence counsel is required during trial.\(^\text{115}\) Trials are closed to the public.\(^\text{116}\) The parents of the accused may be present, unless the court finds that their presence might have harmful consequences for the juvenile’s development.\(^\text{117}\) The CSW also has the right to attend proceedings, provide information about the personality and living conditions of the accused and make proposals intended to ensure that the decision is a fair one.\(^\text{118}\)

Dispositions take the form of a decision if educational measures are imposed, or a sentence. Decisions imposing an educational measure do not include a finding of guilt.\(^\text{119}\) A judgment or sentence may be appealed by the juvenile or, even without the consent of the juvenile, by his/her attorney, a parent, spouse or partner and/or sibling.\(^\text{120}\)

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\(^\text{109}\) Ibid., Articles 103, 104, and also Article 106. (The decision not to authorize preliminary proceedings and proceed to judgment may be made either in agreement with the prosecutor’s request, or rejecting the request for authorization of preliminary proceedings.)

\(^\text{110}\) Ibid.

\(^\text{111}\) Ibid., Article 104.

\(^\text{112}\) Ibid., Article 117.

\(^\text{113}\) Ibid., Article 120.

\(^\text{114}\) Ibid., Article 118.

\(^\text{115}\) Ibid.

\(^\text{116}\) Ibid., Article 84.

\(^\text{117}\) Ibid., Article 85.

\(^\text{118}\) Ibid., Article 90.

\(^\text{119}\) Ibid., Article 121.

\(^\text{120}\) Ibid., Article 124.
The right to legal representation and assistance

Attorneys appointed to represent accused juveniles when an attorney has not been retained privately must be specialized, according to the Law on Juvenile Justice. The Bar Association has organized training of attorneys and recognized some 300 as qualified to represent accused juveniles.

Juveniles taken into police custody may not be interrogated unless a defence attorney is present. During preliminary proceedings, the attorney for the accused juvenile must be present at all acts in which the prosecutor is present, unless excused by the judge. The presence of defence counsel is required during trial. (The participation of a lawyer also is mandatory during proceedings before the CSW, as described below.)

The system was in crisis at the time of the assessment mission, because the law does not provide who shall pay attorneys' fees for representing juvenile suspects during interrogation, or during CSW proceedings. (The courts pay fees of €25 or €30 for an appearance in judicial hearings.) When the Law on Juvenile Justice entered into force, specialized attorneys provided services for six months, but stopped when their fees were not paid. Since the beginning of 2010, police reportedly no longer notify the Bar Association when a juvenile is taken into custody. The President of the Bar Association has appealed to the Minister of Justice to find a solution, but the issue remains pending at this writing.

The right to be tried without delay

Article 81 of the Law on Juvenile Justice provides that accused juveniles have the right to be tried “within a reasonable time,” a standard based on Article 6.1 of the European Convention on Human Rights. The Convention on the Rights of the Child provides that cases involving juveniles shall be resolved “without delay.” In 2007, the Committee on the Rights of the Child adopted a General Comment indicating that, in its view, this means that proceedings against juvenile offenders should not last more than six months. Article 81 of the Law on Juvenile Justice establishes three different limits to the duration of proceedings, depending on the gravity of the offence: six months for misdemeanours, one year for most criminal offences and eighteen months for cases involving offences punishable by more than four years of imprisonment.

Judges and prosecutors informed the assessment team that they find it difficult to comply with the one-year limit. One reason cited is the difficulty to comply with the existing time limit, as many trials involve multiple co-defendants and numerous witnesses whose testimony must be taken during the preliminary stage of proceedings. Another reason mentioned is delays in obtaining forensic and other reports needed for adjudication. These concerns led to the preparation of a draft amendment that would extend the limit of one year to eighteen months, and the limit for more serious offences to two years.

Information on the length of judicial proceedings is not available, but the yearbook on criminal justice contains a table on the length of pretrial proceedings. In 2008, before the Law on Juvenile Justice
came into force, this stage of proceedings lasted less than six months in 56 per cent of all cases involving juveniles; 26 per cent were resolved in six months to a year and 19 per cent (253 cases) took more than a year to resolve. These figures include cases that did not go to trial.

Fortunately, only a small percentage of accused juveniles are detained during proceedings, and such cases are usually resolved in less than two months (see above). But, regardless of whether the accused is at liberty or not, prompt adjudication of cases involving juveniles reinforces the sense of accountability and contributes to the prevention of reoffending.

The assessment team believes that the difficulties encountered in resolving some cases within the existing limit of one year are due, in part, to the essentially inquisitorial character of proceedings. A new Code of Criminal Procedure now being prepared will make proceedings more adversarial, and is expected to bring down the duration of proceedings. Appointment of the psychologist and social worker who should be attached to the juvenile department, at least in the capital, should help reduce delays. Strengthening the capacity of some of the institutions required to provide information to the courts, in particular the CSW, should also contribute to shorten delays.

The assessment team does not believe that the existing limit to the duration of proceedings should be extended, and considers that in the medium term the aim should be to expedite proceedings and increase the percentage that is resolved in six months or less.

The right to appeal

Appellate courts also have a juvenile panel, comprised of a specialized juvenile judge and two other members of the court of appeals. It has competence over any appeal of a decision of the juvenile panel of a trial court.

The Supreme Court should also have a juvenile panel, with competence over appeals of certain decisions of the juvenile panels of appellate courts. It also has competence over “requests for the protection of legality,” an extraordinary remedy that may be sought by the prosecutor. This panel has not yet been appointed, however.

7. Dispositions and sentencing

Alternative dispositions

Juveniles convicted of an offence committed at ages 14–15 years (‘younger juveniles’) are subject only to ‘educational measures’. Most, but not all ‘educational measures’, are non-custodial.

One category of ‘educational measures’ is known as ‘disciplinary measures’. They consist of reprimands and orders to attend a ‘disciplinary centre’. From 1995 to 2002, the percentage of convicted juveniles given a warning ranged from 13 per cent to 27 per cent. In 2009, it was 11 per cent.

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128 Law on Juvenile Justice, Article 95.
129 Ibid., Articles 96 and 126.
130 Ibid., Article 127; Code of Criminal Procedure, Articles 403–410.
131 Law on Juvenile Justice, Article 31.
132 Efficiency of Measures, supra, p. 73.
133 Calculations by assessment team based on News Release, supra, p. 9.
No disciplinary centre existed at the time of the assessment mission, but there are plans to establish one, on the grounds of the open residential facility ‘25th May’, mentioned above. Attendance may be 24 hours per day for up to 20 days, or part time for a number of days, or for holidays.\textsuperscript{134}

A second category of ‘educational measures’ consists in ‘intensive supervision’ by the child’s parents or legal guardian, a foster family or the CSW.\textsuperscript{135} The duration of this measure is one to three years, or from 30 days to a year if the offence committed is a misdemeanour.\textsuperscript{136} It may be accompanied by restrictions on conduct or obligations, similar to probation.\textsuperscript{137} Intensive supervision by parents or the CSW is the most commonly used alternative sentence.\textsuperscript{138} From 1995 to 2005, the percentage of convicted juveniles given intensive supervision varied from 60 per cent to 84 per cent. The percentage of convicted offenders given either a warning or supervision order during these years ranged from 84 per cent to 98 per cent.\textsuperscript{139} In 2009, 85 per cent of all dispositions in cases of juvenile offenders consisted in supervision.\textsuperscript{140} This means that, in 2009, 96 per cent of all dispositions in juvenile cases involved supervision or a warning.

The third category of ‘educational measures’ consists in ‘institutional measures’. They are of two kinds: placement in an ‘open educational facility’ or a ‘closed educational-correctional institution’ (see below). In practice, therefore, the only real form of non-custodial sentence available for a convicted juvenile offender aged 14–15 years is intensive supervision by the family or by the CSW. The caseload of CSWs is approximately 90 to 100 cases per caseworker, which inevitably limits the effectiveness of measures, no matter how skilled or dedicated the caseworkers may be.

Four kinds of non-custodial dispositions may be imposed on ‘older juveniles’ aged 16–17 years at the time of the offence: ‘probation with protective supervision’; suspension of prosecution; community service; and fines.\textsuperscript{141} Sentences of three years or less may be replaced by probation, and prosecution may be suspended for crimes punishable by sentences of five years of imprisonment.\textsuperscript{142}

Community service, which may involve between 5 and 100 hours work, is available for crimes punishable by three years of imprisonment.\textsuperscript{143} An unpaid fine may be replaced by community service, not to exceed 100 hours.\textsuperscript{144} This provision avoids the discriminatory impact of fines on those unable to pay. Similarly, if a juvenile is unable to perform community service, this sentence may be replaced by attendance to a ‘disciplinary centre’ (see above).

The yearbooks on criminal justice do not specify the number of fines or sentences to community service imposed on juveniles. Probation and suspended sentences were not available during the years covered by published data.

\textsuperscript{134} Law on Juvenile Justice, Article 34.
\textsuperscript{135} Ibid., Articles 35–37.
\textsuperscript{136} Ibid., Articles 37 and 59, respectively.
\textsuperscript{137} Ibid., Article 38.
\textsuperscript{138} Intensive supervision by a foster family is practically unknown; only one case was reported from 1995 to 2005. See \textit{Efficiency of Measures}, supra, p. 73; Committee on the Rights of the Child, CRC/C/MKD/2, supra, Table 20.
\textsuperscript{139} Ibid.
\textsuperscript{140} Calculations by assessment team based on \textit{Perpetrators of Criminal Offences in 2008}, supra, pp. 121 and 125.
\textsuperscript{141} Law on Juvenile Justice, Articles 43 (‘punishments’) and 53 (‘measures’). In the unofficial English translation of the law, ‘suspension of prosecution’ is called ‘probationary termination of procedure against the juvenile’ and ‘community service’ is called ‘community work’. The English version of the Criminal Code (Article 55) refers to ‘probation with protective supervision’ as ‘conditional sentence with protective supervision’.
\textsuperscript{142} Ibid., Articles 55–56.
\textsuperscript{143} Ibid., Article 57. (This measure is not new, but was recognized by the Criminal Code.)
\textsuperscript{144} Ibid., Article 48.
Information available to the assessment team indicates that none of these alternative measures are being imposed on juveniles, which is very unfortunate.

The open educational facility ‘Ranka Milanovic’

This facility was established in 1964. It has a capacity of 80, and at the time of the visit had a population of approximately 30 juveniles aged 10–18 years (27 boys, 3 girls). There are some 80 staff, including 30 to 35 professional staff. It is an open facility, which receives offenders sent by the courts under Article 39 of the Law on Juvenile Justice, for a period of six months to three years. It also receives children placed by the CSW, although the legal basis for this is unclear. The staff sends semi-annual reports to the CSW and the court, who decide when the child is ready to return home.

The facility has its own primary school. Children ready for secondary school attend schools outside the facility. Some also work outside the community. The facility grows mushrooms and has an orchard. Children who assist in growing mushrooms or fruit get some compensation, in addition to the allowance of €2 or €3 per week received by all residents, regardless of whether or not they work.

The facility also has an ‘education centre’ designed to “establish proper relationships between children and their parents.” Only seven or eight parents participate, however.

Due to the late arrival of the director, the assessment team only had time to make a brief visit to one building, which contained bedrooms for girls on the ground floor, and classrooms on the upper floor. The bedrooms are very large, and have a bed, table and chair, cupboard and shelving with stuffed animals. There is no radio or television. There are large windows, with bars and curtains. The team was informed that bedroom doors are not locked at night, but the door to the corridor where the bedrooms are located is.

In general, the parts of the facility that the assessment team was able to visit were clean and in good repair. The building is surrounded by a wall, but does not give the impression of a closed facility. The grounds are ample, and contain trees, bushes, lawns, a fountain, a parking area, and a football field that did not appear to be used.

In 2009, the Office of the Ombudsman published a report on this facility (and two others) that concluded that beatings and sexual abuse or harassment of juveniles by staff exist. No action was taken in response to this report. Another source stated that juveniles from the facility often leave without permission during weekends, and commit theft during their absences. Data on juveniles convicted of an offence in 2008 indicate that 29 of them were living in a correctional institution at the time of the offence, which gives some credibility to this statement.

The failure to take prompt action to investigate the abuses reported by the Ombudsman is a very serious matter, which reflects negatively on the management of such facilities and commitment of the responsible ministry to protect the rights of children.

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146 Compensation per kilo of mushrooms: 5 Macedonian Denar (€.08).
Custodial sentences

As indicated above, one educational measure – attendance to a disciplinary centre – may take the form of residential placement for 20 days. No such centre exists at present, but one is planned. The law also allows convicted offenders to be placed in the open residential facility for children at risk ‘25th May’, but this is not done in practice.

A juvenile convicted of a crime committed while aged 14–18 years may be placed in the educational-correctional institution for a period of one to five years. The need for continuation of the placement is re-examined annually by the court that imposed the measure. This requirement is coherent, to some extent, with the principle that no deprivation of liberty shall continue longer than necessary. It would be in greater harmony with the principle if the need for continued confinement and treatment were examined every six months.

Data from 1995 to 2005 indicate that, on average, 12 juveniles were placed in the closed educational-correctional institution and 13 in the open educational facility per year. In 2008, the most recent year for which data have been published, 4 juveniles were placed in the open educational facility, and 21 (11 ‘younger juveniles’ and 10 ‘older juveniles’) in the closed educational-correctional institution.

Older juveniles – those aged 16–17 years at the time of the offence – may be sentenced to the juvenile prison. Prison sentences may be imposed only for crimes punishable by a sentence of at least five years and only if there are “particularly aggravating circumstances” and a “high level of criminal accountability.” The maximum sentence that may be imposed on a juvenile is 10 years, or half the sentence that could be imposed on an adult convicted of the same offence, whichever is less; the minimum is one year. In calculating the sentence to be imposed, the court is to take into account “the level of the mental development of the juvenile and the time needed for his education, re-education and professional training.”

From 1995 to 2005, the average number of juveniles given prison sentences was seven per year. Data on the length of sentences for the years 2000 to 2005 indicate that most sentences (60 per cent) were for less than two years, and only 11 per cent were for more than five years. In some years, the number of sentences of five years or more is less than the number of homicides by juveniles.
2009, 14 juveniles received prison sentences: eight for two years or less; five for two to three years; and one for three to five years.\footnote{162}{News Release, supra, p. 9.} Eleven of the prison sentences, including the longest sentence, were for crimes against property; two were for sexual offences.

### 8. The treatment of juvenile offenders in closed facilities

#### The educational-correctional institution

The assessment team visited the educational-correctional institution together with UNICEF personnel. The institution is the only one in the country for juvenile offenders given educational-correctional measures under Article 40 of the Law on Juvenile Justice.\footnote{163}{For boys (girls given this sentence are confined in the women’s prison).} Prior to 2001, this facility was located in Tetovo, and it is still known as the Tetovo facility. In 2001, it was relocated to a separate building within the prison for men located on the outskirts of Skopje, when the original facility was taken over by insurgents during the conflict.\footnote{164}{Return has been prevented by a legal dispute over ownership of the land on which it is located.} The relocation has always been considered temporary. The government recently received a loan of €46 million for the renovation of the correctional system, and has indicated that this facility will be replaced by a new one by the end of 2011.

The capacity of the facility, according to the Director, is 30. It has 40 staff, including 20 guards, 3 ‘instructors’ and 9 ‘educators’. ‘Instructors’ reportedly provide vocational training in the building trades, but there are no workshops. ‘Educators’ are employees with degrees in social work, psychology or education. They are responsible for interacting with the juveniles and contributing to their socialization or resocialization.

Placement in the facility is for a period of one to five years.\footnote{165}{Law on Juvenile Justice, Articles 40 and 41.} At the end of each year, the case manager evaluates the progress made by the juvenile and sends a report to the judge who imposed the measure, which may contain a recommendation that the child be released. Recommendations are usually accepted.

The population at the time of the visit was 24 persons aged 14–23 years.\footnote{166}{In 2008, the population was 31 and, in 2009, it was 38. See Annual Reports of the Department of Execution of Sanctions regarding the work and conditions of the prisons and educational and correctional institutions in the Republic of Macedonia for the years 2008 and 2009, Ministry of Justice, Skopje, 2009 and 2010.} Two had committed homicide, one sexual assault, and most of the rest, robbery. Only four or five were under age 18.\footnote{167}{Persons under age 21 can be adjudicated as juveniles, and placement orders for offences committed while under age 18 may remain in force until the subject reaches age 23. See Law on Juvenile Justice, Articles 62 and 63.} The Director indicated that about half the population are Roma, about one quarter Macedonian and one quarter Albanian.

The first 30 days in the facility are dedicated to the evaluation of the juvenile, to the preparation of an individual programme and to the assignment of a case manager. The team responsible for the evaluation consists of an educator, a social worker and a psychologist. Assignment of the juvenile to the ‘open’ or ‘restricted’ group is also normally done at this time.\footnote{168}{In rare cases the court specifies the regime applicable to a juvenile. In 2009, 18 juveniles were under the ‘closed’ regime, and 20 under the ‘open’ regime. See Annual Reports of the Department of Execution of Sanctions, supra, p. 17.}
Reassignment due to behaviour can be made at any time. ‘Violent outbursts’ are common, according to the staff.\textsuperscript{169} Suspending privileges is the most frequently used disciplinary measure.\textsuperscript{170} Transfer to a special cell is used when more serious offences occur, such as fighting or striking a staff member. Prisoners in this cell are not confined in isolation, but are subject to greater restrictions on activities.

Juveniles in the ‘open’ group are entitled to two visits per month and a two-day visit to their home once every two months. However, many reportedly have lost contact with their families.

An educator with a degree in psychology informed the assessment team that the only diagnoses used in evaluating juveniles and preparing treatment plans are ‘problematic behaviour’ and ‘changes in behaviour’. Treatment includes individual and group counselling to help juveniles communicate and become more tolerant and less violent.

Since 2001, the facility has been located in a building within the perimeter of the Skopje prison. It is a small, two-storey building in poor repair. The ground floor includes a small kitchen with an adjacent dining area, showers, and a staff room with closed circuit television, monitoring equipment, and medical supplies. The dining area is also used as an activity room, and the staff room is used for meetings and interviews. The stairway to the upper floor is in the centre of the building, and the landing on the upper floor serves to separate two wings. One contains three small dormitories and a classroom for the ‘open’ group; the other contains three dormitories for the ‘restricted’ group. A small room used by the staff contains a cabinet with some books in Macedonian and Albanian. In the classroom, located in the other wing, there are two computers.

The bedrooms or dormitories include three beds each, shelves to store personal effects, a small, low table, and a toilet and sink located behind a room divider. The doors are ordinary doors. Lighting appeared adequate. There are curtains on the windows, and pictures cut from magazines adorn the walls. Only one of the rooms visited by the team had a radio. They appeared to be approximately 2 metres wide by 3 or 4 metres long – too small for three persons.

A paved area adjacent to the building contains a basketball hoop, where some of the juveniles were playing. They have access to this area for several hours a day. Two months before the assessment mission, a chain-link fence was installed to separate this paved area from a much larger grassy area that contains a bench and free weights as well as football goal posts. The grassy area is used by adult prisoners from the main part of the prison. The fence limits, but does not impede, contact between adult prisoners and juveniles. It also prevents the juveniles from having access to the larger yard.

In contrast to the other facilities visited, there was no box for complaints to the Ombudsman, and some juveniles claimed that grievances addressed to the administration are ignored or ridiculed. No NGOs visit the facility, and religious services or counselling are not available.

The assessment team considers that, despite some improvements, material conditions in this facility are seriously substandard.\textsuperscript{171} In addition, the activities offered are very limited, due at least in part to the unsuitability of the infrastructure.

\textsuperscript{169} In 2009, 140 disciplinary incidents were reported, more than thrice the number in the juvenile prison. See Annual Reports of the Department of Execution of Sanctions, supra.

\textsuperscript{170} This includes suspension of the right to receive visits, which is incompatible with Rule 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Havana Rules) and Rule 95.6 of the European Rules for Juvenile Offenders Subject to Sanctions or Measures.

\textsuperscript{171} Council of Europe, CPT/Inf (2008) 31, supra, para. 21.
In May 2010, the Ministry of Justice and the Ministry of Labour and Social Policy signed an agreement to the effect that this facility will be relocated, temporarily, to the grounds of the open educational facility ‘Ranka Milanovic’, described above. The assessment team expressed concern about the implications of this arrangement for the population of the educational facility, and the Ministry of Justice subsequently decided to transfer the population of the educational-correctional institution to an open prison for adults, while transferring the population of the latter to other adult prisons.

The new educational-correctional facility scheduled for construction in 2011 will have three wings, and a capacity of 84. The transfer to a separate dedicated site with ample living area and space for activities will be a very positive development. However, the construction of a facility with a capacity twice the population at any time during the last years gives rise to some concern, as indicated above, about increased use of custodial measures.

The juvenile prison in Ohrid

The juvenile prison is located in Ohrid, a resort situated some 240 km south of the capital. It was built during the 1960s, as part of the local police station, and was converted to a correctional facility for male juvenile offenders in 1990.\(^{172}\)

The capacity of the facility is 35–40, according to the staff.\(^{173}\) The population was 33 at the time of the assessment mission. Three to five juveniles were 17 years of age; all the others were aged 18–23 years.\(^{174}\) One was serving a sentence for a drug offence, one for rape of a child, and four for homicide. The others were serving sentences for property offences, in most cases robbery (i.e., theft with violence). Most are repeat offenders; the exceptions are juveniles convicted of homicides and some other crimes of violence, most of whom are from more traditional family backgrounds.\(^{175}\) The longest sentence being served is eight years.\(^{176}\) Many of the prisoners serving sentences for property crimes are Roma.\(^{177}\) There is no Roma personnel, and the staff indicated that “it is difficult to motivate” the Roma prisoners.\(^{178}\)

The staff of 35 includes one psychologist and one educator; the Director refused to provide any other information regarding the staff. In principle, the treatment provided includes education, individual and group therapy, and ‘work therapy’. Primary education is not presently available, however, due to a disagreement with the Department of Education. One prisoner is participating in secondary education, and one had completed secondary education. At the time of the visit, ‘work therapy’ in the facility was largely limited to work in the kitchen, cafeteria and laundry, where six prisoners were employed. Equipment for producing toilet paper (from uncut paper) had recently been installed, but fabrication had not begun.

\(^{172}\) The juvenile correctional facility was previously located in the main prison in Idrizovo, near the capital, which now houses the women’s prison.

\(^{173}\) Most of the information given to the assessment team by the staff was approximate; they did not appear to be familiar with exact information.

\(^{174}\) In 2009, only one ‘juvenile’ prisoner was under age 18. See Annual Report of the Department of Execution of Sanctions for the year 2009, supra.

\(^{175}\) I.e., two parents, and not poor.

\(^{176}\) The maximum sentence for juveniles is 10 years.

\(^{177}\) No more concrete information was given.

\(^{178}\) There are only two Roma staff in the entire prison system. See Annual Report of the Department of Execution of Sanctions for the year 2008, supra, p. 11.
Upon arrival, prisoners spend 15 days in evaluation, during which time an individual programme is prepared. The staff psychologist indicated that three prisoners were receiving medication for severe anxiety linked to use of ecstasy, and one had borderline mental retardation.

Fights between inmates are not uncommon, and are punished by solitary confinement. The staff indicated that the age of the prisoner is taken into account in deciding how to respond to violations of the house rules, and when the infraction is not serious an effort is made to resolve it by counselling.

The centre of the facility is comprised of a paved yard, where the prisoners spend most of their free time. It contains some benches, free weights and an exercise bench. One side of the square consists of a high wall and the other three of two-storey buildings. Two of the three buildings are connected to one another, and the third is separated from the other two by the gate that allows access to the facility. Just outside the gate is a room where prisoners receive visitors, which has the appearance of a coffee bar.

The two adjoining buildings contain cells or dormitories and, on the ground floors, a kitchen, a dining room, the office of the psychologist and educator, a room for guards, an indoor activity room, a room with toilets and sinks, a shower room, a small workshop for producing toilet paper, and an activity room with table tennis equipment. There is video surveillance of the corridors. In the third building, there is a rudimentary medical office in poor condition, a room for guards and the room for receiving visitors that, as indicated above, extends outside the gate.

The cells are of varying sizes and house from three to ten inmates, making it difficult to judge whether they are sufficiently large for the number of prisoners assigned to each cell. The cells contain cupboards for the personal effects of prisoners, and have pictures on the walls.

The assessment team believes that, with the exception of the medical office, the physical infrastructure, while not in good condition, does not appear to be seriously substandard. It also concludes that prisoners in the juvenile prison are adequately separated from adults in an adjacent prison.

The assessment team has several concerns about conditions in this facility. One is the lack of access to primary education. Another is the quality of medical care. The staff indicated that many of the prisoners have hepatitis, but they are unable to buy medication to treat those who have the disease or to vaccinate those who do not. Other sources informed the team that the prisoners are entitled to receive medication and vaccines from the Ministry of Health. Denial of education and medical care is a serious violation of the rights of these prisoners.

More generally, although the prisoners apparently are able to spend much of the day outside their cells, there seems to be a lack of organized activities. As the Committee for the Prevention of Torture observed in a 2006 report:

“... all prisoners, including those on remand, [should] spend a reasonable part of the day (i.e., eight hours or more) outside their cells, engaged in purposeful activities of a varied nature...”

“In addition, specific steps need to be taken to ensure juvenile inmates are offered educational and recreational activities, which take into account the specific needs of their age group. Physical education should form a major part of that programme...”

179 Article 273 of the Law on Execution of Sanctions (2006) allows solitary confinement for up to 10 days as a disciplinary sanction for juveniles.

180 Council of Europe, CPT/Inf (2006) 5, supra, paras. 69–70 (emphasis added).
A 2008 report on a visit to the prison by an NGO indicated that only two staff members are assigned to the ‘resocialization sector’. The prison does not seem to have any staff whose function is to organize sports or other ‘purposeful’ activities other than work, but the Director refused to answer the assessment team’s questions about the number of staff assigned to various functions.

The women’s prison

Girls given a prison sentence or sentenced to confinement in an educational-correctional institution are placed in the women’s prison. They are assigned to a separate cell, but have extensive contact with adult prisoners. Physical conditions in the women’s prison are acceptable, and female staff indicated that the exploitation of adolescents by older prisoners has not been reported. However, the educational and vocational activities offered by the women’s prison are basically limited to work in the kitchen or laundry.

There were no girls under age 18 in the women’s prison at the time of the assessment mission, and the small number of girls given custodial sentences is cited as the reason why there is no special facility for them.

The establishment of the ‘disciplinary centre’ may reduce even more the number of convicted girls placed in closed facilities. Nevertheless, the assessment team considers that any juvenile given a custodial sentence has the right to benefit from appropriate educational and vocational programmes. Providing such programmes to boys but not to girls would be a form of discrimination that could not be excused by financial considerations.

The problem of how to accommodate very small groups of prisoners, who, in principle, should be separated from other prisoners because of their age, sex or other status, is a complex one, and the assessment team is not in a position to make a specific recommendation as to where adolescent girls given custodial sentences should be confined. In some countries in the region, there are educational-correctional facilities that have separate units for boys and girls. The new educational-correctional facility being planned will no doubt offer a range of educational, vocational and other programmes that would be appropriate for young prisoners of both sexes. The competent authorities should carefully weigh the advantages of giving female juvenile prisoners access to such programmes against the potential risks of confinement in a facility whose population is predominantly male.

Sentences to an educational-correctional facility are different from prison sentences, but creating an educational-correctional facility with the capacity to house offenders of both sexes might greatly reduce, if not eliminate, the confinement of girls in the women’s prison. The option of creating appropriate conditions for juveniles within the women’s prison also should be considered, however. This would require upgrading the educational and vocational programmes offered at the women’s prison and providing some of the staff with specialized training in the treatment of adolescent offenders and, perhaps, some modifications of the infrastructure or the adoption of new standards or policies concerning contact between the juvenile and adult prisoners. Having considered all the options, the solution that is in the best interests of the concerned adolescent female offenders should be chosen and implemented.

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Early release

Juveniles serving prison sentences are eligible for release on parole after serving one third of the sentence “if re-education is successful.”\(^{182}\) This is another provision of the Law on Juvenile Justice that helps implement the principle that no deprivation of liberty shall be longer than necessary.\(^{183}\) The 2006 Law on Execution of Sanctions gives prison directors discretion to release prisoners unconditionally 90 days before the end of their sentence.\(^{184}\) This discretion is used mainly to alleviate overcrowding.

9. General concerns regarding correctional facilities for juveniles

The assessment team has some general concerns about the management of correctional facilities for juveniles (Ohrid juvenile prison and Tetovo educational-correctional institution), some of which also apply to the open educational facility ‘Ranka Milanovic’ operated by the Ministry of Labour and Social Policy.

One concern is the practice of appointing persons with no professional experience or qualifications as directors and, in some cases, deputy directors. Two of the four directors interviewed by the assessment team made statements revealing attitudes towards the juveniles in their care that the team considers cynical and symptomatic of lack of commitment to resocialization, which should be the main criterion for their appointment. The European Committee for the Prevention of Torture has repeatedly recommended “that the national authorities develop a professional managerial career path within the prison administration, based exclusively upon the competences required for managing an evolving system,” instead of disposing of these positions as political patronage.\(^{185}\) The assessment team strongly endorses this recommendation.

A second concern has to do with the management of correctional facilities. Each facility has its own legal personality, and most have income-generating activities that offer prisoners ‘work therapy’.\(^{186}\) Work can be therapeutic, of course, provided that it is remunerated, especially if it helps to develop skills that enhance creativity and self-esteem.\(^{187}\) If the work enables prisoners to acquire skills and experience that are in demand in the job market, it may help prepare them for social reintegration. Reports by the European Committee for the Prevention of Torture have indicated that non-payment of prisoners who work within correctional facilities has been a problem, in the past.\(^{188}\) The 2009 Report of the Ombudsman confirms that this is a continuing problem.\(^{189}\) Moreover, it is not clear that the kind

\(^{182}\) Law on Juvenile Justice, Article 46. (The minimum that must be served is six months.)

\(^{183}\) See Convention on the Rights of the Child, Article 37(b).

\(^{184}\) The Director of the institution can issue an early release of the convicted person if the person served at least three quarters of the one-year imprisonment sentence and if he/she did not receive conditional release up to 30 days for one year imprisonment; up to 90 days for imprisonment of up to five years; and up to 120 days for imprisonment above five years. See Changes to the Law on Execution of Sanctions, Official Gazette of the Republic of Macedonia No. 57/2010.

\(^{185}\) Council of Europe, CPT/Inf (2008) 31, supra, para. 29.

\(^{186}\) The ‘Ranka Milanovic’ facility, for example, has a mushroom farm and the Ohrid juvenile prison, as indicated above, was about to enter the business of producing toilet paper at the time of the assessment mission.


\(^{188}\) Council of Europe, CPT/Inf (2006) 5, supra, para. 71.

\(^{189}\) Ombudsman, Annual Report 2009, Skopje, 2010, p. 2. (The facilities in which complaints of non-payment have been made are not identified.)
of employment presently offered meets the criterion set by Rule 46 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty:

“The interests of the juveniles and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility…”

The Director of the juvenile prison indicated that prisoners did not have access to primary education because of a ‘disagreement’ with the Ministry of Education and Science, and that essential medication was not available due to lack of funds. It is unclear whether or to what extent problems of this sort reflect insufficient budget allocations, mismanagement or misuse of resources; it is clear that they illustrate the need for stronger and more transparent monitoring of the management of facilities.

A third general concern is about the approach to ‘socialization’ of juvenile prisoners and the prevention of reoffending. The main components of the programmes offered by the facilities for juveniles appear to be schooling, ‘work therapy’ and ‘giving advice’ or counselling. Prisoners are also separated into two groups, which may give them some incentive to respect the rules of the institution, but does not seem to be otherwise linked to any other form of progress in personal development. Only the ‘Ranka Milanovic’ facility mentioned outreach to juveniles’ parents, but implied that it is not very successful. ‘Work therapy’, as indicated above, appears to be calculated mainly to generate income and give prisoners a chance to do something with their time and earn some money, not to impart skills that will help them find employment after release. Although there are psychologists on the staff and individual plans are prepared when the juvenile enters a facility, the information available suggests that the diagnoses made are simple (e.g., ‘problematic behaviour’).190 The teachers who work in such facilities have no special training. Organized sports, recreational, cultural, artistic and religious activities appear to be non-existent. Plans call for the establishment of a working group to develop methodologies for the prevention of reoffending to be used in residential settings. The assessment team believes that a serious effort is needed to study the experience of other countries and identify methods that would be appropriate for this country.

A related concern is the lack of Roma staff, and of any programmes or policies specifically concerning the rehabilitation of Roma prisoners. Roma make up approximately 2.6 per cent of the population, but about 50 per cent of the population of the juvenile correctional facilities. The staff recognizes that there are special challenges in the prevention of reoffending by Roma, yet have no coherent approach about what might be done to meet their special needs. The entire prison system has only two Roma staff persons. Referring to rehabilitation, the Director of the juvenile prison stated, “You can do everything right, but some prisoners just refuse to cooperate.” Although he did not refer specifically to Roma, the complacency and lack of creativity expressed in this statement are disturbing.

Finally, the assessment team also has concerns about the confinement of young adults with juveniles. Treating young adults as juvenile offenders is encouraged by the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) as well as by European standards on juvenile justice.191 These standards do not necessarily mean, however, that young adults should be

190 In 2008, the staff of the juvenile prison informed an NGO mission that the prisoners are classified into two categories: ‘good’ and ‘bad’ persons. Report about the Visit of the Prison for Juveniles in Ohrid, supra, section 1.1.1.
191 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), Rule 3.3; Council of Europe, Recommendation 2003(20) of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, para. 11; European Rules for Juvenile Offenders Subject to Sanctions or Measures, Rule 17.
confined together with juveniles under age 18. The 2006 report by the Committee for the Prevention of Torture stated,

"As a rule, children should never be placed in detention together with adults (18 years and older). To accommodate juveniles and unrelated adults together inevitably brings with it the possibility of domination, exploitation and inter-prisoner violence."\

The assessment team believes that it is desirable to allow vulnerable young adults to remain in juvenile facilities, provided they do not represent a significant risk to younger prisoners. If this condition is not met, allowing them to remain in juvenile facilities is incompatible with the 'best interests' principle.

The Law on Juvenile Justice provides that persons who are accused of committing an offence while aged 18–21 years may, exceptionally, be treated as juveniles. Moreover, the Law on Execution of Sanctions provides, “The sentence for juvenile imprisonment imposed upon juveniles under age of 23 years shall be executed separately from the adults sentenced to imprisonment.”

Consequently, the population of correctional facilities for juveniles includes prisoners aged 18–23 years as well as those under age 18. Indeed, juveniles under age 18 are a small minority in the juvenile prison and a minority in the educational-correctional institution. The combined population of the juvenile prison and the educational-correctional institution at the time of the assessment was 57, of which 10 juveniles or fewer were under age 18.

The small size of this population means that a separate facility for persons under age 18 might be impractical, especially considering that the criteria for imposing a sentence to juvenile prison and placement in the educational-correctional facility are different. However, the crowded conditions in the educational-correctional institution and the incidence of peer violence in both suggest that the policy of confining young adults with juveniles may be detrimental to prisoners under age 18. Separating the juvenile and young adult populations within these facilities might be helpful. The assessment team also believes there should be a policy of confining prisoners aged 18–23 years in an appropriate adult facility if they represent a risk to younger prisoners, or if the juvenile prison is overcrowded. If necessary, the legislation should be changed to allow that.

10. The procedure for underage offenders and diversion

Children under age 14 who have committed an offence are considered as ‘children at risk’ and may not be prosecuted or sanctioned. The Law on Juvenile Justice defines as ‘child at risk’ a person aged 7–14 years who is at risk of offending due to ‘addiction’ to drugs, psychotropic substances or alcohol,
serious difficulties with physical or psychological development, violence, neglected education and social development, failure to attend school, begging, ‘roaming’, prostitution or any combination of these factors.\textsuperscript{200} They are, however, subject to ‘measures of aid and protection’ if the CSW finds that the proper upbringing and development of the child’s personality have been compromised and the risk factors “may lead to the commission of criminal acts or offences in the future.”\textsuperscript{201} Measures of aid and protection are defined by other legislation, in principle.\textsuperscript{202} They may remain in place until the child reaches age 18.\textsuperscript{203} The procedure to be followed in cases of children at risk or underage offenders is the same, and is set forth in Chapter Two of the Law on Juvenile Justice.\textsuperscript{204}

The Law on Juvenile Justice obliges the CSW to establish specialized teams to carry out its functions under this law.\textsuperscript{205} Members of such teams are required to participate in four to ten days of training annually.\textsuperscript{206} The CSW intervenes in cases of underage offenders, or children at risk, on the basis of a report from the police, school, family, an injured party or any other person.\textsuperscript{207} Such reports must be recorded in a Register.\textsuperscript{208} Within seven days – or 24 hours in an emergency – the CSW must summon the child and his/her family and initiate a confidential investigation into “the factual circumstances of the specific event or the state of risk.”\textsuperscript{209} The hearing is conducted by a representative of the CSW juvenile justice team.\textsuperscript{210}

The presence of an attorney who represents the child is mandatory, although representatives of the CSWs informed the assessment team that they believe it is unnecessary.\textsuperscript{211} Within seven days of the hearing, the attorney must submit a legal opinion on the case.\textsuperscript{212} If the CSW team does not agree with the view of the attorney, or if the attorney fails to make the submission, the case must be referred to the competent juvenile judge for decision.\textsuperscript{213}

Within 30 days, the CSW must prepare a programme to assist the child, and within 10 more days, it must meet with the child’s family in order to confirm their ability and willingness to cooperate in its implementation.\textsuperscript{214} During implementation, the CSW must meet with the parents monthly.\textsuperscript{215} If the family does not cooperate in the implementation of the measures, the CSW shall refer the matter to the juvenile judge.\textsuperscript{216}

\begin{itemize}
\item \textsuperscript{200} Ibid., Article 12. (The same definition applies to ‘juveniles at risk’ aged 14–18 years.)
\item \textsuperscript{201} Ibid., Articles 13 and 14. (Article 12 defines ‘sanctions’ and ‘measures of aid and protection’ in such a way that the former involves ‘cancellation or limitation of the rights and freedom of a juvenile because of the commission of a criminal act or offence’, and the latter does not.)
\item \textsuperscript{202} Article 16 of the Law on Juvenile Justice indicates that these measures are defined ‘by law’ in other fields, but in reality they appear to be defined by administrative norms. See Rulebook on the form, content and manner of using a Register for implementation of the measures of aid and protection of children and juveniles at risk, Official Gazette of the Republic of Macedonia No. 136/2008, p. 24. The assessment team believes that the measures that may be imposed should be clearly spelled out in legislation, for reasons stated in the memorandum reproduced in Annex 4 to this report.
\item \textsuperscript{203} Ibid., Article 22.
\item \textsuperscript{204} The only exception is found in Article 24, which concerns ‘intermediation’ with the victim.
\item \textsuperscript{205} Ibid., Article 26.
\item \textsuperscript{206} Ibid.
\item \textsuperscript{207} Ibid., Article 18.
\item \textsuperscript{208} Ibid.
\item \textsuperscript{209} Ibid., Article 19.
\item \textsuperscript{210} Ibid.
\item \textsuperscript{211} Ibid.
\item \textsuperscript{212} Ibid.
\item \textsuperscript{213} Ibid., Article 20.
\item \textsuperscript{214} Ibid., Article 22.
\item \textsuperscript{215} Ibid.
\item \textsuperscript{216} Ibid., Article 23.
\end{itemize}
If the report concerns conduct that caused injury or loss, the CSW shall also mediate. If mediation is not successful, the injured party may ask the juvenile judge to award damages or order restitution, in accordance with the Code of Criminal Procedure.

This procedure has advantages. In principle it is rapid, the child and his/her family are represented by an attorney and, if the family does not agree with the decision of the CSW, they have the right to request that it be reviewed by a juvenile court. It is new, and the assessment team has little information about how the procedure is applied in practice. It does believe, however, that some changes would help ensure greater respect for the rights of the child. For example, it is unclear whether the lawyer represents the child or his/her family, or what his/her role would be in the event they have divergent interests or opinions. There is no express recognition of the child’s right to be heard and the obligation of the authorities to take his/her views into account, and no indication that the child and his/her parents and attorney have the right to be heard in person by the court, if they disagree with the decision of the CSW. Nor is there express recognition that separation from the family and placement in a residential facility should be the ‘last resort’, or recognition that, in principle, the aim of measures should be to strengthen the capacity of the family to provide the child with a healthy environment for development and return the child to his/her family, or a substitute family. The memorandum concerning draft amendments to the Law on Juvenile Justice prepared by the assessment team recommends that amendments addressing these problems be drafted and adopted.

11. The role and capacity of the Centres for Social Work

There are 30 Centres for Social Work (CSWs). They are attached to the Ministry of Labour and Social Policy, and their staff includes 551 professionals (social workers, pedagogues, psychologists, sociologists and lawyers). The mandate and procedures of the CSWs are defined mainly by the Law on Social Protection, but the Law on Juvenile Justice also gives them a large role.

Chapter Two (Articles 13–26) of the Law on Juvenile Justice defines the role of the CSWs with regard to children at risk. This role is described above, in section 10 on ‘underage offenders’. Their functions regarding cases handled by the police, prosecutors and courts include the following:

- advising the prosecutor as to the appropriateness of proceedings;
- advising the juvenile judge as to the appropriateness of misdemeanour proceedings;
- preparing a report on the juvenile and the circumstances of the act when the prosecutor decides that preliminary proceedings are not required (within a deadline of 30 days);
- advising the prosecutor if an accused juvenile and the victim have reached an agreement on restitution or reparation of damages.

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217 Ibid., Article 24. (This is referred to as ‘intermediation’, to distinguish it from mediation in cases where the juvenile is over age 14, which is covered by Articles 74–78 of the Law.)

218 See Annex 4.

219 Committee on the Rights of the Child, CRC/C/MKD/Q/2/Add.1, supra, p. 2.

220 Law on Juvenile Justice, Article 100.

221 Ibid., Article 132.

222 Ibid., Articles 68 and 103.

223 Ibid., Article 68.
providing relevant information on the personality, living conditions, mental maturity and prior record of juveniles during preliminary proceedings, and attending the proceedings if invited to do so;\footnote{Ibid., Articles 106 and 107.}

- supervising placement in a residential facility during preliminary proceedings, if ordered;\footnote{Ibid., Article 108.}
- assisting in mediation;\footnote{Ibid., Article 101.}
- advising the court when interrogation of a juvenile may be harmful;\footnote{Ibid., Article 86.}
- attending the main trial (optional).\footnote{Ibid., Article 118.}

The Centres for Social Work also have important functions with respect to the execution of dispositions imposed by courts:\footnote{In addition to the functions listed below, they will have responsibility for coordinating the implementation of placement in the disciplinary centre, when one is established. See Article 284 of the Law on Execution of Sanctions.}

- monitoring execution of supervision orders by parents and assist them as necessary;\footnote{Law on Juvenile Justice, Article 35. (Under Article 36 they also have responsibility for monitoring and assisting the supervision by foster families, but this does not exist in practice.)}
- implementing ‘intensive supervision’;\footnote{Ibid., Articles 37 and 59.}
- supervising juvenile prisoners released on ‘probation’;\footnote{Ibid., Article 46.}
- supervising and assisting in the implementation of probation, conditional suspension of prosecution;\footnote{Ibid., Article 55.}
- supervising community service orders;\footnote{Ibid., Article 57.}
- coordinating the transfer of juveniles from their home to residential facilities.\footnote{Law on Execution of Sanctions, Articles 278.3 and 301.}

The Law on Juvenile Justice requires CSWs to establish specialized departments or teams to accomplish the functions under the law.\footnote{Law on Juvenile Justice, Articles 26 and 97.} There are only two specialized teams in the whole country, with a total of 10 or 11 professionals. They work in two shifts, with some staff on call 24 hours per day, including weekends. When the Law on Juvenile Justice was adopted in 2007, the CSWs calculated that they would need an additional 53 professional staff to fulfil their new responsibilities. Fifty-six new professional staff were hired.\footnote{Social Welfare for Children, Juveniles and Adults, supra, p. 11.}

At the time of the assessment mission, there were approximately 900 juveniles subject to ‘educational measures’.\footnote{They continue to monitor educational measures as long as they are in effect, even after the offender has reached age 18.} Each member of a juvenile justice team has a caseload of 90 to 100, which makes it
difficult for them to carry out all their responsibilities adequately and in a timely fashion.\textsuperscript{239} They often do not perform functions that are not mandatory, such as attending interrogation of a juvenile or hearings when a parent is present.

The team also drew attention to the difficulties in obtaining professional assistance for adolescents with drug problems and psychological difficulties that do not require hospitalization. This is, in part, because the services do not want to deal with adolescents who are disruptive and, in part, because juveniles in need of treatment lack insurance coverage.

The assessment team considers that reinforcing the capacity of the CSWs – not simply in terms of staff size but also in terms of skills, efficiency and service delivery – is crucial to the proper implementation of the Law on Juvenile Justice, to the prevention of offending, to diversion, to social reintegration and to the administration of juvenile justice.

\textsuperscript{239} Another obstacle is the distance between CSWs that are assigned to provide services to courts located in a different municipality and the respective courts. Most CSW offices do not have cars for official use.
PART III. UNICEF’s Support to Juvenile Justice Reform

The UNICEF Country Office opened in 1993. Support to the development of juvenile justice began towards the end of the decade, with a situation analysis prepared by a foreign expert and two national experts. The situation analysis led to a series of workshops and similar activities that culminated with a national seminar, which took place in Struga in 2000 and adopted a series of recommendations, including a recommendation that a law on juvenile justice be adopted.

UNICEF’s work on the issue during the last decade has been oriented largely by the situation analysis and the recommendations adopted at the 2000 seminar, in particular the recommendation concerning the adoption of a law on juvenile justice. In 2003, the Ministry of Justice appointed a working group to draft the law on juvenile justice, and UNICEF financed three studies by national experts intended to inform the law: a study on the effectiveness of sentences and other measures used in the juvenile justice system at the time; a study on risk and prevention in the country; and a comparative study on juvenile justice legislation. They were published in 2004 and did contribute to the preparation of the new law, although the drafting process was delayed for two years because the government gave priority to other matters. UNICEF also participated to the process of drafting the law and to a series of meetings with practitioners (lawyers, judges, CSWs etc.) to allow them to comment on the draft before it was finalized.


Until 2010, support to the activities mentioned above was financed by the UNICEF Country Office’s child protection budget. The implementation of the 2010–2011 Action Plan was financed by a European Commission pre-accession IPA grant of €700,000. UNICEF’s work on juvenile justice has been carried out by the child protection team in addition to their other activities.

Since UNICEF’s support to juvenile justice has been limited, to date, few of the activities have been extensive enough to deserve an independent evaluation. One exception is the training of CSW staff from 2005 to 2009. An independent evaluation of this training, by a civil society organization, was carried out in November 2009. The methodology used included a written survey of participants and focus groups. The general conclusion was that the “training [was] very relevant, needed and useful for most of the participants [who] expressed high levels of satisfaction from the knowledge gained... [but] the impact of training is not very noticeable.” The limited impact led to the conclusion that “... the knowledge is not being applied or what has been learned is not new.” The training included, but was not limited to, activities concerning juvenile justice.

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241 Ibid., pp. 1 and 51.
244 The grant covers the period April 2010 to March 2012.
245 Evaluation of Training for Child-Protective Services, supra, p. 4.
246 Ibid., p. 23.
PART IV. Conclusions and Recommendations

POSITIVE DEVELOPMENTS

1. The Law on Juvenile Justice

The Law on Juvenile Justice adopted in 2007 introduces some safeguards for the rights of juvenile suspects; establishes a new procedure for diverting less serious offences to the social welfare authorities; requires special training of designated juvenile judges, prosecutors, police investigators, social workers and defence attorneys; limits the duration of proceedings; allows suspended sentences; and encourages mediation and restorative justice. It establishes procedures for intervening in cases of underage offenders and children at risk of offending as well as new national and municipal bodies for the coordination of prevention. It contains a chapter on the treatment of child victims and witnesses.

2. A strategic approach to the development of juvenile justice

The inclusion of juvenile justice in the second National Action Plan on Children’s Rights and the achievement of some of the relevant objectives are an example of the usefulness of incorporating juvenile justice into such plans. More generally, the relationship between the National Action Plan on Children’s Rights, the Law on Juvenile Justice, the Action Plans for Implementation of the Law and the creation of an inter-agency and intersectoral body responsible for the development of a strategy for prevention of juvenile delinquency demonstrate an approach to the strengthening of juvenile justice that is both strategic and comprehensive.

3. Coordination

The State Council for Prevention of Juvenile Delinquency represents most of the concerned agencies and public institutions as well as civil society. At this writing, less than one year since its creation, the State Council is meeting regularly.

4. Training

Considerable training in juvenile justice has been carried out, and training is now being mainstreamed into the curricula of relevant professional training institutions. The training methods being used in the Academy for Training of Judges and Public Prosecutors are participatory, and some progress has been made in introducing juvenile justice into university-level education.

5. Accountability

The Ombudsman has a special unit for child rights headed by a Deputy Ombudsperson, and has given priority to the rights of children and juveniles in institutions. The police force has a policy of taking administrative action against officers who infringe the rights of children.

6. Data

The State Statistical Office’s yearbook Perpetrators of Criminal Offences contains much valuable data on juvenile offenders, the offences they commit, and the way their cases are handled by the juvenile justice system. Data on pretrial detention and its duration and the disaggregation of data by ethnicity are important advances in published data. The yearbook that publishes nation data on social welfare for children, juveniles and adults contains useful data, in particular on underage offenders and children involved in antisocial behaviour. And the Annual Reports of the Department of Execution of Sanctions regarding the work and conditions of the prisons and educational and correctional institutions also contain valuable data on the population of two correctional facilities for juveniles (and young adults).
7. Research
Legislation and policy on juvenile justice are based in part on research carried out by national experts and institutions, and the support provided by international organizations took advantage of and supported the development of national research capacity.

8. Prevention
Prevention is recognized as a strategic priority. An innovative new programme for the parents of children at risk and juvenile offenders has been piloted.

Reliance on institutional care for children at risk, as reflected by the population of the ‘25th May’ centre, has decreased. The centre is an open one, for boys and girls. The living areas have sufficient space and are appropriately decorated and equipped. Individual plans are prepared for each child, and a range of organized activities is offered.

9. Police
The creation of a group of specialized police investigators responsible for juvenile offenders and child victims is an important advance that no doubt has contributed to greater respect for the rights of juvenile suspects.

The establishment of strict legal limits to the length of time juvenile suspects may be in police custody, for notification of the prosecutor and for taking the juvenile before a judge, as well as the prohibition of interviewing juveniles unless a lawyer is present, are important advances that have helped protect the rights of juvenile suspects in police custody.

10. Detention on remand/before and during trial
Legal standards on detention before and during trial are in compliance with international standards. The number of accused juveniles detained before trial has decreased significantly during the present decade. The number detained annually is low, and in most cases the length of detention does not exceed two months. Juveniles in the main pretrial detention facility in Skopje are separated from adults, and cells are roomy, clean and well furnished.

11. Diversion and mediation
The Law on Juvenile Justice creates ample possibilities for the diversion of cases involving juvenile offenders accused of offences punishable by less than three years of imprisonment. This is in harmony with the Committee on the Rights of the Child’s observation, “Given the fact that the majority of child offenders commit only minor offences, a range of measures involving removal from criminal/juvenile justice processing and referral to alternative (social) services (i.e., diversion) should be a well-established practice that can and should be used in most cases.”

Moreover, mediation is, in principle, available for offences by juveniles punishable by up to five years of imprisonment.

12. The right to be tried by specialized judges or courts
The Law on Juvenile Justice provides that only especially designated judges for juveniles may handle cases involving juvenile offenders, and that such judges must have relevant training, which has to be updated annually. Similar requirements apply to prosecutors. The law also contains a general provision on establishing a ‘child-friendly’ atmosphere during proceedings.
13. The right to be tried without delay

The Law on Juvenile Justice contains strict time limits for certain phases or elements of proceedings, including proceedings diverted to the CSW. More than half the cases handled by prosecutors and courts in 2008, before the new law came into effect, were resolved in six months or less.247

14. The right to legal assistance

The right of juvenile suspects not to be questioned unless a lawyer is present, the right of accused juveniles to be advised and represented by an attorney at all stages of proceedings, including proceedings before the CSW if the case is diverted, and the requirement that lawyers representing accused juveniles have special training, are very positive developments, despite the problems that have emerged with regard to the payment of legal fees.

15. Alternative sentences

The Law on Juvenile Justice expands the range of alternative sentences available. In 2008, before the law came into force, 95 per cent of convicted juveniles received a non-custodial sentence. The new alternative sentence will provide offenders with more assistance than supervision and reprimands.

16. Custodial sentences

The existence of an open residential facility primarily for offenders (Ranka Milanovic) is positive, even though it is not a recent accomplishment. The fact that the facility has capacity for girls as well as boys is important too. Recognition of the value of involving the family in efforts to overcome the problems that led to placement is another positive development, although the efforts made to date have been limited.

Even before the entry into force of the Law on Juvenile Justice, the number of juvenile offenders sentenced to the juvenile prison and the closed educational-correctional institution was relatively small.248

The juvenile prison is completely separate from an adjoining facility for adults. The space is sufficient for the population, and prisoners in the ‘open’ regime can attend school or work in the community.

CHALLENGES

1. The Law on Juvenile Justice

Although the Law on Juvenile Justice is fully compatible with international standards in most respects, and even exceeds them in some particulars, difficulties have been encountered in implementing the law. One of the most serious ones is the lack of clarity regarding responsibility for financing the services of lawyers in certain proceedings, in particular during the questioning of children and juveniles by the police and during the proceedings before the CSW. The ambiguity of the law as to diversion of cases to CSWs is another.

The provisions of the law concerning proceedings before the CSW do not either expressly incorporate some of the relevant basic principles, including the last resort principle, the family unity principle and the child’s right to be heard and have his/her views taken into account.


248 Thirty-two persons in 2008, less than 5 per cent of all juvenile convictions; of these, eleven were prison sentences. Only two prison sentences were for longer than two years.
2. Political commitment to implementation of laws, strategies and policies

The execution of the first Action Plan for Implementation of the Law on Juvenile Justice was unsatisfactory, due in large part to lack of funding for certain activities and programmes. Some urgent recommendations of the Committee for the Prevention of Torture have been left unresolved for years. These experiences suggest that political commitment to full implementation of the laws, strategies and policies that have been adopted is insufficient, at higher levels of government.

3. Coordination

It remains to be seen whether the State Council for Prevention of Juvenile Delinquency will be able to coordinate the broad process of developing a more effective juvenile justice system, or whether its role shall, as its name suggests, be limited to prevention.

4. Training

Most training is done on an ad hoc basis. Although juvenile justice professionals have a legal obligation to participate in training annually, there is no plan, strategy or regulations regarding the aims and content of such training. In addition, while the prison service has incorporated child rights into its in-service training programme, the legislative obligation regarding child rights does not apply to correctional staff working with juveniles.

With one notable exception – training by the Institute of Social Activities – the impact of training on professionals involved in juvenile justice and related areas has not been evaluated objectively. The training that has been evaluated has had little impact on the performance of the institutions concerned.

5. Accountability

Some public bodies, in particular the Ministry of Labour and Social Policy, have not taken appropriate action to investigate violations of the rights of children referred to them by the Ombudsman, in order to sanction those responsible and to prevent reoccurrence. The use of psychological pressure and intimidation by police investigators has not been eliminated.

6. Data

Despite important improvements there are still significant gaps in published data (e.g., recidivism). Some, in particular data on children under age 14 involved in criminal acts and at risk, are collected using indicators and definitions that do not correspond to those of the relevant legislation.

7. Prevention

Schools do not have policies or programmes designed to identify children at risk of offending and provide them, directly or by referral, with appropriate assistance. There are no programmes for the prevention of delinquency specifically designed to meet the needs of Roma communities. There are no community-based, non-residential ‘day centres’ to assist children at risk and underage offenders.

8. Pretrial detention

The small number of juveniles who are detained before and during legal proceedings and the principle that they should be separated from adults can cause accused juveniles to be detained alone. Standards on the psychological evaluation of detainees and on the treatment of juvenile detainees have not been adopted, despite the recommendations of the Committee for the Prevention of Torture.

249 Training by the Academy for Training of Judges and Public Prosecutors is an exception.
9. Diversion and mediation

Mediation is not yet being implemented.

Although the diversion of relatively minor offences to the CSWs for resolution is, in principle, a positive development, the procedure is too new to assess implementation in practice. Certain basic principles are not adequately incorporated into the relevant provisions of the law, as indicated above. ‘Intermediation’ by the CSWs seems to overlap the role of mediators, with emphasis on the compensation of damage rather than recognition by the offender of the human consequences of the wrong committed.

10. Specialized judges, prosecutors and auxiliary services

In the capital, designated judges and prosecutors for juveniles handle exclusively cases involving juveniles. However, about two thirds of offences by juveniles are committed elsewhere, within the jurisdiction of 11 courts where judges and prosecutors for juveniles handle juvenile cases along with other criminal cases. No information is available, at this point, about how these part-time juvenile judges and prosecutors, most of whom have received limited training, comply with the letter and the spirit of the new laws and procedures.

Similarly, teams of CSW staff specialized in juvenile justice have been established only in the capital and one other jurisdiction; in other districts, staff designated to handle cases involving juvenile offenders do so in addition to other responsibilities, and no information is yet available about how well they fulfil their functions under the new Law on Juvenile Justice.

11. The right to be tried without delay

The Law on Juvenile Justice establishes a limit of one year for proceedings in most cases involving juvenile offenders, and a limit of 18 months for more serious crimes. Data on the duration of judicial proceedings are not available, but data on the duration of pretrial proceedings indicate that, in 2008, 253 cases (19 per cent) took more than 12 months to resolve at that stage.

12. Alternative sentences

The Law on Juvenile Justice provides for a wide range of non-custodial sentences, but several are not used, due mainly to the absence of the requisite facilities or programmes. They include community service and participation in the community-based programmes provided by ‘disciplinary’ or youth centres.

Research on intensive supervision, the most widely used alternative measure, suggests that its effectiveness could be improved.

13. Mistreatment of residents at the open facility

Physical punishment and sexual abuse or harassment by staff have not been eliminated at the open facility for juvenile offenders.

250 Perpetrators of Criminal Offences in 2008, supra, p. 120.

251 A recent study on alternative measures for juveniles and adults based in part on interviews with judges found that “...the judges themselves on several occasions mentioned that they prefer to play safe” and avoid using innovations in new legislation. See Kovacic, M., Assessment of the Implementation of Alternative Measures in the Republic of Macedonia, Coalition ‘All for Fair Trials’, Skopje, 2007, p. 53.

14. The educational-correctional institution for juvenile offenders
This facility is overcrowded, and allows some contact between the juveniles and the population of the adult prison within which it is located. The building is too small to offer sufficient space for organized activities. Most of the detainees are young adults, and peer violence is not infrequent.

15. The juvenile prison in Ohrid
Organized activities are few, and only part of the population participates in them. Only secondary education is available, and medical care is seriously substandard. Only a minority of the population is under age 18; most detainees are between the ages of 18 and 23 years. Peer violence is frequent, and punishment can include solitary confinement. The director and deputy director of the facility have no prior experience in corrections.

16. The women's prison
When adolescent girls are confined in this prison, they do not have access to programmes designed for persons of their age, in particular education and vocational training.

RECOMMENDATIONS

1. Prevention
The potential contribution of the school system to prevention should be analysed, and measures should be taken to establish non-stigmatizing programmes to identify children at risk of offending and to ensure, directly or indirectly, their access to services that help reduce such risk.

Steps should be taken to ensure that all children who need psychological counselling and treatment for substance abuse have access to such services in the community, regardless of their ability to pay.

Preventive strategies that take into account the disproportionate participation of juveniles from certain communities in specific types of offending should be developed, with the active participation of representatives of those communities, in particular the Roma. This includes all kinds of prevention, including the prevention of reoffending.

2. The open residential centre for children with educational and social problems ‘25th May’
Disciplinary action should be taken against any staff found to have used violence or engaged in sexual abuse or harassment, and a programme to prevent any reoccurrence should be designed with the assistance of independent experts and put into effect. The budget should include sufficient allocations to maintain the infrastructure in better conditions. The difficulties in implementing the programme for improving relations between children and their families should be assessed and steps should be taken to overcome them. An effort should be made to facilitate and encourage greater participation of community-based groups and organizations (sports, music, arts, theatre and cultural activities, environment, religion etc.) in activities involving the residents.

3. Police
Measures should be taken to ensure that psychological pressure against juvenile suspects is not tolerated.

4. Pretrial detention
Priority should be given to adopting guidelines on psychological screening and treatment of vulnerable detainees, in particular juveniles, as recommended repeatedly by the Committee Against Torture.
It is particularly important to identify appropriate measures to safeguard the psychological well-being of juveniles who are detained alone, for reasons independent of the will of the administration. The emotional health of such juveniles should be evaluated daily by a competent professional. The law or regulations should recognize the right of detained juveniles to daily access to radio and television, unless a judge orders otherwise, and should establish minimum standards for daily contact with staff.

5. Diversion

The procedure for handling cases involving minor offences diverted to the CSWs (which is identical to the procedure for cases involving children at risk and underage offenders) should be modified to ensure full compliance with certain basic principles.

(a) It should be made clear that it is the child who has the right to legal advice and assistance in presenting his/her concerns and version of events to the decision-making body, in particular when the views or interests of the child and his/her parents are not identical.

(b) Since most if not all cases will involve children old enough to express their own views, it should be clear that the child should be given an opportunity to address the decision-making body in person, if he/she wishes to do so and after being advised by his/her attorney, and that the decision-making body has a duty to take his/her views and opinions into account.

(c) Consideration should be given to rewording Article 22 of the Law on Juvenile Justice, or adopting a guideline on the application of this Article, to bring it into greater harmony with the principle that the consent of the child and his/her parent(s) to any measures should be freely given.253

6. Mediation

Mediators interested in providing services in cases involving juvenile offenders or victims should receive special training, including training in adolescent development, communication skills and mediation with individuals from minority communities. The law should recognize the right to mediation without charge in cases involving juveniles, and identify the source of funding for mediation fees.

7. Legal assistance

Provisions should be made without delay to ensure compensation for legal services provided to juvenile suspects and accused juveniles, including those diverted to the CSWs.

8. Judicial proceedings

Efforts should be made to increase compliance by all concerned actors with time limits for the various components of juvenile proceedings, with a view to increasing the number of cases resolved in less than six months, i.e., the maximum duration considered acceptable by the Committee on the Rights of the Child.

A study should be done of the way the Law on Juvenile Justice is applied by judges, prosecutors and social workers, similar to the 2007 study on the application of alternative measures.

253 "Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian..." United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules), Rule 11.3. The Committee on the Rights of the Child has emphasized the voluntary nature of diversion measures, stating, "The child must freely and voluntarily give consent in writing to the diversion, a consent that should be based on adequate and specific information on the nature, content and duration of the measure, and on the consequences of a failure to cooperate, carry out and complete the measure. With a view to strengthening parental involvement, States Parties may also consider requiring the consent of parents..." General Comment No. 10, CRC/C/GC/10, supra, para. 27.
9. Alternative measures

Priority should be given to establishing a ‘disciplinary centre’, as per Article 34 of the Law on Juvenile Justice. Efforts to identify institutions and organizations willing to offer opportunities for community service should continue, and the impact of placements, once they have begun, should be monitored to determine the characteristics of offenders who respond positively as well as those of placements that have positive results.

A new study on intensive supervision should be undertaken, to establish a new baseline for the effectiveness of intensive supervision, now that specialized juvenile justice teams are in the process of being created.

10. The open educational facility for juvenile offenders ‘Ranka Milanovic’

The programme of assistance offered to juveniles placed in the open residential facility for offenders and their families and the methodologies used should be reviewed. Disciplinary action should be taken against any staff found to have used violence or engaged in sexual abuse or harassment, and a programme to prevent any reoccurrence should be designed with the assistance of independent experts and put into effect.

11. The closed educational-correctional institution for juvenile offenders

This facility should be permanently relocated without delay to an appropriate site, having adequate infrastructure, preferably within a reasonable distance from the capital. In designing the facility, consideration should be given to the need to separate juvenile prisoners from young adults serving sentences for offences committed while juveniles, and to the possibility of including a small unit for juveniles detained while awaiting trial. The possibility of returning prisoners to the community should be examined semi-annually rather than annually.

12. Rehabilitation methods in facilities for juvenile offenders

The approach to prevention of reoffending, including the criteria for psychosocial diagnosis used in the development of ‘individual plans’, should be reviewed. In particular, psychological diagnosis should be based on international standards. A more comprehensive programme of activities should be developed, and efforts should be made to involve community-based groups in such activities. ‘Work therapy’ should be designed with the primary aim of aiding the personal development of participants, not the needs of the institution.

13. The confinement of young adults in juvenile facilities

The policy of not separating the population under age 18 from the population aged 18–23 years should be reconsidered from the perspective of the ‘best interests’ principle. No young adult should be confined in a facility for juveniles unless his presence there is compatible with the interests of younger prisoners. Young adult prisoners who have a negative influence on younger prisoners should be transferred to an adult facility. To the extent that young adults are allowed to remain in juvenile facilities, consideration should be given to policies such as taking age into account in assigning cells and giving separate access to activities such as recreation and work.

14. The confinement of adolescent girls in the women’s prison

The advantages and disadvantages of the placement of convicted adolescent girls in the planned new educational-correctional facility or creating more appropriate conditions and programmes for

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254 In particular, the World Health Organization’s ICD-10 Classification of Mental and Behavioural Disorders.
adolescents within the women’s prison should be carefully weighed in order to identify the solution most in harmony with the ‘best interests’ of convicted girls given custodial sentences.

15. General policy issues concerning facilities for juvenile offenders

(a) Directors should be selected for their professional qualifications and experience, and their dedication to the rehabilitation of offenders.

(b) Policies and methodologies for the prevention of reoffending should be re-examined in the light of comparative experience and research on ‘what works’.

(c) Procedures for ensuring accountability of individual institutions, including accountability for matters such as the use of income generated by the work of prisoners, should be made more transparent.

(d) Directors should be held responsible for their failure to respond to communications of the Ombudsman regarding violations of the rights of children or juveniles in their care.

(e) Efforts should be made by the management of facilities for juvenile offenders to hire personnel from gender, age and ethnic backgrounds – in particular people of Roma origin – who will enhance the facilities’ capacity to cater for the needs of all juveniles.

16. Disciplinary measures in juvenile correctional facilities

The use of solitary confinement as a disciplinary measure should be prohibited, in order to bring the law into compliance with the United Nations Rules for the Protection of Juveniles Deprived of their Liberty. Similarly, suspension of the right to receive visits from family should not be used as a disciplinary measure.

17. Data

Data on reoffending (recidivism) by juveniles are limited, at present, to those who commit a first offence while over age 14 and subsequent offences while under age 18. This time frame is too short to provide useful information on the effectiveness of interventions, and should be extended to age 23.

The indicators used to collect data on proceedings concerning juveniles should be modified to include data on new measures and procedures, such as diversion to the CSW and mediation.

18. Training

A plan or policy, or regulations on training should be developed to ensure that the annual training, which is obligatory for juvenile justice professionals, corresponds to their needs, and the legal requirement regarding annual specialized training should be extended to the staff of correctional facilities in which juveniles are detained.

The recommendations of the independent evaluation of training programmes of the Institute of Social Activities should be implemented, and similar evaluations on the training of other juvenile justice professionals should be conducted.

19. Research

A study should be carried out on the implementation of the Law on Juvenile Justice, in particular by judges, prosecutors and CSW staff.
Research should be carried out on the effectiveness of measures taken to prevent offending by children at risk and to prevent reoffending by underage offenders and juvenile offenders. The aim should be to identify the psychosocial factors that correlate with the effectiveness (or ineffectiveness) of different types of individuals, with a view not only to monitoring the effectiveness of the different categories of measures being introduced, but also to developing the knowledge that will help ensure children and juveniles are channelled into the programme or facility most likely to be effective in preventing reoffending, given their personal characteristics and history.
Annex 1. Data collection and analysis

One of the aims of this assessment is to ascertain whether the information corresponding to global and regional indicators exists; to identify problems or difficulties concerning the use or definition of such indicators; and to explore the availability of other indicators of particular relevance. The assessment reveals that data corresponding to most of UNICEF-UNODC\textsuperscript{255} and TransMONEE\textsuperscript{256} indicators are available, and some are disaggregated in a more detailed fashion. Disaggregation by ethnicity is an example for other countries. Data on deaths in detention, contact with families and aftercare are not compiled, and indicators on diversion and alternative sentences should be reformulated in the light of new legislation.

The indicators and corresponding observations of the assessment team are as follows:

1. National data collection system and international and regional indicators

   (a) Crimes committed by juvenile offenders

   The TransMONEE matrix defines this indicator as the “number of crimes committed by persons aged 14–17,” disaggregated by the kind of crime, i.e., violent, property or other.\textsuperscript{257}

   Since 1995, the State Statistical Office has published a yearbook on criminal justice entitled \textit{Perpetrators of Criminal Offences}. It contains data on the number of reported juvenile offenders, but not on reported offences by juveniles (see below).

   The \textit{ad hoc} report prepared in 2006 by the State Statistical Office for the UNICEF TransMONEE project includes a number of tables, which disaggregate crimes by their nature. One that apparently covers all reported offences by juveniles uses the TransMONEE indicators of property crimes, violent crimes and other crimes, and also homicide.\textsuperscript{258} Other tables, which disaggregate offences by their nature and a second criterion (age, or ethnicity), use additional categories based on the relevant chapters of the Criminal Code, namely, property, bodily harm, sexual offences (Chapter 19), offences against public order (Chapter 33), health offences (Chapter 21, which includes drug offences), and offences concerning traffic safety (Chapter 27). These tables cover only a fraction of the total number of offences, however.\textsuperscript{259}

   Data from the 1990s can be found in two \textit{ad hoc} reports published by UNICEF.\textsuperscript{260}

   Published data on offending by juveniles exclude criminal acts committed by children under age 14, the threshold for the prosecution of juveniles (‘age of criminal responsibility’).

   (b) Homicides committed by juveniles

   The assessment team compared data on homicides by juveniles provided by the State Statistical Office with those published by the TransMONEE project. The figures for the years 1996 to 2008

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\textsuperscript{257} The UNODC-UNICEF Manual does not include this indicator.

\textsuperscript{258} \textit{Children in Conflict with the Law}, supra, Table 2.

\textsuperscript{259} Ibid., Table 6 (disaggregation by ethnicity and nature of offence, covering 1,224 offences) and Table 12 (disaggregation by age and nature of offence, covering 728 offences).

\textsuperscript{260} \textit{Survey on the Status of Children and Youth in the System of Juvenile Justice}, supra; and \textit{Efficiency of Measures}, supra.
– whether for reported, accused or convicted juveniles – agreed only for one year (2005). For several years, the reason for discrepancy seems to be that the TransMONEE figure is the sum of the State Statistical Office’s figures for reported, accused and convicted juveniles. In effect, this usually means that the same event is counted two or three times.

(c) Children in conflict with the law/children arrested

The term ‘arrest’ is defined by the UNODC-UNICEF Manual as “placed in custody by the police... or other security forces because of actual, perceived or alleged conflict with the law.” ‘Conflict with the law’ is, in turn, defined as having “committed or [being] accused of having committed an offence,” although the definition adds that, “Depending on the local context,” the term may also mean “children dealt with by the juvenile justice or adult criminal justice system for reason of being considered to be in danger by virtue of their behaviour or the environment in which they live.” The TransMONEE matrix defines this more clearly as “the number of children/juveniles taken into police custody (following arrest on suspicion of having committed an offence)...”

Data on children taking into police custody are not published. Moreover, they are of limited relevance, for two reasons. The first is that arrest by the police is not the only entry point into the juvenile justice system, so the number of children taken into police custody is not a good indicator of the number of ‘children in conflict with the law’, or children accused of an offence or investigated because of suspected participation in an offence. The second reason is the ephemeral nature of police custody: juveniles in police custody must be brought before a judge within 12 hours and, if the judge authorizes detention, they are transferred directly to a pretrial detention facility.

(d) Children in detention

The UNODC-UNICEF Manual describes this indicator as “children detained in pretrial, pre-sentence and post-sentencing in any type of facility (including police custody).” This indicator is defined by the TransMONEE matrix as “the total number of children/juveniles in conflict with the law in closed correctional/punitive institutions or open/semi-open institutions at the end of the year.”

In 2007, the Department of Execution of Sanctions began to publish an annual report containing data on prisoners, including the population of the juvenile prison and the closed educational-correctional institution at the end of the year. It also includes data on flow, i.e., the number of persons who entered and were released during the course of the year. The data are disaggregated by the age of the offenders.

The State Statistical Office publishes annually data provided by the Ministry of Labour and Social Policy in a publication on social welfare for children, juveniles and adults. The yearbook contains a table on the population of ‘25th May’ and ‘Ranka Milanovic’ facilities at the end of the year. These data are disaggregated by sex, age cohort (under 10 years; 10–13 years; 14–15 years; 16–17 years; 18–21 years; and over 21 years) and their family and educational background.

(e) Children in pretrial or pre-sentence detention

The TransMONEE matrix defines this indicator as “the number of children who are placed in pretrial detention during the year.” The UNODC-UNICEF Manual describes it as including children deprived of liberty while awaiting trial and convicted juveniles awaiting sentencing, but not those who are sentenced and awaiting the outcome of an appeal.
The *ad hoc* report published in 2006 by the State Statistical Office, in cooperation with UNICEF, contains data on the end-of-year population of juveniles in pretrial detention.\(^{261}\)

The State Statistical Office’s yearbook on criminal justice does not include data on the population of detained juveniles, but does offer data on the number of juveniles placed in detention while awaiting trial and/or sentencing.\(^{262}\) These data are disaggregated by offence and by outcome of proceedings, i.e., whether a prison sentence or other correctional measure was imposed or not.

**(f) Duration of pretrial detention**

The State Statistical Office’s yearbook on criminal justice includes data on the duration of detention of accused juveniles awaiting trial and sentencing.\(^{263}\) Six categories are used, from fewer than three days to more than three months.

**(g) Child deaths in detention**

No data are published on this indicator.

**(h) Separation from adults**

The UNODC-UNICEF Manual describes this indicator as “the percentage of children in detention not wholly separated from” adult prisoners.\(^{264}\)

Data on the population of the two correctional facilities for convicted juvenile offenders are disaggregated by their age, including those under and over age 18.

In addition, the entire population of the educational-correctional institution has limited contact (in a yard, through a chain link fence) with adult prisoners. In the women’s prison, convicted adolescent girls have extensive contact with adult women, in the ‘open’ part of the facility reserved for prisoners with good behaviour.

The open facility for juvenile offenders of both sexes (Ranka Milanovic) operated by the Ministry of Labour and Social Policy is the only facility for adjudicated juvenile offenders whose population, at the time of the assessment mission, did not include young adult offenders. There are, however, plans to relocate the educational-correctional institution temporarily to the grounds of this facility.

Male juveniles under age 18 detained while awaiting trial are kept separately in pretrial detention facilities designed primarily for adults. In the main pretrial detention facility in the capital, contact with adult prisoners appears to be effectively prevented.

**(i) Contact with parents and family**

The UNODC-UNICEF Manual describes this indicator as “the percentage of children in detention who have been visited by, or visited, parents or guardian or an adult family member during the last three months.”

No data on this indicator are compiled or published.

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\(^{261}\) *Children in Conflict with the Law*, supra, Table 1.

\(^{262}\) *Perpetrators of Criminal Offences in 2008*, supra, p. 120.

\(^{263}\) Ibid.

\(^{264}\) The TransMONEE project does not include this indicator.
(j) Convictions

The TransMONEE matrix describes this indicator as “the number of juveniles convicted during the year,” disaggregated by sex, age and type of crime, i.e., violent, property, or other.\textsuperscript{265}

The ad hoc report of the State Statistical Office contains data on convicted juveniles from 2000 to 2005, disaggregated by the nature of the offence (property, violent, or other), the age at the time of the offence (14–15 years; 16–17 years) and the sex.\textsuperscript{266}

Data on convictions are now published annually by the State Statistical Office.\textsuperscript{267} They are disaggregated by the offence or the category of the offence, the sex and the age of the offender at the time of the offence (14–15 years; 16–17 years), the ethnicity and the locality where the offence was committed.\textsuperscript{268} They are also disaggregated by the family environment and the educational background of the offender.\textsuperscript{269}

(k) Custodial sentences

The UNODC-UNICEF Manual describes this indicator as “the percentage of sentenced children who receive a custodial sentence,” i.e., one of confinement to an open, semi-open or closed facility. The TransMONEE matrix limits this to children aged 14–18 years.

In the country, there are four facilities in which juveniles may be placed because they have committed an offence: the juvenile prison; the closed educational-correctional institution presently located in a different prison for adults; the women’s prison; and an open facility exclusively for juveniles, which is not part of the prison system.

The State Statistical Office’s yearbook on criminal justice contains information on the number of juveniles given prison sentences as well as the number placed in the educational-correctional institution (which, as indicated above, is located on the grounds of a prison) and the juvenile prison in Ohrid. These data are disaggregated by the age of the offender at the time of the offence (14–15 years; 16–17 years), the sex and the offence.\textsuperscript{270} Data on prison sentences are also disaggregated by the length of the sentence and by the offence.\textsuperscript{271}

The ad hoc report of the State Statistical Office contains data on the number of juveniles given prison sentences from 2000 to 2005, but not the number placed in other open or closed facilities for juvenile offenders.\textsuperscript{272} Some data on placement in the closed educational-correctional institution and the open educational facility during the second part of the 1990s can be found in the survey on juvenile justice published by UNICEF in 2001.\textsuperscript{273}

\textsuperscript{265} The UNODC-UNICEF Manual does not include this indicator.

\textsuperscript{266} Children in Conflict with the Law, supra, Tables 8–10.

\textsuperscript{267} Data are published since 2007 in Perpetrators of Criminal Offences, supra.


\textsuperscript{269} Ibid., pp. 132–133 and 135.

\textsuperscript{270} Ibid., pp. 121–123.

\textsuperscript{271} Ibid, pp. 124–127.

\textsuperscript{272} Children in Conflict with the Law, supra, Table 15.

\textsuperscript{273} Survey on the Status of Children and Youth in the System of Juvenile Justice, supra, Tables 3 and 4.
(l) Alternative sentences

The TransMONEE matrix requests information on the kind of sentences imposed on convicted juveniles. The 12 categories used are: committal to a penal institution; committal to an educational/correctional institution; pre-sentence diversion; formal warning/conditional discharge; apology; fine/financial compensation; community service or corrective labour; supervision order; probation order; postponement of sentencing; release from sentencing; and other.

The State Statistical Office’s yearbook on criminal justice contains data on alternative measures imposed on adjudicated juveniles. Since the Law on Juvenile Justice only came into force during 2009, no yearbook refers to all the alternative measures it recognizes. The 2008 yearbook includes data on the imposition of ‘security measures’ (e.g., referral for psychiatric treatment or treatment for substance abuse), ‘rebuke’, ‘intensive supervision’ and placement in an open facility. Most such data are disaggregated by the offence or type of offence and the age group (14–15 years; 16–17 years), and some are disaggregated by sex. Data on ‘intensive supervision’ are also disaggregated to differentiate between supervision by parents and supervision by the child welfare authorities.

(m) Pre-sentence diversion

The UNODC–UNICEF Manual defines this indicator as “the percentage of children diverted or sentenced who enter a pre-sentence diversion scheme,” adding that it is intended to measure “the number of children diverted before reaching a formal hearing.” This is somewhat confusing, and the Manual recognizes that what constitutes diversion “will need to be identified in the local context.”

The State Statistical Office’s yearbook on criminal justice contains some data on cases of juveniles referred to the prosecutor that do not proceed to trial, or which are disposed of during preliminary proceedings. These data differentiate between different reasons the case is not prosecuted or prosecution is terminated, including insufficient evidence and other legal obstacles to prosecution, and some reasons that clearly should be considered diversion, in particular “in the interest of defendant or society.” Some of the reasons cited (e.g., “not characterized as criminal offence and trivial offence”) are described in such a way that it is impossible to know whether they represent diversion. These data are disaggregated by the offence or class of offence and the sex of the accused.

(n) Aftercare

This indicator is defined as “the percentage of children released from detention receiving aftercare.” There is a problem with the way this indicator is defined because aftercare programmes are generally considered important for offenders released from custodial facilities after serving a sentence, not those released from pretrial detention.

No data are available in this country on the number of juveniles released from custody, prison or residential facilities who receive any significant form of assistance. Indeed, no data are published on the number of juveniles, or adults serving sentences for crimes committed as juveniles, released from any form of custodial care.

274 Perpetrators of Criminal Offences in 2008, supra, pp. 119, 121.

275 It is unclear why the percentage of offenders diverted should be calculated with reference to the number diverted or sentenced, rather than the number accused or prosecuted.

2. Other relevant data and information

**Juveniles prosecuted**

Data on juveniles prosecuted are necessary to understand the functioning of the juvenile system. In most countries, there is a large difference between the number of crimes reported to the police and the number prosecuted (see below). There are many different reasons for this, including the discovery that a suspect is too young to be prosecuted, lack of evidence, diversion, exercise of prosecutorial discretion (the ‘principle of opportunity’) and expiration of the statute of limitations. The quantity of offences not prosecuted for each of these reasons has very different implications for the analysis of the functioning of the system.

In this country, data are published on the number of juveniles accused of an offence, and on the outcome. This includes – in addition to the number of cases adjudicated – data on the number of cases terminated during the investigative stage of proceedings because evidence is insufficient, because there are other legal obstacles to prosecution, or (as indicated above) because it has been decided to close the case “in the interests of defendant or society.”

**Repeat offending**

Data on the number of juveniles who have previous recording of offending, or the number of adult prisoners who committed offences as juveniles, are not published.

Data on the ‘family circumstances’ of convicted offenders published in the State Statistical Office’s yearbook do, however, include information on those ‘living in correctional institutions’ at the time of the offence.

Data contained in a study published by UNICEF in 2004 do offer some information on this subject, based on interviews with juvenile offenders. The study concludes that 36 per cent of juvenile offenders interviewed had been sanctioned previously for one or more offences.

**Disaggregation by ethnicity**

Data on juvenile offenders published by the State Statistical Office’s yearbook on criminal justice are disaggregated by ethnicity. Seven categories are used, including Macedonian, Albanian, Turk, Roma, Serb, Bosniak and ‘other’. There are correlations between ethnicity and offending. In 2008, Roma – 2.5 per cent of the population aged 14–18 years – represented 29 per cent of reported offenders, and 19 per cent of convicted offenders. The other two largest population groups – Macedonians and Albanians – are over-represented for some kinds of crimes and underrepresented for others. Macedonians, for example, made up almost 40 per cent of the age cohort, but committed 86 per cent of offences involving bodily harm committed by juveniles. Albanians committed 44 per cent of sexual offences committed by juveniles.

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278 *Perpetrators of Criminal Offences in 2008*, supra, pp. 112–113 and 130.
279 Ibid., pp. 113 and 130.
280 Ibid., p. 130 (convictions).
281 Ibid.
Annex 2. List of persons interviewed

**Government and public institutions**

V. Ortakovski, President, State Council for Prevention of Juvenile Delinquency, Ministry of Justice
T. Kikerekova, Head, Unit for Human Rights, Ministry of Justice
N. Krusharovksa, Deputy Ombudsperson for Children
A. Arnaudovska, President, Academy for Training of Judges and Public Prosecutors
V. Bozinovksa, Juvenile Judge, Basic Court 1, Skopje
J. Josifovska, Juvenile Judge, Basic Court 1, Skopje
M. Kolishevski, Investigating Judge, Basic Court 1, Skopje
L. Nedelkovska, President, Basic Court 1, Skopje
L. Nanev, Judge, Basic Court, Kavadarci
B. Angelovska, Head, Police Unit for Juveniles, Ministry of the Interior
J. Stancovam, Police Inspector, Ministry of the Interior
S. Naumovski, Police Inspector, Unit for Trafficking of People, Ministry of the Interior
C. Chalovska, Head, Prevention Unit, Ministry of the Interior
R. Dojcinovska, Prevention Unit, Ministry of the Interior
D. Milovanovic, Deputy Public Prosecutor for Juveniles, Skopje
J. Misevska, Deputy Public Prosecutor for Juveniles, Skopje
L. Gavrilovska, Director, Department of Execution of Sanctions, Ministry of Justice
E. Jordanova, Advisor on Alternative Measures, Department of Execution of Sanctions, Ministry of Justice
S. Trpenovski, Director, Juvenile Prison, Ohrid
A. Rizvani, Deputy Director, Juvenile Prison, Ohrid
P. Tuntev, Psychologist, Juvenile Prison, Ohrid
B. Maksuti, Deputy Director, Educational-Correctional Home Tetovo
M. Rustemi, Social worker, Educational-Correctional Home Tetovo
N. Ristovska, Psychologist, Educational-Correctional Home Tetovo
M. Mladenovski, Director, Idrizovo Prison
L. Cvetkov, Head, Reconciliation Unit, Idrizovo Prison
B. Mladenovska, Pedagogue, Idrizovo Prison
S. Gavrilovic, Director, Skopje Prison
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Annex 4. Comments on the draft amendments to the Law on Juvenile Justice and related matters

The preparation of draft amendments to the Law on Juvenile Justice only one year after implementation of the law began is a positive development, given some significant problems experienced in implementing certain provisions of the law. However, the team of experts contracted by UNICEF to evaluate juvenile justice believes that some of the proposed amendments would not improve respect for the rights of juvenile suspects, defendants and offenders, and should be reconsidered. This memorandum has the limited aim and purpose of identifying those provisions and explaining the reasons in our opinion that they would not improve the law. It is not intended as a comprehensive evaluation of the law or the proposed draft amendments. However, the memorandum does also identify a few provisions of the existing law that the assessment team believes are not fully compatible with international standards, and whose amendment has not been proposed but also should be considered.

1. Article 81, Article 104 and the duration of judicial proceedings

The General Comment on *Children’s Rights in Juvenile Justice* adopted by the Committee on the Rights of the Child in 2007 “urges States parties to introduce the legal provisions necessary to ensure that the court/juvenile judge or other competent body makes a final decision on the charges not later than six months after they have been presented.”

The law presently establishes a time limit of one year in most cases, and eighteen months for accusations concerning offences punishable by a sentence of more than four years of imprisonment. The assessment team believes that every possible effort should be made to resolve cases involving accused juveniles within six months, if possible, instead of amending the law to allow even more time than the law presently allows – twice the time recommended by the Committee.282 This is important not only because of the recommendation of the Committee, but also because many experts believe that prompt adjudication of responsibility and reducing the delay between an offence and the beginning of the process of rehabilitation minimize the risk of reoffending.

A proposed amendment to Article 104 would double the time given to the Centres for Social Work (CSWs) to prepare a pre-sentence report, from 15 days to 30 days. This would undermine efforts to reduce the total length of proceedings to bring practice into greater compliance with international recommendations. It would be preferable to strengthen the capacity of the CSWs to allow them to meet existing standards.

2. Article 19 and the role of the attorney in hearings before the CSW

The hearings provided for in articles 18 to 23 of the law cover several legally distinct situations: children (aged 7–13 years) and juveniles (aged 14–17 years) who meet the definition of ‘at risk’ but are not suspected or accused of the commission of an offence; children under age 14 who have been involved in criminal activity; and juveniles (aged 14–15 or 16–17 years) accused of committing an offence punishable by a sentence of up to three years in juvenile prison.

This has some relevance for the analysis of the law in the light of international standards. Article 40 of the Convention on the Rights of the Child (CRC), the main article on juvenile justice, concerns only

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282 Draft amendment to Article 81, para. 2: The procedure against the juveniles is urgent and it may not last longer than one year and six months, except for criminal acts for which sentence imprisonment of four years is prescribed, when the procedure may not last longer than two years, or for a misdemeanour – not longer than six months.
juveniles considered to be offenders. Similarly, standards on diversion, such as Rule 11 of the Beijing Rules, are designed to apply to juveniles who have been involved in an offence and are old enough to be prosecuted.

The treatment of children who are at risk, but have not been involved in offending, is governed by other provisions of the CRC. They include:

- Article 39, which recognizes the right to psychological assistance and social reintegration if the risk factors include neglect or exploitation;
- Article 12.2, which recognizes the right of the child to be heard and have his or her views taken into account;
- Article 9.1, which provides that no child may be separated from his or her family without their consent unless separation is necessary to protect his or her best interests;
- Article 20.3, which provides that, when it is necessary to remove a child from his or her home, institutional placement shall be the last resort;
- Article 25, which provides that, if a child has been placed in an institution, the treatment provided and other circumstances must be reviewed periodically;
- Article 37(b)–(d), which provides that, if the measures taken involve a deprivation of liberty, they may not be imposed arbitrarily and the child concerned has the right to humane treatment and legal assistance.

These are the rights and principles most directly linked to proceedings concerning the treatment of children at risk. Others also are relevant, including the principle of family unity (Articles 7–8), the duty of the State to assist parents in raising their children (Article 18.2), the child’s right to protection against arbitrary interference in privacy (Article 16), and the principle that children have an evolving capacity to exercise their basic human rights (Article 5).

The procedure established by section 2 of Chapter Two of the law has advantages. In principle, it should be quicker than legal proceedings. The existing time limits set forth in Articles 19 to 22, which cover the period from referral to informing the family of the decision, total 54 days. A draft amendment to Article 19 would extend this to 62 days.

If the family does not agree with the decision of the CSW, they have the right to request that it be reviewed by a juvenile court. This complies with one of the requirements of Article 9.1 of the CRC, as well as one of the requirements applicable to diversion recognized by Rule 11.3 of the Beijing Rules.

Rule 11.3 of the Beijing Rules also requires that the juvenile, or his or her parents, consent to any diversion that involves participation in a programme of some kind. The Rules were adopted a quarter of a century ago, in 1985. Given that diversion only applies to juveniles at least 14 years of age, we believe that evolving standards regarding the right of children to have their views taken into account mean that the possibility that parental consent replace or override the views of the juvenile himself or herself should no longer be recognized.

The Beijing Rules appears to indicate that the consent requirement applies to diversion measures, not diversion from a judicial to a non-judicial procedure as such. Article 23 of the law complies with this requirement, in a sense, because the attorney of the concerned juvenile, acting on behalf of the juvenile or his or her family, may ask a court to review the measures imposed by the CSW. The assessment team believes it would be more consistent with international principles to require an accused juvenile to consent to diversion to the CSW procedure as such. One reason for this is that
the CSW, unlike the court, is not independent and impartial. In many cases, at least some of the members of the CSW team that will decide whether or not the alleged criminal act was committed and what measures shall be imposed will be familiar with the juvenile and his or her family, and may have been involved in supervising the implementation measures imposed previously. In such circumstances, it seems possible that some accused juveniles might prefer for their case to be heard by an authority that is seen as more impartial and independent, and basic principles of justice would seem to require that an accused be allowed to insist on a hearing by such an authority, i.e., a juvenile judge, if they wish.

Moreover, requiring the consent of the juvenile as a prerequisite for diversion to the CSW procedure would be in harmony with the idea that voluntary recognition of responsibility by an offender is an important step to successful rehabilitation, which is commonly considered one of the reasons for diversion. Since accused juveniles have the right to legal advice, the lawyer could inform and advise the accused juvenile on the advantages and disadvantages, if any, of agreeing to diversion.

When the case in question concerns a juvenile aged 14–17 years accused of an offence, consent of the accused before transfer would be compatible with the role of the lawyer as defined in a proposed amendment to Article 20, which indicates that the lawyer should prepare a legal opinion that, among other things, “should contain a description of the act [and] factual elements...” Although proceedings before the CSW are not formally criminal in nature, requiring the lawyer for the juvenile to prepare a legal document that recognizes his or her participation in an act that constitutes a criminal offence does not seem in harmony with the presumption of innocence and the principle that an accused person may not be required to confess or give evidence against him or herself. These issues would not arise if referral to the CSW required the consent of the accused juvenile.

Another important consideration is that a proposed amendment to Article 19 would greatly restrict the requirement that children and juveniles be represented by an attorney in proceedings before a CSW. If the case of an accused juvenile is diverted under Article 18, but the juvenile is not entitled to free legal assistance during the CSW proceeding, then presumably it will not be possible for the family or child to ask the court to review a decision that they do not agree with. This would not be compatible with requirement of Rule 11.3 of the Beijing Rules, as explained above.

The Beijing Rules does not apply to cases of children under age 14, whether or not they have been involved in criminal conduct or are simply at risk. Nor do they apply to juveniles referred to the CSW because of risk alone, without an allegation of offending. The question that arises, therefore, is whether international standards require representation of children at risk in proceedings such as those regulated by section 2 of Chapter Two of the Law on Juvenile Justice.

Since no international norm addresses this question expressly, the answer must be sought in the general principles recognized by international instruments. In the view of the assessment team, several principles do support the conclusion that recognition of the right to legal advice and representation provides greater protection for the rights of children in such proceedings.

One principle underlying this conclusion is the child’s right to be heard in any administrative proceeding affecting him or her, and to have his or her views duly taken into account. It is often difficult for a child to present his or her views effectively in an administrative proceeding.

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283 Convention on the Rights of the Child, Articles 40(2)(b)(i) and (iv).
284 By definition, diversion is an alternative to prosecution, which means that prosecution must be legally possible.
285 Convention on the Rights of the Child, Article 12.2 and 12.1, respectively. See also Article 9.1.
tend to be intimidated by the situation, and by anxiety about the decision that might be taken. Even if they overcome their anxiety and feeling of disadvantage vis-à-vis adults in a position of authority, they may not have the communication skills needed to relate the facts or express their thoughts in a way that will be properly understood by the adult decision makers. The fact that proceedings are informal and the decision makers view their role as helping the child may lower the barrier to effective participation by the child, but they do not eliminate it. To be heard effectively, and to ensure that his or her views are given the weight that they deserve, a child needs a trained advocate whose role is to inform the child in an objective way about the issues at stake and the possible outcomes, whose communications with the child in an effort to fully understand the facts are legally recognized as confidential, and who can assist the child in making relevant facts and wishes known and understood. In some countries, specially trained children’s advocates exercise this function. Experience suggests that parents and teachers, unless especially trained, are unable to fulfil this role effectively. Indeed, the parents have another role in the proceeding. In the absence of a specially trained group of paraprofessionals, the knowledge and skills of lawyers, especially those having training in child rights, make them the logical choice for advising and assisting children in proceedings of this kind.

A second consideration is the right to have access to an independent and impartial authority in matters that affect their human rights. This is not a right recognized by the Convention on the Rights of the Child, but it is recognized by human rights instruments, such as the International Covenant on Civil and Political Rights (Article 14.1). It is not limited to criminal cases, but applies to any case affecting a legal right. The right to have matters that may affect a person’s legal rights heard by an independent and impartial authority is related to the right to protection against arbitrary interference in basic human rights; it is the responsibility of such bodies to ensure that any measure that affects the basic rights of an individual is proportionate, or necessary, in the pursuit of a legitimate aim or purpose.

There are no requirements concerning the independence or impartiality of CSW teams, despite their authority to take measures that affect essential rights such as privacy of the family and family unity. The right to seek review of their decision by a court brings the procedure within the requirements established by Article 9 of the CRC, insofar as imposition of measures involving involuntary separation from the family is concerned. However, requiring the participation of lawyers in proceedings helps to ensure that the proceedings themselves are conducted in the spirit of impartiality, independence, fairness and equality of all concerned, and provides an effective safeguard against arbitrary decisions. The participation of an attorney is the best way of ensuring that “human rights and legal safeguards are fully respected,” in accordance with Article 40(3)(b) of the CRC.

For this reason, the assessment team believes that the proposed amendment restricting the requirement that lawyers participate in the proceedings established under section 2 of Chapter Two would have an adverse impact on the rights of children. The amendment in effect gives the CSW unrestricted discretion to determine when the participation of a lawyer is required, because in all proceedings the mandatory participation of a lawyer depends on a finding by the CSW of “higher risk.” Such a broad grant of discretion to determine, in effect, whether the proceedings will be inquisitorial or adversarial in nature is not in harmony with the basic values of fairness, impartiality and equality that should characterize administrative as well as judicial proceedings.

Allocation of responsibility for paying legal fees is a positive development. However, the assessment team has reservations regarding the draft clause indicating that legal fees will be compensated at a reduced rate, because this seems to imply that the role of the lawyer in proceedings before the CSW is less important than his or her role in other proceedings.
3. Article 109 and 109(a) on the apprehension and detention of juvenile suspects

The requirement of the present paragraph 2 of Article 109, that the parents and attorney of a juvenile who is apprehended must be informed ‘immediately’, has been eliminated in paragraphs 4 and 5 of the new draft Article 109.

The third paragraph of draft Article 109(a) indicates that, if the public prosecutor does not request pretrial detention, the judge must order detention for 24 hours, if he or she considers that the legal conditions for detention exist. The law does not indicate what information the judge would use to determine whether such conditions exist, in the absence of any request by the prosecutor. Given that the police may keep apprehended juveniles suspected of an offence other than a misdemeanour in custody for 12 hours before taking them before the judge, and that (under the existing law) the prosecutor must be informed immediately of the apprehension, a rule that authorizes deprivation of liberty for an additional 24 hours because the prosecutor takes no action does not appear compatible with the principle that juveniles shall not be deprived of liberty except as a last resort and for the shortest possible period of time.

Paragraph 4 of draft Article 109(a) gives the juvenile the right to appeal against such an order of 24-hour detention and requires the court to decide on the appeal within 24 hours. This would not appear to be an effective safeguard.

4. Other recommendations regarding possible amendments

Article 16 provides that the “measures of aid and protection” that may be imposed by the CSW are those “measures determined by law in the field of education, health, social, family and other forms of protection.” It appears that, in reality, these measures are defined largely by administrative rules and guidelines rather than legislation. The assessment team believes that these measures should be more clearly identified and that, since they can have profound and lasting consequences for those concerned, they should be defined by legislation. In a democratic society, norms that restrict personal liberty should be adopted by the legislature, not the executive.

The role of the attorney in proceedings before the CSW is described by Article 19 as “protecting the rights and interests of the child” or juvenile. It would be desirable to specify that the role of the attorney also includes informing the child or juvenile of the nature and possible outcome of proceedings, and assisting the child or juvenile in presenting relevant evidence, requests and opinions to the CSW team, and ensuring that they be given the weight they deserve. This would help ensure respect for Article 12 of the CRC.

The assessment team also considers that section 2 of Chapter Two should expressly indicate that children brought before the CSW should not be separated from their families unless there are specific and convincing reasons to believe no other measure or combination of measures would be likely to protect the child’s right to healthy development and reduce the risk of offending. This would help bring the law into greater conformity with Article 9.1 of the CRC.

Similarly, consideration should be given to introducing language recognizing that, as a rule, the aim of the measures taken should be to restore the child to his or her family as soon as the factors that create an unacceptably high risk of offending are overcome or significantly reduced, or the child has developed the skills and capacity to resist criminogenic factors that cannot be eliminated. This would bring the law into greater conformity with the principle of family unity, as recognized by Article 7.1 of the CRC.
Consideration also should be given, in our view, to adding a provision to the effect that the views of parents should be taken into account in proceedings before the CSW. Research indicated that programmes for the prevention of offending or reoffending that include parents are more effective. In practice, intensive supervision by parents is one of the most common measures. However, the language of Article 22 of the law, which warns parents of the consequences of failure to cooperate in the implementation of the measures imposed by the CSW, seems somewhat out of harmony with an approach that would emphasize assisting parents to fulfil their parental responsibilities and seeking voluntary cooperation and joint identification of the problems that need to be resolved. The language of proposed amendments to the law regarding the potential criminal responsibility of parents who do not cooperate with the CSW also seems out of harmony with what, in our view, should be the primary approach, namely, to encourage and help parents to contribute to prevention, whenever possible.

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12 July 2010