



**CHILDREN
DEPRIVED OF
LIBERTY IN
CENTRAL AND
EASTERN EUROPE:
BETWEEN LEGACY
AND REFORM**

Children Deprived of
Liberty in Central and
Eastern Europe: Between
Legacy and Reform

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Children Deprived of Liberty in Central and Eastern Europe: Between Legacy and Reform

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Romania (Centre for Legal Resources)

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PREFACE

The present study was conducted within the framework of the project Children Deprived of Liberty in Central and Eastern Europe: Between Legacy and Reform, financed by the specific programme Fundamental Rights and Citizenship for the period 2007 – 2013, as part of the General Programme “Fundamental Rights and Justice” at the Directorate-General for Justice of the European Commission. The programme aims to help make people’s rights and freedoms effective in practice by making them better known and more consistently applied across the EU. It also promotes the rights of the child, the principles of non-discrimination (on racial or ethnic grounds, religion or belief, disability, age or sexual orientation) and gender equality (including projects to combat violence against women and children).

The two-year project was implemented by the Bulgarian Helsinki Committee (BHC), the leading organisation, together with the Association for the Defence of Human Rights in Romania – the Helsinki Committee (Romania), the Centre for Legal Resources (Romania), the Helsinki Foundation for Human Rights (Poland) and the Hungarian Helsinki Committee (Hungary).

In 2011, the EU adopted an Agenda on the Rights of the Child. One of its main priorities is to make justice systems across Europe more child-friendly because many are still insufficiently adapted to the specific vulnerabilities and needs of children. The agenda is focused on children’s involvement in judicial proceedings in various settings, either directly as a defendant, victim or witness or indirectly when judicial decisions may have a considerable impact on their lives such as in divorce or custody proceedings. While the agenda also recognises that children sentenced to custody and placed in criminal detention structures are particularly at risk of violence and maltreatment, it only makes a fleeting reference to existing international guiding principles regarding how to deal with children who are deprived of liberty.

The agenda further states that detention of children should be a measure of last resort and for the shortest appropriate period of time. However, children are all too often deprived of their liberty, being exposed to increased risks of abuse, violence, acute social discrimination and denial of their civil, economic and social rights. The extent and forms of deprivation of liberty of children across Europe is not sufficiently analysed and studied and not enough research has examined whether national juvenile justice systems meet international standards both in law and in practice. Deprivation of liberty for the purposes of “educational supervision”, a term that has not been given clear meaning by international jurisprudence, also needs more scholarly attention.

As a result of a common communist legacy, Central and Eastern European countries face similar problems in the living and placement conditions of children in closed institutions.

International organisations have consistently noted the need for reform in institutional care and juvenile justice systems in Central and Eastern Europe and stress that depriving children of liberty continues to be used extensively. There is also very little jurisprudence of international bodies capable to guide the reforms. In addition, the lack of reliable and comparable data on children deprived of liberty on a national and European level hinders the development of evidence-based policies on the rights of children deprived of their liberty.

The project *Children Deprived of Liberty in Central and Eastern Europe: Between Legacy and Reform* provides a systematic overview of the closed institutions where children are deprived of liberty, including those for children with imposed criminal sanctions and children placed in institutions for other purposes (educational supervision, medical treatment, immigration control etc.) in Bulgaria, Hungary, Poland and Romania. It provides an up-to-date picture regarding the situation in these Central and Eastern European countries, evaluating the compliance of national legislation with international standards both in law and in practice. The project sets the basis for an in-depth discussion on the implementation of future policies and reforms in the field of juvenile justice. It also demonstrates the need for developing a comprehensive common strategy on juvenile justice within the European Union to fully ensure the protection of a particularly vulnerable sector of the population (minors and young people, frequently belonging to groups at risk of social exclusion).

Traditionally, projects on children deprived of liberty adopt an approach that limits monitoring to institutions, pertaining formally or informally to the criminal justice system. The current project uses a broadened scope to include other institutions that inherently replicate the placement and living conditions of criminal justice institutions (reformatories, pre-trial detention facilities, police stations), where children are placed by a judicial, administrative or other authority and from which they cannot leave at will. Thus, it involved monitoring not only of criminal justice institutions but also other closed establishments such as institutions for the placement of children for educational supervision, welfare and protection purposes, migrants with irregular status, children with disabilities and institutions for active treatment of children with mental disabilities.

The present approach better suits the project's aim since the case law of the European Court of Human Rights (ECtHR) has determined that institutions falling outside the juvenile justice system can be also deemed as closed institutions depriving children of their liberty. ECtHR jurisprudence and the standards of the UN Committee on the Rights of the Child were the basis for determining the type and the number of institutions to be monitored and the given recommendations. This approach provides a comprehensive analysis of the forms of deprivation of liberty, conditions and guarantees provided, and whether they meet the standards for the protection of children's rights.

On this basis, each partner selected the type and number of institutions to monitor in their respective countries. Due to limitations upon the number of monitored institutions and access restrictions in some countries, not all organisations visited the same type of institutions such as psychiatric institutions or asylum detention facilities. Nevertheless, each partner monitored the core institutions that are formally or informally part of the juvenile justice systems.

Part I presents a critical review of international standards related to the deprivation of liberty and treatment of children, deprived of liberty. The first part of this review relating to international standards on the protection of the right to liberty and security is based mainly **on the law of international treaties**, more specifically of the two international treaties of fundamental importance to Europe: the United Nations International Covenant on Civil and Political Rights (ICCPR, the Covenant) and the Council of Europe's European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR, the Convention). The

analysis focuses on the generally applicable standards, where the case law is most abundant, but it takes into account the relevant **jurisprudence**, generated by child-related cases.

The second part of the analysis is dedicated to standards regarding the treatment of children at places for deprivation of liberty. Since the case law of the UN and Council of Europe bodies is not very comprehensive on this issue, the analysis in this part is based on the documents comprising soft law. This includes several documents of UN and Council of Europe bodies, partly dedicated to the treatment of children who are in the process of being deprived, or have already been deprived, of their liberty. Among these, the most comprehensive in terms of standards on the treatment of children deprived of their liberty, are the 1990 United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules) and the 2008 European Rules for Juvenile Offenders Subject to Sanctions or Measures (European Rules on Juvenile Offenders). Other important documents include the 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the 1990 United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), as well as General Comment No. 10 of the United Nations Human Rights Committee on children's rights in juvenile justice.

Part II consists of the country reports prepared by the five participating organisations from Bulgaria, Hungary, Poland and Romania. Each country report presents the results from the two-year legal and field research. The research assesses the conditions of children deprived of liberty throughout the respective country.

Each country report first outlines the utilised methodology which defines the scope and type of institutions visited. This section provides an overview of used information sources – primary and secondary, as well as an analysis of the obstacles to carrying out the study. The methodology used for institutional monitoring was developed by the participating organisations at a kick-off meeting in Sofia, Bulgaria, to ensure consistency and comparability of the results.

The country reports include a chapter on legal research, which provides an assessment of national legislation compliance with European and international standards on the rights of children deprived of liberty. Its objective was to analyse all possibilities of institutional detention of children and explain why each type of detention/accommodation is considered to be a deprivation of liberty. The legal research includes an analysis of secondary information and interviews and serves to establish violations or important gaps in the legislative framework and thus, propose adequate changes and alternatives to the existing legislation.

Finally, each organisation carried out monitoring visits to closed institutions, including reformatories, pre-trial detention facilities, police custody facilities, migrant detention centres, social institutions and services and more. Thus, each country report includes detailed chapters on each type of monitored institution. It outlines the various aspects investigated during the monitoring visits – placement, judicial review and access to legal aid, material conditions, access to health care, access to education and other activities, disciplinary practices, contact with the outside world, staff and inspections.

CHAPTER 1

International Standards for Deprivation of Liberty of Children and for Treatment of Children Deprived of Their Liberty: A Critical Overview

Krassimir Kanev*

Deprivation of liberty of children is regulated by both the general rules which govern also deprivation of liberty of adults, and by special rules applicable only to children. The part of this review that discusses international standards on the protection of the right to liberty and security focuses mainly on international legal standards, more specifically on the law of the international treaties of fundamental importance to Europe: the International Covenant on Civil and Political Rights (ICCPR, the Covenant) of the United Nations and the Council of Europe's European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR, the Convention). The law of these treaties is presented on the basis of the jurisprudence of the treaty bodies, which are established to ensure their effective implementation at the national level. These include the Human Rights Committee (HRC),¹ the European Commission of Human Rights (ECmHR, the Commission)² and the European Court of Human Rights (ECtHR, the Court). In addition, in order to clarify the case law of the UN and Council of Europe bodies, some aspects of the jurisprudence of the UN Committee on the Rights of the Child, established with the Convention on the Rights of the Child, as well as of the bodies of the inter-American system for the protection of human rights, have also been analysed. The analysis focuses primarily on the standards of general applicability, where the case law is most developed, while also taking into account the applicable case law generated by cases involving children. To a lesser extent, the analysis in this part also relies on the documents comprising the soft law on this matter.

The second part of the analysis is dedicated to the standards on the treatment of children at places for the deprivation of liberty. Since the case law of the UN and Council of Europe bodies on this issue is not very developed, the analysis is based on soft law. This includes several documents of UN and Council of Europe bodies, which focus largely on the treatment of children who are in the process of being deprived, or have already been deprived, of their liberty. Among these, the most comprehensive in terms of standards on the treatment of children deprived of their liberty are the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules)³ from 1990 and the European Rules for Juvenile Offenders Subject to Sanctions or Measures (European Rules on Juvenile Offenders) from 2008.⁴ Other important documents include the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules)⁵ from 1985, the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines)⁶ from 1990, as well as General Comment No. 10 of the United Nations Committee on the Rights of the Child on children's rights in juvenile justice.⁷

The recent proposal for a directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings, if adopted, would

* The author wants to thank Margarita Ilieva, attorney-at-law, Director of the Legal defence programme of the Bulgarian Helsinki Committee for her numerous valuable comments and extensive editorial work.

1 The HRC is a body established by the Covenant which considers individual complaints, as well as periodic reports of the states parties, and formulates recommendations to them. It also publishes general comments on different articles of the Covenant which, together with the decisions on individual complaints and the recommendations to states party, comprise its jurisprudence. In October 2014 the HRC adopted its General Comment No. 35 on Article 9 of the Covenant.

2 The European Commission of Human Rights was abolished in 1998 when Protocol No. 11 to the ECHR entered into force.

3 United Nations Rules for the Protection of Juveniles Deprived of their Liberty, GA resolution 45/113 of 14 December 1990.

4 European Rules for juvenile offenders subject to sanctions or measures, Recommendation CM/Rec(2008)11 of the Committee of Ministers of the Council of Europe of 5 November 2008.

5 United Nations Standard Minimum Rules for the Administration of Juvenile Justice, GA resolution 40/33 of 29 November 1985.

6 United Nations Guidelines for the Prevention of Juvenile Delinquency, GA resolution 45/112 of 14 December 1990.

7 CRC, General Comment No. 10 (2007): Children's Rights in Juvenile Justice, 25 April 2007.

be of key importance in relation to both the standards on the deprivation of liberty of children and their treatment in the institutions.¹

1. The right to liberty and security: concept, status and obligation to guarantee

The way the provisions governing the right to liberty and security are formulated in the different international documents varies significantly. The analysis of these provisions and the differences between them is an important starting point for understanding the approaches of the different human rights protection systems to this fundamental human right.

Table 1 contains the formulations of the two most important treaties on the protection of civil and political rights, which are applicable to Europe: the International Covenant on Civil and Political Rights and the European Convention on the Protection of Human Rights and Fundamental Freedoms.

Table 1: Defining the right to liberty and security

European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)	International Covenant on Civil and Political Rights (1966)
<p>Article 5</p> <p>1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:</p> <ul style="list-style-type: none"> a) the lawful detention of a person after conviction by a competent court; b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law; c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority; e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants; 	<p>Article 9</p> <p>1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.</p> <p>2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.</p> <p>3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.</p> <p>4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.</p> <p>5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.</p>

¹ European Commission, Proposal for a Directive of the European Parliament and of the Council on procedural safeguards for children suspected or accused in criminal proceedings, COM(2013) 822/2.

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| <p>2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him.</p> <p>3. Everyone arrested or detained in accordance with the provisions of paragraph 1.c of this article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.</p> <p>4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.</p> <p>5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.</p> | |
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The definitions in several other special UN treaties, which contain provisions guaranteeing the right to liberty and security of certain vulnerable groups, should also be considered in the interpretation of these texts. The applicable provisions of other regional human rights treaties, and especially Article 7 of the American Convention on Human Rights and the jurisprudence of the Inter-American Court of Human Rights (IACHR), are also important.

Generally, the scholarly literature makes a distinction between two aspects of the right to liberty and security as stated in the Covenant and in the Convention: substantive and formal.¹ The substantive aspect comprises the prohibition of unlawful and arbitrary deprivation of liberty, as well as a comprehensive list of circumstances in which deprivation of liberty is allowed. The formal aspect is related to the formulation of procedural safeguards against unlawful and arbitrary deprivation of liberty.

In its judgment in the case of *McKay v. the United Kingdom* the Grand Chamber of the European Court of Human Rights held: “Article 5 of the Convention is, together with Articles 2, 3 and 4, in the first rank of the fundamental rights that protect the physical security of an individual”.² In the case of the Tehran hostages, the International Court of Justice (ICJ) went further by holding that the prohibition of unlawful and arbitrary deprivation of liberty under certain circumstances is an obligation of a more universal nature than that established with the ratification of an international treaty: “[...] wrongfully to deprive human beings of their freedom and to subject them to physical constraint in conditions of hardship is in itself manifestly incompatible with the principles of the Charter of the United Nations, as well as with the fundamental principles enunciated in the Universal Declaration of Human Rights”.³ The violation of this right is therefore a violation of a norm of general international law.⁴ The prohibition of the arbitrary deprivation of liberty is also a norm of customary international humanitar-

1 See Trechsel, S. (1993) “Liberty and Security of Person”, in: Macdonald, R. St. J., F. Matscher, H. Petzold (eds.), *The European Convention for the Protection of Human Rights*, Dordrecht/Boston/London: Martinus Nijhoff, 1993, p. 278 (hereinafter Trechsel, *Liberty and Security of Person*).

2 ECtHR, *McKay v. the United Kingdom*, No. 543/03, Grand Chamber judgment of 3 October 2006, § 30.

3 ICJ, *Case Concerning United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran)*, ICJ Reports 1980, § 91.

4 *Ibid.*, § 90.

ian law.¹ According to Article 7.1e of the Rome Statute of the International Criminal Court, imprisonment or other severe deprivation of physical liberty carried out in violation of the fundamental rules of international law is a crime against humanity when committed as part of a widespread or a systematic attack against a civilian population.

Nevertheless, it is evident from the way it has been formulated that this right is not absolute. This is one aspect in which it differs, for example, from the right to not be subjected to torture, inhuman or degrading treatment or punishment (Article 3 of the ECHR),² as well as the right to not be held in slavery or servitude (Article 4 of the ECHR). Both Article 9 of the ICCPR and Article 5 of the ECHR allow for its restriction, i.e. for the deprivation of liberty under certain circumstances. In some cases the deprivation of liberty is admissible when the aim of the state is to safeguard the interests of vulnerable persons, such as children and individuals with mental disorders (*parens patriae*).

There are several common elements in the formulation of Article 9 of the ICCPR and Article 5 of the ECHR:

- prohibition of deprivation of liberty that has not been provided for by law;
- obligation to inform detained persons about the grounds for the detention and about all the charges against them, in cases where the detention is on suspicion that an offence has been committed;
- special safeguards against unlawfulness and arbitrariness for persons detained on suspicion that they have committed an offence, including an obligation to ensure prompt appearance before a judge or another official authorised by law to exercise judicial powers, trial within a reasonable time and right to release conditioned by guarantees to appear for trial;
- right of access to court for everyone arrested or detained, regardless of the grounds, in order to verify the lawfulness of the deprivation of liberty, and an obligation for the court to rule speedily;
- right to compensation for unlawful arrest or detention.

A sixth element should be added to these five: the prohibition of arbitrary deprivation of liberty in any form. This prohibition goes together with the prohibition of unlawful deprivation of liberty under Article 9 of the Covenant, and is also explicitly included in the relevant articles of both the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities, but not in the formulation of Article 5 of the ECHR. Since their earliest case law, however, the European Commission on Human Rights and the European Court of Human Rights have distinguished between the lawfulness and arbitrariness requirements and established the latter also as a key requirement under Article 5.³ On the basis of this, other international treaties and the monitoring bodies related to them have derived concrete and narrowly formulated rights.

The main difference between Article 9 of the Covenant and Article 5 of the Convention is that the latter includes an exhaustive list of grounds on which deprivation of liberty is possible. Depending on the approach, different authors come up with 13 to 15 such grounds.⁴ Ever

1 Henckaerts, J.-M., Doswald-Beck, L. (2009) *Customary International Humanitarian Law*, Vol. I, Cambridge, Cambridge University Press and ICRC, 2009, p. 344. In essence this publication uses "arbitrary" in the broadest sense of the word, which comes from the Universal Declaration of Human Rights, and includes within it the meaning of "unlawful".

2 See Kanev, K. (2009) *Protection against Torture, Cruel, Inhuman or Degrading Treatment or Punishment* (in Bulgarian), Sofia, Sibi, pp. 19-25 (hereinafter: Kanev, Protection against Torture).

3 See section 3: Requirement of lawfulness and protection against arbitrariness, below.

4 Trechsel, *Human Rights in Criminal Proceedings*, p. 407; Reed, R., Murdoch, J. (2011) *Human Rights Law in Scotland*, Third edition, Haywards Heath, Bloomsbury Professional, p. 428.

since its earliest case law, the ECtHR has ruled that the exhaustive list of exceptions allowed under Article 5(1) should be interpreted narrowly.¹ In this way, Article 5's list of legitimate exceptions differs significantly to that of Articles 8-11 of the Convention and of the similar provisions of the Covenant, which are more loosely defined.² Other differences will be pointed out as well later in the text, when reviewing in detail specific provisions.

Guaranteeing the right to liberty and security, just like any other human right, bestows both negative and positive obligations onto states. As pointed out by Judge Martens in his dissenting opinion to the ECtHR judgment in the case of *Gül v. Switzerland* of 1996, “[n]egative obligations require member States to refrain from action, positive to take action”.³ The two types of obligations are derived both from the formulation of the provisions in the respective international treaties and from the jurisprudence of the bodies monitoring their implementation. With regard to some rights, such as the prohibition of torture, inhuman and degrading treatment and punishment, the definitions contained in both the Convention and the Covenant point towards a fully negative obligation. Nevertheless, both the ECtHR and the HRC have formulated in their case law a wide spectrum of positive obligations to prevent such practices, and the failure to comply with these would lead to a violation of the respective treaty provision.⁴ One such obligation is, for example, the obligation to investigate, which is not included in the provisions in the Convention and in the Covenant.

The right to liberty and security is of a different type. In the way it is defined, the negative and the positive obligations of states are intertwined and the positive ones actually prevail over the negative. Only the prohibition of unlawful and arbitrary deprivation of liberty and the implicit prohibition of arrest and detention beyond the exhaustive list of grounds (Article 5(1)(a)-(f) of the Convention) constitute negative obligations. The obligation to inform, to promptly bring the person detained on a criminal charge before a judge, to have a court rule speedily on the lawfulness of any deprivation of liberty, are all positive obligations. In addition to those listed in the treaties, both the ECtHR and the HRC have formulated in their case law other negative and positive obligations.⁵

Under the systems of the Convention and of the Covenant, states have the positive obligation to guarantee the right to liberty and security against violations on behalf of third parties. In a series of cases, the ECtHR and the HRC found violations of respectively Article 5 of the Convention and Article 9 of the Covenant, in cases where the states had failed to comply with these obligations. For example, in its judgment in the case of *Riera Blume and others v. Spain* of 1999, the Court found a violation of Article 5 in a case where the police had assisted the parents of several members of a religious group, denounced as a “sect”, to have them taken against their will to a hotel where they were supervised by a private organisation fighting against “sects”, in order to be “deprogrammed” by a psychologist and a psychiatrist aiming to “recover their psychological balance”.

1 See for example ECtHR, *Winterwerp v. the Netherlands*, No. 6301/73, Judgment of 24 October 1979, § 37; ECtHR, *Bouamar v. Belgium*, No. 9106/80, Judgment of 29 February 1988, § 43; ECtHR, *Ciulla v. Italy*, No. 11152/84, Judgment of 22 February 1989, § 41; ECtHR, *Quinn v. France*, No. 18580/91, Judgment of 22 March 1995, § 42.

2 See Harris, D.J., O’Boyle, M., Bates, E.P., Buckley, C.M. et al. (2014) *Law of the European Convention on Human Rights*, Third edition, Oxford, Oxford University Press, p. 289 (hereinafter Harris, O’Boyle, Bates, Buckley, *Law of the European Convention on Human Rights*).

3 ECtHR, *Gül v. Switzerland*, No. 23218/94, Judgment of 19 February 1996, Dissenting Opinion of Judge Martens, approved by Judge Russo.

4 See Mowbray, A.R. (2004) *The Development of Positive Obligations under the European Convention on Human Rights by the European Court of Human Rights*, Oxford/Portland, Hart Publishing, pp. 43-65.

5 For the positive obligations under Article 5 established in the case law of the Strasbourg bodies, see Rainey, B., Wicks, E., Ovey, C. (2014) *The European Convention on Human Rights*, Sixth edition, Oxford, Oxford University Press, pp. 219-220 (hereinafter Rainey, Wicks, Ovey, *The European Convention on Human Rights*).

Article 4 of the ICCPR and Article 15 of the ECHR allow derogation (exemption of the state from the obligation to guarantee) from some rights in time of war or other emergency. In such situations, certain aspects of the right to liberty and security may be derogated. The main terms used in the two provisions are clarified in several documents issued by international bodies and organisations. These include General Comment No. 29 of the HRC on Article 4 of the Covenant,¹ the Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, adopted by the United Nations Sub-Commission on Prevention of Discrimination and Protection of Minorities (the Siracusa Principles)² and the Paris Minimum Standards of Human Rights Norms in a State of Emergency (the Paris Standards), adopted by the 61st conference of the International Law Association in Paris in 1984.³ The UN Working Group on Arbitrary Detention has also developed an extensive position on the possibilities for derogation from international treaty provisions guaranteeing the right to liberty and security.

In General Comment No. 29, which is the most authoritative among these standards, the HRC stresses that not every public disturbance or even a catastrophe constitutes a public emergency that threatens the life of the nation, i.e. a ground for derogation. The HRC also points out that “[...] no provision of the Covenant, however validly derogated from will be entirely inapplicable to the behaviour of a State party”.⁴ This stems from the requirement that the derogation be narrowed down to that strictly required by the exigencies of the situation.⁵ The HRC gives examples of provisions which cannot be subject to derogation and which are not explicitly stipulated in Article 4 of the Covenant. These include the prohibitions against taking of hostages, abductions or unacknowledged detention. The inadmissibility of derogation from them is justified by their status as norms of general international law.⁶

With regard to the right to liberty and security, the Paris Standards define a long list of non-derogable guarantees related to preventive administrative detention. There is, however, a gap in the Standards with regard to such forms of deprivation of liberty as the detention of mentally ill persons, children, migrants, and others, for which there are even more solid arguments not to allow derogation, given the general principles established by the Standards.

Principle 53 of the Siracusa Principles defines clearly what is meant by a derogation measure being strictly required by the exigencies of the situation. It is not strictly required when “[...] ordinary measures permissible under the specific limitations clauses of the Covenant would be adequate to deal with the threat to the life of the nation”. In other words, the derogation from guaranteeing the right to liberty and security is a measure that goes beyond the limitations stipulated by Article 9 of the ICCPR and Article 5 of the ECHR.

In its General Comment No. 29 the HRC explicitly prohibits derogation from guaranteeing the right to access to court for persons arrested or detained in order to verify the lawfulness of their deprivation of liberty, regardless of its grounds, as well as from the obligation for a speedy ruling by a court under Article 9(4) of the Covenant. The Committee explicitly justifies this with the need for judicial protection of non-derogable rights:

1 HRC, General Comment No. 29: States of Emergency (Article 4), 31 August 2001, CCPR/C/21/Rev.1/Add.11.

2 U.N. Economic and Social Council, U.N. Sub-Commission on Prevention of Discrimination and Protection of Minorities, “Siracusa Principles on the Limitation and Derogation of Provisions in the International Covenant on Civil and Political Rights”, Annex, UN Doc E/CN.4/1984/4 (1984).

3 International Law Association, “The Paris Minimum Standards of Human Rights Norms in a State of Emergency”, *American Journal of International Law*, Vol. 79, 1985.

4 HRC, General Comment No. 29, § 4.

5 *Ibid.*, § 6.

6 *Ibid.*, § 13b.

“In order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention, must not be diminished by a State party’s decision to derogate from the Covenant.”¹

Under Article 18 of the ECHR, limitations of the rights and freedoms, which are allowed by the Convention, cannot be imposed with a purpose different from that for which they were prescribed. If the purpose is different, the limitation would constitute a violation of Article 5. In a number of cases related to limitations of the right to liberty and security imposed for other purposes, the ECtHR found also a violation of Article 18 in conjunction with Article 5. These cases concerned politically motivated arbitrary detentions of known opponents of the authorities.² When applying Article 5 in such situations, the Court seeks specific facts that prove the existence of “a hidden agenda”. The burden of proof in such cases falls on the applicant.

2. Basic terms

The three terms “deprivation of liberty”, “arrest” and “detention”, which are used both in Article 9 of the ICCPR and in Article 5 of the ECHR, often cause confusion and misunderstanding, especially when used in relation to children. This occurs even more often in countries in Eastern Europe, where “deprivation of liberty” has the very narrow meaning of a specific punishment stipulated by criminal law and, at least among practicing jurists, is not used to mean anything else. The case of *A. and others v. Bulgaria*, on which the ECtHR ruled in November 2011, is a very good example of the differences in understanding of “deprivation of liberty” of the Bulgarian authorities and the Strasbourg judges. The case concerns the placement of the applicants, one minor (under 14 years old) and four adolescent (14-18 years old) girls, in a correctional boarding school (CBS), as well as the placement of one of them in a crisis centre for children and of another one in a Home for temporary placement of minors and adolescents (HTPMA). According to the Bulgarian government, the applicants were not deprived of their liberty.³ The ECtHR did not agree with the Bulgarian government and held that all three cases constituted deprivation of liberty.

The deprivation of liberty after conviction is only one type of deprivation of liberty under Article 5(1) of the ECHR. It falls into one of the exhaustively listed conditions under which deprivation of liberty is allowed, that under sub-paragraph a). Apart from that one, there are five other circumstances that also constitute deprivation of liberty under the Convention. In the case of *A. and Others v. Bulgaria* the ECtHR found that the applicants’ deprivation of liberty falls under Article 5(1)(d): detention for the purposes of educational supervision. In other words, the meaning of “deprivation of liberty” under the Convention is autonomous and is not dependent on the domestic legal definition.

Apart from “deprivation of liberty”, Article 9 of the Covenant and Article 5 of the Convention also include the terms “arrest” and “detention”. It seems that the most logical and most common understanding today is that “deprivation of liberty” is the generic term, while “arrest” and “detention” are types of deprivation of liberty. Different international documents, however, have created a bit of a terminological muddle.

1 HRC, General Comment No. 29, § 16. See also HRC, *Concluding observations on Israel* (1998) (CCPR/C/79/Add.93), § 21.

2 Among the more recent judgments, see ECtHR, *Lutsenko v. Ukraine*, No. 6492/11, Judgment of 3 July 2012; ECtHR, *Tymoshenko v. Ukraine*, No. 49872/11, Judgment of 30 April 2013; ECtHR, *Ilgar Mammadov v. Azerbaijan*, No. 15172/13, Judgment of 22 May 2014.

3 CEDH, *A. et autres c. Bulgarie*, Requête no 51776/08, Arrêt du 29 novembre 2011, §§ 55, 90, 100. The author was the applicants’ representative in the proceedings before the ECtHR.

Rule 11(b) of the Havana Rules defines deprivation of liberty as follows:

“The deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority.”

Exactly the same definition of deprivation of liberty is contained also in Article 4.2 of the Optional Protocol to the United Nations Convention against Torture (the Optional Protocol). “Arrest” is absent from this definition, which apart from “detention” refers also to “imprisonment” and “placement of a person in a public or private custodial setting”, both obviously meaning something different from “detention”. The Havana Rules establish the principles for the protection of children deprived of their liberty in any form, while the Optional Protocol sets out mechanisms for visiting places for the deprivation of liberty at the global and national level, for the purposes of preventing torture, cruel, inhuman and degrading treatment or punishment.¹ Given the wider spectrum of circumstances for the deprivation of liberty of children, as well as the requirement for maximum scope of the monitoring under the Optional Protocol, the wider definition found within it is justified. Yet, it is not sufficiently comprehensive as it does not include deprivation of liberty that results from the decision of a private individual or a representative of a non-public institution (for example, the director of a private psychiatric clinic). The Covenant and the Convention refer only to “arrest” and “detention”. “Placement in a public or private custodial setting”, formulated as one of the types of deprivation of liberty alongside “detention” and “imprisonment” in the definitions above, prevents the integration of this definition within the scope of Article 9 of the ICCPR and Article 5 of the ECHR and causes serious problems around the applicability of judicial review of the deprivation of liberty.

The UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (UN Principles for the Protection against Detention) offer their own definitions of “arrest”, “detained person” and “imprisoned person”, which are presented in Table 2.

Table 2: Definitions of “arrest”, “detained person” and “imprisoned person” according to the UN Principles for the Protection against Detention

Arrest	Detained person	Imprisoned person
The act of apprehending a person for the alleged commission of an offence or by the action of an authority.	Any person deprived of personal liberty except as a result of conviction for an offence.	Any person deprived of personal liberty as a result of conviction for an offence.

These definitions outline a wide scope of “arrest” and “detention”, which is not restricted to the deprivation of liberty for having committed an offence. Regarding the commission of an offence, there is no requirement that the measure be imposed only by a public body; it would also count as “arrest” if imposed by a private individual. However, the second part is unjustifiably narrow when referring to “the action of an authority” and omitting other public officials. Nonetheless, these definitions are more consistent with the requirements for judicial protection against unlawful and arbitrary deprivation of liberty stipulated by the Covenant and the Convention than the definitions of the Havana Rules and the Optional Protocol.

2.1. Right to liberty

In international human rights law, the right to liberty has a very specific meaning that is closely related to the right to the freedom of physical movement. Until very recently, the substance of this right was defined in a more or less identical way in the jurisprudence of the

¹ See Kanev, *Protection against Torture*, pp. 198-201.

ECtHR and the HRC as freedom from an extreme form of restriction to the freedom of physical movement against the will of the person who is subject to the restrictive measures. This understanding of the right to liberty also prevails in the relevant literature, although there are certain variations with respect to its systematic place.¹

In one of its key judgments on the right to liberty and security, *Storck v. Germany* of 2005, the ECtHR distinguished between two aspects of the right to liberty: objective and subjective. According to the Court:

“[...] the notion of deprivation of liberty within the meaning of Article 5(1) does not only comprise the objective element of a person’s confinement in a particular restricted space for a not negligible length of time. A person can only be considered to have been deprived of his liberty if, as an additional subjective element, he has not validly consented to the confinement in question.”²

In its more recent case law, the Court reaffirmed this approach in a series of other judgments.³ It was also reaffirmed in the judgment of the Grand Chamber in the case of *Stanev v. Bulgaria* of 2012.⁴

Through its jurisprudence, the ECtHR has created several legal constructs that elucidate the meaning of both the objective and the subjective element of the concept of deprivation of liberty. One part of these constructs in relation to the objective element concern the differentiation between this right and the right to freedom of movement under Article 2 of Protocol No. 4 to the Convention.⁵ In its judgment in the case of *Stanev v. Bulgaria* of 2012, the Grand Chamber held that this distinction is a matter of “[...] degree or intensity, and not one of nature or substance”.⁶ The main principles of the objective element of the concept of deprivation of liberty were articulated by the Court in an earlier judgment in the case of *Guzzardi v. Italy*.⁷ This key judgment concerns the judicially ordered enforced stay of the applicant on an island during pre-trial proceedings against him on charges of abduction. Generally speaking, in the case of *Guzzardi* and in the subsequent judgments based on it, the ECtHR formulated four criteria for assessing whether applicants had been objectively deprived of their liberty:

- The (im)possibility to leave a particular confined space;
- The degree of isolation;
- The degree of supervision and control to which they are subject;
- The existence and degree of restriction of social contacts.

1 According to Stefan Trechsel, the right to liberty and security protects „the classical *liberté d’aller et de venir*” (*Trechsel, Human Rights in Criminal Proceedings*, p. 409). Jacques Velu and Rusen Ergec express a similar view in *Velu, J., R. Ergec. R. (2014) Convention européenne des droits de l’homme*, 2e édition, Bruxelles, Bruylant, p. 310 (hereinafter Velu, Ergec, *Convention européenne des droits de l’homme*). In Gilles Lebreton’s textbook, however, it is not included in the scope of the right d’aller et venir, but is treated instead under the “right to security” (Lebreton, G. (2005) *Libertés publiques et droits de l’Homme*, 7e édition, Paris, Armand Colin, pp. 369-392).

2 ECtHR, *Storck v. Germany*, No. 61603/00, Judgment of 16 June 2005, § 74.

3 See more specifically ECtHR, *Shtukaturov v. Russia*, No. 44009/05, Judgment of 27 March 2008, § 106; ECtHR, *D.D. v. Lithuania*, No. 13469/06, Judgment of 14 February 2012, § 146; ECtHR, *Kędzior v. Poland*, No. 45026/07, Judgment of 16 October 2012, § 55; ECtHR, *Mihailovs v. Latvia*, No. 35939/10, Judgment of 22 January 2013, § 128.

4 ECtHR, *Stanev v. Bulgaria*, No. 36760/06, Grand Chamber judgment of 17 January 2012, § 117.

5 This provision guarantees the right to freedom of movement to everyone residing legally within the territory of a state, including the right to leave any country, including his own. This right may be restricted in the interest of national security or public safety, to maintain public order, to prevent crimes, to protect public health and morals or to protect the rights and freedoms of others. It is also subject to restrictions in certain areas of the country, insofar as this is justified by the public interest in a democratic society.

6 ECtHR, *Stanev v. Bulgaria*, § 115. See also ECtHR, *Rantsev v. Cyprus and Russia*, No. 25965/04, Judgment of 7 January 2010, § 314.

7 ECtHR, *Guzzardi v. Italy*, No. 7367/76, Judgment of 6 November 1980.

Many of the cases in which the Court gave judgments include some or all of these factors and the Court does not always explain which of the factors were considered decisive in the specific case.

Placing the arrested person under the constant control of the authorities, regardless of whether they are detained at an institution or if the detention was for a brief duration and with the purpose of arranging formalities, is decisive when ruling whether a deprivation of liberty has occurred.¹ In several cases concerning formal detentions and arrests for the purposes of safeguarding public order or combating crime, the ECtHR disregarded almost completely the duration of the measure and held that a deprivation of liberty had occurred despite the short duration of the restrictions on the applicants' freedom of physical movement.² In its judgment in the case of *Shimovolos v. Russia* of 2011, the Court found that the applicant, a well-known human rights activist and opponent of the Russian regime, had been deprived of his liberty when he was detained for 45 minutes. In its judgment in the case of *Gillan and Quinton v. United Kingdom* of 2010, the ECtHR found that when police officers stopped two persons who were going to an anti-military rally in London for a 20-30 minutes search them, this amounted to deprivation of liberty and, therefore, fell within the scope of Article 5. The Court motivated this by the fact that they were statutorily obligated to stay in place and be subjected to a search, and that, had they refused to do so, they would have been detained at a police station where charges could have been pressed against them.³ The duration of the detention of one of the applicants in the case of *Brega and Others v. Moldova* (judgment of 2012) was even shorter. In this case, plainclothes police officers stopped the applicant at a trolleybus stop and forced him to enter the coming trolleybus in order to prevent him from attending a protest rally. Inside the trolleybus, he was closely surrounded by the officers and, despite his protests, was kept like this for about eight minutes until the trolleybus passed several stops. After that he was released but his detention prevented him from attending the rally. The ECtHR held that there had been a deprivation of liberty and that "[i]n view of the context and of the special circumstances of the case the Court considers that the second applicant's deprivation of liberty was arbitrary and unlawful".⁴

The assessment of whether a deprivation of liberty has objectively occurred on the basis of the above-mentioned four criteria has guided the jurisprudence of the Strasbourg organs for more than three decades since the judgment in the *Guzzardi* case. In March 2012, however, with the Grand Chamber judgment in the case of *Austin and Others v. the United Kingdom*, this test was seriously undermined. With this judgment, the Court reversed its entire Article 5 jurisprudence. The case concerns a raid carried out by the British police against a rally in London on 1 May 2001. On the basis of preliminary intelligence that there would be some among the participants who might resort to violence and property damage, the police implemented special measures. Some 6,000 police officers with special equipment closely encircled some 1,500 rally participants gathered at Oxford Circus in central London. This highly controversial tactic, known as "kettling", is traditionally used by the British police in such situations. The police made several attempts to let small groups of protesters exit through the cordon but

1 See ECtHR, *Foka v. Turkey*, §§ 77-79; ECtHR, *Rantsev v. Cyprus and Russia*, § 317; ECtHR, *Iskandarov v. Russia*, § 140.

2 The case law of the Strasbourg organs in this respect has evolved. In their earlier decisions, they were more inclined to take the duration factor into consideration. In its decision on admissibility in the case of *X. v. the Federal Republic of Germany* of 1981, the Commission held that a child who was detained for two hours for questioning at a police department without the door being locked had not been deprived of liberty (ECmHR, *X. v. the Federal Republic of Germany*, No. 8819/79, Decision on admissibility of 19 March 1981). See also Trechsel, *Human Rights in Criminal Proceedings*, p. 416-417.

3 ECtHR, *Gillan and Quinton v. the United Kingdom*, § 57. In this case the Court reviewed the whole set of facts related to the stopping and the searching of the applicants under Article 8 instead of under Article 5., and found a violation of Article 8.

4 ECtHR, *Brega and Others v. Moldova*, No. 61485/08, Judgment of 24 January 2012, § 43.

then backtracked and tightened the cordon. Some participants in the demonstration, both inside and outside the cordon, threw paving stones and other items at the police. However, some people inside the cordon were there by accident, i.e. they were not part of the demonstration. Among them were three of the four applicants in the case. When setting out the general principles of its case law, the Court for the first time created the possibility that the deprivation of liberty be justified by the “common good”.¹ Thus, the Court in fact created a new ground which allows the deprivation of liberty beyond those found under Article 5(1).² This new ground is formulated so generally that it practically renders meaningless the judgment of whether the deprivation of liberty falls under the exhaustively listed grounds in Article 5(1), thereby making their exhaustiveness useless.

According to the ECtHR, in order for deprivation of liberty to have taken place, it is necessary not only that the measure imposed on the person results in a significant degree of restriction of their freedom of movement, but it is also required that the person has not given valid consent for the restriction. The two elements, the objective and the subjective, should generally be present at the same time, or the measure should be such that it would objectively lead to a presumption of deprivation of liberty without the need to examine the subjective element.

In most cases, the establishment of the subjective element is not much of a challenge. This is true, for example, in cases when the person is detained after a pursuit for having committed a crime; when the person is detained at their home or in the street and is involuntarily brought before an authority, thus breaching their normal rhythm of life; when a person suffering from a mental illness is detained at a moment when their actions pose a threat or are likely to pose a threat to their own or other people’s safety and/or corporal integrity; when an illegal alien is detained for the purpose of deportation following an attempt to hide. In all of these, and in scores of similar cases in which the facts undoubtedly indicate an obvious violation of the will of the person by intervention of a clearly restrictive nature, the issue of the existence of valid consent is not even brought up.

There are some cases, however, when establishing the subjective element is contentious. These are cases involving persons incapacitated due to a mental disorder; persons who, although not incapacitated, are in a state of temporary insanity or under the influence of an impulse they cannot overcome, for example due to an acute mental disorder or the influence of substances; homeless persons whose need for shelter has incited them to want to be detained but who later have changed their mind; as well as children.

The cases of alleged violations of Article 5 involving children, as well as those involving children and adults with mental disorders, pose the greatest challenge to the subjective element in the ECtHR’s case law. The judgment in the case of *Nielsen v. Denmark* of 1988 is still leading with regard to the placement of children in institutions. This old, and in many aspects anachronistic judgment sets a very conservative standard which, however, is still being replicated in newer cases. The case concerns the placement of a 12-year-old boy in a psychiatric clinic on the request of his mother, who was at the time exercising parental rights. The placement is preceded by a family drama which began with the separation of the parents several years earlier. Since they were not married, the parental rights were automatically awarded to the mother, in line with Danish legislation, but the father had the right to see his son. During the visits, the father and the son grew very close and the child ran away from home on several occasions and went to live with his father. In this case, the Court held that the ap-

1 ECtHR, *Austin and Others v. the United Kingdom*, Nos. 39692/09, 40713/09 and 41008/09, Grand Chamber judgment of 12 March 2012, § 59.

2 Fenwick, H. “An appeasement approach in the European Court of Human Rights”, *UK Constitutional Law Association blog*, 5 April 2012, at: <http://ukconstitutionallaw.org/2012/04/05/helen-fenwick-an-appeasement-approach-in-the-european-court-of-human-rights/>, accessed on 13 June 2014.

plicant's hospitalisation did not constitute deprivation of liberty but a responsible exercise of parental rights by his mother, which was in the interest of the child. Article 5 was therefore held inapplicable.¹

This approach of the ECtHR, dating back to times when the concept of child rights was still at a nascent stage, creates several problems. The biggest one is the evident disregard for the will of the child, who at the material time had been sufficiently mature to realise what he was being subjected to and to have a valid opinion on whether he wished to be subjected to the restrictive measures. The kind of exercise of parental rights that allows the placement of a mature child against his will in a psychiatric clinic for five and a half months, given that the child's mental disorder definitely did not require hospitalisation, is incompatible with the pedagogy of a free society. It is, in the words of two judges with dissenting opinions, an abuse of both parental authority and psychiatry.²

The deficiencies of the ECtHR's approach in the *Nielsen* case are somewhat offset in its later jurisprudence on cases of deprivation of liberty of people with mental disorders, including incapacitated persons. In several cases the Court held that the fact that someone is incapacitated does not mean that they do not understand their situation when a restrictive measure is imposed, or that their consent should not be sought.³ The Court requires the latter especially when the national legislation itself envisages such a requirement.

2.2. Right to security

Apart from the right to liberty, Article 5 of the ECHR and Article 9 of the ICCPR also guarantee the right to security. The applicable provisions of almost all other global and regional treaties are formulated in a similar manner.

In its earliest case law, in the case of *35 East African Asians v. the United Kingdom*, the European Commission of Human Rights relates closely the right to security to the right to liberty, interpreted as freedom from measures restricting physical movement, and highlights its approach, which has also been adopted by the Court:

"In the Commission's view, the protection of "security" is in this context concerned with arbitrary interference, by a public authority, with an individual's personal "liberty". Or, in other words, any decision taken within the sphere of Article 5 must, in order to safeguard the individual's right to "security of person", conform to the procedural as well as the substantive requirements laid down by an already existing law."⁴

In a series of other cases, the Commission rejected as inadmissible applications concerning violations of the right to security under Article 5 of the Convention beyond the context of deprivation of liberty, such as, for example, cases of alleged inaction on behalf of the state in view of threats against the applicant made by private individuals,⁵ of the police withholding pictures of the applicant made during her participation in a protest against the apartheid in South Africa,⁶ or of the impossibility for a serviceman to file a lawsuit for tort.⁷

1 ECtHR, *Nielsen v. Denmark*, No. 10929/84, Judgment of 28 November 1988, § 73.

2 *Ibid.*, Joint dissenting opinion of judges Pettiti and De Meyer.

3 See ECtHR, *Shtukaturov v. Russia*, No. 44009/05, Judgment of 27 March 2008, §§ 108-109; ECtHR, *Stanev v. Bulgaria*, § 130; ECtHR, *D.D. v. Lithuania*, § 150.

4 ECmHR, *35 East African Asians v. the United Kingdom*, Nos. 4626/70 and others, Decision of 6 March 1978, § 6.

5 ECmHR, *X. v. Ireland*, No. 6040/73, Decision of 20 July 1973.

6 ECmHR, *X. v. the United Kingdom*, No. 5877/72, Decision of 12 October 1973.

7 ECmHR, *Dyer v. the United Kingdom*, No. 10475/83, Decision of 9 October 1984. See also ECmHR, *A., B., C., D., E., F., G., H. and I. v. the Federal Republic of Germany*, Nos. 5573 and 5670/72, Decision of 16 July 1976.

In its more recent case law, the Strasbourg bodies continued to apply this approach, interpreting the right to security exclusively as a function of personal liberty and rejecting all other possible meanings of “security”. Thus, in its judgment in the case of *Menteş and Others v. Turkey* of 1996, the Commission rejected as inadmissible the application alleging a violation of the right to security of a group of victims of security forces’ operations who had been forced to leave their homes. According to the Commission, their personal insecurity arising from the loss of their homes did not fall within the scope of the concept of security of the person.¹ The Court also refuses to find a violation of the right to security under Article 5(1) in cases in which the applicants are threatened but not deprived of their liberty, explicitly justifying this with the absence of deprivation of liberty.² There are no cases where the Commission and the Court found a violation of the right to security independently from the right to liberty. In their decisions on the right to security, they discuss only the procedural safeguards of the right to liberty as guaranteed by Article 5 and the principles which the Strasbourg organs, and most of all the ECtHR, have established in their case law as arising from this provision.

Unlike the Strasbourg organs, the HRC treats the right to security as an independent right, independent of the right to liberty. The Committee’s leading decision in this respect is *Delgado Páez v. Colombia* of 1990. The applicant is a teacher of religion whose views differ from those of the local apostolic prefect. On request of the prefect, he was reassigned to teach manual labour and handicrafts. Later, after the teacher had submitted a complaint, he received anonymous phone calls at his home and at the residence of the teachers’ union threatening him with death if he would not withdraw his complaint. The teacher was later assaulted in the street, which forced him to leave the country and seek asylum in France. He had not been arrested or detained in Colombia. The HRC found a violation of his right to security under Article 9 of the Covenant due to the refusal of the authorities to take any measures to protect him against the threats.³

In its case law after *Delgado Paes*, the Committee has reaffirmed its approach to finding separate violations of the right to security regardless of whether a deprivation of liberty had occurred, under various different circumstances: threats and harassment of an opponent of a single-party political regime;⁴ shooting the applicant in the back by a police officer during attempted arrest;⁵ threats against a businessman aimed at preventing him from entering the country after his partner and her bodyguard had been killed earlier and his office was ransacked by individuals close to the authorities;⁶ police officers shooting and wounding a prominent politician during a public event;⁷ threats by police officers against the applicant to

1 ECmHR, *Menteş and Others v. Turkey*, No. 25186/94, Report of the Commission of 7 March 1996, § 196. The Court’s Grand Chamber subsequently completely adopted this approach. See ECtHR, *Menteş and Others v. Turkey*, No. 25186/94, Grand Chamber judgment of 28 November 1997, § 79.

2 Cf. ECtHR, *Altun v. Turkey*, No. 24561/94, Judgment of 1 June 2004, §§ 57-58; ECtHR, *Çaçan v. Turkey*, No. 33646/96, Judgment of 26 October 2004, §§ 69-70. In its judgment in the case of *Cyprus v. Turkey* of 2001, the Grand Chamber also adopted this approach but pointed out that the specific circumstances of the case, which defined the personal insecurity of the applicants - elderly people subjected to aggression and crime with impunity, fall into the scope of Article 8. As in other cases, the Court did not consider these facts a violation of Article 5 (ECtHR, *Cyprus v. Turkey*, No. 25781/94, Grand Chamber judgment of 10 May 2001, §§ 226-227). In its judgment in the case of *Gäfgen v. Germany* of 2010, the Grand Chamber held that the threat of violence falls into the scope of Article 3 and constitutes inhuman treatment (ECtHR, *Gäfgen v. Germany*, No. 22978/05, Grand Chamber judgment of 1 June 2010, § 108). In this case, police investigators threatened a detainee suspected of committing murder. There is no reason to believe that the Court’s approach in this case would not be applicable also to threats made by private individuals.

3 HRC, *Delgado Páez v. Colombia*, No. 195/1985, Views of 10 July 1990, § 5.5. For similar death threats and inaction on behalf of the authorities, see also HRC, *Jiménez Vaca v. Colombia*, Views of 25 March 2002, § 7.1.

4 HRC, *Bwalya v. Zambia*, No. 314/1988, Views of 14 July 1993, § 6.4. For similar facts, see also HRC, *Bahamonde v. Equatorial Guinea*, Views of 20 October 1993, § 9.2.

5 HRC, *Leehong v. Jamaica*, No. 613/1995, Views of 13 July 1999, § 9.3.

6 HRC, *Dias v. Angola*, No. 711/1996, Views of 20 March 2000, § 8.3.

7 HRC, *Chongwe v. Zambia*, No. 821/1998, Views of 25 October 2000, § 5.3. Apart from finding a violation of art. 9(1), in

force him to withdraw his complaint of being tortured by the police;¹ repeated death threats by police officers against a prominent journalist and human rights activist for “unpatriotic” articles published by him;² refusal of the state to protect well-known human rights activists from threats by law enforcement bodies, followed by their abduction and murder;³ threats by police officers against the applicant in order to force him into out-of-court settlement when he filed a complaint against them for torture and unlawful detention.⁴ In all of these cases except one, the Committee found a violation only of Article 9(1) of the Covenant, but not of Article 6 or Article 7. In the case law of the Strasbourg organs, these facts would have been classified as a violation of Article 2 or Article 3 of the Convention and, in the absence of deprivation of liberty, the issue of a violation of Article 5(1) would not even be brought up.

3. Requirement for lawfulness and protection against arbitrariness

Article 9 of the Covenant, Article 37 of the Convention on the Rights of the Child and other treaties, as well as documents formulating “soft” standards, explicitly prohibit both unlawful and arbitrary deprivation of liberty. The distinction that these sources of international law make between unlawful and arbitrary deprivation of liberty has always been, and still is, unclear and sometimes even illogical. The lack of clarity on whether a separate prohibition of arbitrariness needs to be introduced in parallel with the requirement for lawfulness has existed as early as during the preparatory work on the ICCPR. Article 9 of the Universal Declaration of Human Rights prohibits arbitrary arrest and detention but does not mention lawfulness. Some of the first drafts of Article 9 of the Covenant, such as for example that of the United States, presented at the second session of the Commission on Human Rights in 1947, also do not mention lawfulness⁵ but only foresee protection against arbitrariness. Several attempts were made in the course of the discussions to differentiate the meaning of “arbitrary” from that of “unlawful” but these were unsuccessful.⁶ The Commission struggled with this issue for some time and eventually decided to keep both “unlawful” and “arbitrary”. The proposal of the United Kingdom in 1952 to have the second sentence of Article 9(1) deleted was rejected with 44 votes against, 11 votes in favour and 14 abstentions.⁷ Consequently, the explicit prohibition of both the unlawful and the arbitrary deprivation of liberty were preserved in all applicable UN instruments, as well as in all regional human rights protection systems except the European one. Article 5 of the ECHR does not contain an explicit prohibition of arbitrary detention, but such a prohibition was introduced in the earliest case law of the Strasbourg organs.

Article 37(b) of the Convention on the Rights of the Child repeats the standards of the ICCPR and requires that in cases of children, deprivation of liberty “shall be used only as a measure of last resort and for the shortest appropriate period of time”. It is difficult to say, however, whether this requirement provides children with enhanced protection against arbitrary dep-

this case the Committee found a violation of the right to life under Article 6(1) of the Covenant.

1 HRC, *Lalith Rajapakse v. Sri Lanka*, No. 1250/2005, Views of 14 July 2006, § 9.7.

2 HRC, *Njaru v. Cameroon*, No. 1353/2005, Views of 19 March 2007, § 6.3.

3 HRC, *Marcellana and Gumanoy v. Philippines*, No. 1560/2007, Views of 30 October 2008, § 7.7. In this case the Committee found a separate violation of Article 6 in conjunction with Article 2 of the Covenant because the abduction and murder of the two human rights activists was not investigated.

4 HRC, *Gunaratna v. Sri Lanka*, No. 1432/2005, Views of 17 March 2009, § 8.4.

5 Bossuit, M. (1987) *Guide to the “travaux préparatoires” of the International Covenant on Civil and Political Rights*, Dordrecht, etc.: Martinus Nijhoff, p. 188 (hereinafter Bossuit, Guide to the “travaux préparatoires” of the ICCPR).

6 For example, Belgium’s proposal (E/CN.4/235) that aimed to provide an exhaustive definition of “arbitrary”, did not clarify how it is different from “unlawful”. Bossuit, Guide to the “travaux préparatoires” of the ICCPR.

7 *Ibid.*, p. 200.

privation of liberty because the requirement of necessity and proportionality is also valid with regard to adults.¹

3.1. Prohibition of unlawful deprivation of liberty

Article 5 of the ECHR seems to give particular significance to the prohibition of the unlawful deprivation of liberty. In the wording of the provision, it is replicated as a requirement for lawfulness in the beginning of paragraph 1 (“a procedure prescribed by law”), as well as in relation to each of the legitimate grounds for deprivation of liberty in items a) through f). This insistence on the need for lawfulness of the deprivation of liberty is probably due to the higher status of the right to liberty and security and to the fact that, according to the Grand Chamber’s ruling in the *McKay* case, it is “in the first rank of the fundamental rights that protect the physical security of an individual”.² The jurisprudence of the Commission and the Court, however, does not provide reason to believe that the requirement for lawfulness of the deprivation of liberty has a narrower meaning than the requirement for lawfulness of the restriction of other rights and freedoms guaranteed by the Convention. As early as its 1983 report on the case of *Zamir v. the United Kingdom*, the Commission held that the same principles are applied to the evaluation of the requirement for lawfulness under Article 5, as to the evaluation of the lawfulness of the restrictions of the right to freedom of expression under Article 10 of the ECHR.³

In their case law, the Commission and the Court assess the lawfulness of a deprivation of liberty on the basis of two criteria: the consistency of the measure with the applicable national law and the quality of the latter. The national legislation may include acts of international law when these are an integral part of domestic law and when the respective measure is based on them,⁴ as well as acts of customary law.⁵ The Court has on many occasions stressed that the national authorities, and most of all the courts, are the ones that should assess the extent to which the imposed measure is consistent with the applicable law, but since a violation of the latter results in a violation of the Convention, the Court itself has to also assess whether the detention is consistent with the existing provisions of the national law.⁶ Such an assessment, more specifically an assessment of the consistency of the grounds for the detention of the applicant (provision of aid to developing countries) with the provisions of the Criminal Code, was carried out by the Court in its first ever case against Bulgaria, *Lukanov v. Bulgaria* of 1997, when it ruled that the detention was unlawful.⁷

The quality of the legislation is the second criteria with regard to lawfulness. From their earliest case law, the Strasbourg organs stress that:

„[...] the conditions for deprivation of liberty under domestic and/ or international law be clearly defined and that the law itself be foreseeable in its application, so that it meets the

1 See section 3.2 below.

2 See footnote 37 above.

3 ECmHR, *Zamir v. the United Kingdom*, No. 9174/80, Report of the Commission of 11 October 1983, §§ 90-91. See also ECtHR, *Mooren v. Germany*, No. 11364/03, Grand Chamber judgment of 9 July 2009, § 76.

4 Among the many examples, see ECtHR, *Medvedyev and Others v. France*, No. 3394/03, Grand Chamber judgment of 29 March 2010, § 79, as well as a more recent extradition case: ECtHR, *Čalovskis v. Latvia*, No. 22205/13, Judgment of 24 July 2014.

5 See ECtHR, *Drozdz and Janousek v. France and Spain*, No. 12747/87, Judgment of 26 June 1992, § 107. This case is related to a custom dating back to the Middle Ages, that individuals convicted in Andorra serve their sentences in France.

6 ECtHR, *Winterwerp v. the Netherlands*, § 46; ECtHR, *Douiyeb v. the Netherlands*, No. 31464/96, Grand Chamber judgment of 4 August 1999, § 45; ECtHR, *Baranowski v. Poland*, No. 28358/95, Judgment of 28 March 2000, § 50; ECtHR, *Gusinskiy v. Russia*, No. 70276/01, Judgment of 19 May 2004, § 66; ECtHR, *Öcalan v. Turkey*, No. 46221/99, Grand Chamber judgment of 12 May 2005, § 84; ECtHR, *Čalovskis v. Latvia*, § 156.

7 ECtHR, *Lukanov v. Bulgaria*, No. 21915/93, Judgment of 20 March 1997, § 43.

standard of “lawfulness” set by the Convention, a standard which requires that all law be sufficiently precise to avoid all risk of arbitrariness and to allow the citizen – if need be, with appropriate advice – to foresee, to a degree that is reasonable in the circumstances of the case, the consequences which a given action may entail.”¹

Based on this, the ECtHR has found violations of Article 5(1) in cases where even if the decisions of the competent authorities at national level are based on the provisions of domestic law, the latter are insufficiently clear and do not provide the applicants the opportunity to foresee the consequences of certain behaviour. Such is, for example, the case of *Baranowski v. Poland* of 2000. The applicant was initially detained on a charge of fraud. His detention was extended several times on the same grounds as the initial ones. The prosecution presented the indictment in court six and a half months after the initial detention. The validity of the last judicial decision in the pre-trial proceedings, with which the detention of the applicant was extended, expired soon after that. He appealed his continuous detention on several occasions, on different grounds, and was eventually released, but not until four months had passed after the validity of the last judicial decision on the detention had expired. According to the Polish government, during that period he was detained only on the grounds that an indictment against him was presented to court. At the legislative level, however, there were no clear provisions indicating that this by itself can serve as a justification of detention without an explicit court decision. According to the Court, the fact that national legislation lacked clear provisions indicating whether and under what conditions the detention imposed for a limited time during the pre-trial phase may be validly extended during the trial phase means that the law does not meet the requirement for “predictability” contained in Article 5(1). Also, the gap in the legislation that allows indefinite detention during the trial phase without clear legal grounds and without a judicial decision contradicts the principle of legal certainty.² In this case, the ECtHR also held that detention which extends over a period of several months and which has not been ordered by a court cannot be considered lawful, and that detention which is extended beyond the initial period foreseen in Article 5(3) requires judicial scrutiny as a safeguard against arbitrariness.³

In several other cases the ECtHR also held that provisions in the national legislation which are interpreted inconsistently and controversially by the law enforcement bodies do not meet the requirement for the quality of the legislation.⁴ In another case, however, a similar situation was classified as inconsistent with the requirement for the prohibition of arbitrary detention.⁵

The ECtHR’s approach to the requirement for the lawfulness of detention is not always sufficiently strict and consistent with the status given to this human right in the Court’s jurisprudence. In the case of *Medvedyev and Others v. France* of 2010, the Grand Chamber found with a fragile majority of ten to seven votes that the detention of the applicants, who were crew members of a Cambodian vessel sailing in open sea, onboard a French ship for a period of 13

1 ECtHR, *Medvedyev and Others v. France*, § 80. For the replication of this standard in more recent case law, see: ECtHR, *Tymoshenko v. Ukraine*, § 264; ECtHR, *Radu v. Germany*, No. 20085/07, Judgment of 16 May 2013, § 94; ECtHR, *Del Río Prada v. Spain*, No. 42750/09, Grand Chamber judgment of 21 October 2013, § 125; ECtHR, *L.M. v. Slovenia*, No. 32863/05, Judgment of 12 June 2014; ECtHR, *Dragin v. Croatia*, No. 75068/12, Judgment of 24 July 2014; ECtHR, *Čalovskis v. Latvia*, § 182. For more details on the three criteria on “quality of law” (accessibility, predictability and adequate safeguards against abuse), see: Van Dijk, P., van Hoof, F., van Rijn, A., Zwaak, L. (eds.) (2006) *Theory and Practice of the European Convention on Human Rights*, Fourth edition, Antwerpen/Oxford, Intersentia, pp. 336-338 (hereinafter Van Dijk, van Hoof, van Rijn, Zwaak, *Theory and Practice of the European Convention on Human Rights*)

2 ECtHR, *Baranowski v. Poland*, §§ 54-55.

3 *Ibid.*, § 57.

4 See, for example, ECtHR, *Jėčius v. Lithuania*, No. 34578/97, Judgment of 31 July 2000, § 59.

5 ECtHR, *Nasrulloev v. Russia*, No. 656/06, Judgment of 11 October 2007, § 77.

days on suspicion of drug trafficking, on the grounds of only a diplomatic note stating that “[...] the royal government of Cambodia authorises the French authorities to intercept, inspect and take legal action against the ship Winner, flying the Cambodian flag [...]” had been lawful. In a poorly reasoned dissenting opinion, seven of the judges tried to argue that this generally and unclearly formulated diplomatic note, of whose existence the applicants were unaware and could not have been aware, could serve as an adequate legal basis, given the necessity “to be realistic in such exceptional circumstances”.¹

The judgment in the case of *A. and Others v. Bulgaria* of 2011 is one of the examples of the insufficiently strict approach of the ECtHR to the requirement for the lawfulness of detention. It is a clear indication that for the time being the Court is not inclined to apply stricter standards in this respect with regard to the deprivation of liberty of children. In this case, some of the applicants complained that they had been placed in a correctional boarding school for “anti-social behaviour”, including running away from home and truancy. The Juvenile Delinquency Act (JDA) defines “anti-social behaviour” as “an act which poses danger to society and is illicit or contradicts morality and decency”. This unclear definition was criticised in the June 2008 recommendations of the United Nations Committee on the Rights of the Child to Bulgaria for contradicting international standards. The Committee, therefore, recommended that the notion of “anti-social behaviour” be withdrawn.² The ECtHR, on the contrary, saw no problem with the lawfulness of the applicants’ deprivation of liberty and found their application in this respect inadmissible. According to the Court, the term “anti-social behaviour” was indeed unclearly defined in the legislation but had been sufficiently clarified in the jurisprudence. In reaching this conclusion, the Court refers to a monograph by a Bulgarian scholar published in 2008, which summarises previously unpublished data of the National Statistical Institute (NSI), which were not provided to the parties to the case for comments. The data indicates that between 1991 and 2006, the local commissions for combatting juvenile delinquency and the courts had accepted that running away from home and truancy constitute “anti-social behaviour”.³ However, this statistical data was generated in the NSI’s archives on the basis of decisions which were, with minor exceptions, unpublished and inaccessible not only to the applicants but also to their representatives at national level.

The HRC uses in its jurisprudence the same two criteria to assess the lawfulness of detention and also does not give it greater significance than that of the requirement for lawfulness in the restriction of other rights and freedoms guaranteed by the Covenant.⁴ Reviewing individual applications, it has on multiple occasions found a violation of Article 9(1), having judged that at national level the arrest or the detention was inconsistent with the applicable legal provisions. In a series of recommendations based on the periodical reports of various states parties, the HRC found that their national legislation is unclear and does not define with the necessary degree of precision the substantive grounds for arrest or detention, which contradicts Article 9. Such is the case with the unclear, undefined concept of “national security” as grounds for detention without specific charges in Sudan;⁵ the unclearly formulated law in the Philippines which allows the detention of sex workers and street children;⁶ the wide and

1 ECtHR, *Medvedyev and Others v. France*, Joint partly dissenting opinion of judges Costa, Casadevall, Bîrsan, Garlicki, Hajiyeu, Šikuta and Nicolaou, § 10.

2 Committee on the Rights of the Child, *Consideration of Reports Submitted by State Parties under Article 44 of the Convention, Concluding Observations: Bulgaria*, CRC/C/BGR/CO/2, 23 June 2008, §§ 68-69.

3 CEDH, *A. et autres c. Bulgarie*, § 36. In fact, the case law of the local commissions is controversial; some of them hold that truancy should not be punished under the JDA.

4 Nowak, M. (2005) *U.N. Covenant on Civil and Political Rights: CCPR Commentary*, 2nd revised edition, Kehl am Rhein, N.P. Engel, p. 224 (hereinafter: Nowak, *CCPR Commentary*).

5 HRC, *Concluding observations on Sudan*, CCPR/C/79/Add.85, 19 November 1997, § 13.

6 HRC, *Concluding observations on the Philippines*, CCPR/CO/79/PHL, 1 December 2003, § 14.

unclear definition of the concept of terrorism in the terrorism prevention act in Mauritius;¹ the unclear definition in the Honduras penal code of the concept of “illegal association”, used as grounds for the detention of different categories of individuals;² the unclear definition of “extremist activity” in Russian legislation.³

3.2. Prohibition of arbitrary deprivation of liberty

During the discussion of the draft Article 9 of the Covenant by the Third Committee of the United Nations General Assembly, some representatives equated the unlawful and the arbitrary deprivation of liberty, rendering meaningless the attempts to draw distinction between them.⁴ A later study by an expert panel commissioned by the Commission on Human Rights adopted a definition of “arbitrary”, according to which an arrest or detention can be considered arbitrary a) for reasons or according to procedures other than those prescribed by law, or b) pursuant to a law, the basic purpose of which is incompatible with respect for the individual’s right to liberty and security.⁵ Although part b) of this definition provides a key to understanding the meaning of “arbitrary”, unfortunately part a), combined with the conjunction “or”, duplicates the meaning of “unlawful”.

In some cases the HRC also does not make a clear distinction between unlawful and arbitrary deprivation of liberty. Thus, in its decision in the case of *Bousroual v. Algeria* of 2001 the Committee found that the detention of the author’s husband, a member of a political religious organisation opposing the ruling regime, was arbitrary because it was not based on any provision in national law and because it was not approved by a court.⁶ Similarly, in the case of *Yklymova v. Turkmenistan* of 2009, the Committee found a deprivation of liberty arbitrary because the measure of “home arrest” was imposed without any legal grounds.⁷ In fact, both cases could have been classified as unlawful deprivations of liberty.

Over the years, however, HRC’s approach became clearer. In a series of decisions, the Committee held that the concept of unlawful deprivation of liberty is different from the concept of arbitrary deprivation of liberty. As early as its decision on the case of *Van Alpen v. the Netherlands* of 1990, related to detention in the context of pre-trial proceedings, it held that given the presumption of lawfulness, the measure was characterised by “inappropriateness, injustice and lack of predictability. This means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances”.⁸ In its more recent case law, the Committee adds also requirements related to fair trial, necessity and proportionality.⁹ Typical examples of arbitrary detention include several HRC decisions against Australia related to the excessive duration of the detention of immigrants who had entered the country illegally. According to the Committee, the detention in such cases should not continue “[...] beyond the period for which the State can provide appropriate justification”. The latter may be related to the need for investigation, as well as to the likelihood of absconding and lack of cooperation.

1 HRC, *Concluding observations on Mauritius*, CCPR/CO/83/MUS, 27 April 2005, § 12.

2 HRC, *Concluding observations on Honduras*, CCPR/C/HND/CO/1, 13 December 2006, § 13.

3 HRC, *Concluding observations on the Russian Federation*, CCPR/C/RUS/CO/6, 24 November 2009, § 25.

4 See, for example, United Nations (1964) *Study of the right of everyone to be free from arbitrary arrest, detention and exile*, United Nations, New York, § 25.

5 *Ibid.*, § 27.

6 HRC, *Bousroual v. Algeria*, No. 992/2001, Views of 30 March 2001, § 9.5.

7 HRC, *Yklymova v. Turkmenistan*, No. 1460/2006, Views of 20 July 2009, § 7.2.

8 HRC, *Van Alpen v. the Netherlands*, No. 305/1988, Views of 23 July 1990, § 5.8.

9 HRC, *A. v. Australia*, No. 560/1993, Views of 3 April 1997, § 9.2; HRC, *Spakmo v. Norway*, No. 631/1995, Views of 5 November 1999, § 6.3; HRC, *Gorji-Dinka v. Cameroon*, No. 1134/2002, Views of 17 March 2005, § 5.1; HRC, *Fijalkowska v. Poland*, No. 1061/2002, Views of 26 July 2005, § 8.3; HRC, *Kulov v. Kyrgyzstan*, No. 1369/2005, Views of 26 July 2010, § 8.3; HRC, *F.K.A.G. et al. v. Australia*, No. 2094/2011, Views of 26 July 2013, § 9.3; HRC, *M.M.M. et al. v. Australia*, No. 2136/2012, Views of 25 July 2013, § 10.3.

Without such factors, detention may be considered arbitrary, even if it was formally lawful.¹ In its decision in the case of *Jalloh v. the Netherlands* of 2002, the HRC gave indications that in determining that detention was arbitrary, it would consider the specific vulnerability of the juvenile applicant, who was detained at a centre for illegal immigrants after having escaped from such a centre. Following unsuccessful attempts at his deportation, he was released. Although in this case the Committee did not hold that the detention was arbitrary, it stressed several times that states should be more restrained when detaining a child and expressed appreciation of the efforts made by the Netherlands in this respect with regard to the case.²

In its early case law, the Inter-American Court of Human Rights also did not make a distinction between “unlawful” and “arbitrary” detention. Despite that, as early as in the judgment in the case of *Gangaram Panday v. Surinam* of 1994, it established that detention may be arbitrary even if it were legal, for many years after that it systematically mixed the two terms.³ It was not until the judgment in the case of *Chaparro Álvarez y Lapo Íñiguez v. Ecuador* of 2007 that the IACHR established clear criteria to differentiate between arbitrary and unlawful deprivation of liberty. According to them, the detention, if lawful, is not arbitrary only if: 1) the purpose of the measure is compatible with the Convention and its objectives; 2) the measure is appropriate to achieve the purpose sought; 3) the measure is necessary, in the sense that it is absolutely necessary for the achievement of the purpose sought; 4) the measure is strictly proportional, “[...] so that the sacrifice inherent in the restriction of the right to liberty is not exaggerated or excessive compared to the advantages obtained from this restriction and the achievement of the purpose sought, and that, among all possible measures, there is no less burdensome one in relation to the right involved, that would be as suitable to achieve the proposed objective.”⁴

A lack of clarity and confusion around international jurisprudence terminology also exist in the case law of the European human rights bodies, although they clarify the distinction between “unlawful” and “arbitrary” to a significantly greater extent compared to other international bodies. Most of all, the ECtHR, including in a series of Grand Chamber judgments, positions the protection against arbitrary detention as a major requirement under Article 5.⁵ In many judgments the Court repeats its statement from the *Winterwerp* case that “[...] no detention that is arbitrary can ever be regarded as ‘lawful’.”⁶ In a number of cases, just like

1 HRC, *A. v. Australia*, § 9.4. See also HRC, *C. v. Australia*, No. 900/1999, Views of 28 October 2002, § 8.2; HRC, *Baban and Baban v. Australia*, No. 1014/2001, Views of 6 August 2003, § 7.2; HRC, *Bakhtiyari et al. v. Australia*, 1069/2002, Views of 29 October 2003, § 8.2; HRC, *D. and E. v. Australia*, No. 1050/2002, Views of 11 July 2006, § 7.2; HRC, *F.K.A.G. et al. v. Australia*, §§ 9.3-9.4; HRC, *M.M.M. et al. v. Australia*, §§ 10.3-10.4. In some of these cases the HRC requested proof that the state had used “less restrictive means to achieve the purpose”.

2 HRC, *Jalloh v. the Netherlands*, No. 794/1998, Views of 26 March 2002, § 8.3.

3 See Bovino, A. (2004) “La libertad personal en el sistema interamericano”, *Derecho internacional de los derechos humanos*, ed. Academia de Derechos Humanos y Derecho Internacional Humanitario, Washington College of Law, American University, México, compilada por Claudia Martín, Diego Rodríguez-Pinzón y José A. Guevara B. See also criticism of the IACHR’s approach to use arguments on the unlawfulness of the detention in order to rule it “arbitrary”: Burgorgue-Larsen, L., Ubeda De Torres, A., Greenstein A. (2011) *The Inter-American Court of Human Right: Case Law and Commentary*, Oxford, Oxford University Press, p. 481.

4 IACHR, *Chaparro Álvarez y Lapo Íñiguez v. Ecuador*, Series C, No. 170, Judgment of 21 November 2007, § 93.

5 See ECtHR, *Chahal v. the United Kingdom*, No. 22414/93, Grand Chamber judgment of 15 November 1996, § 118; ECtHR, *Stafford v. the United Kingdom*, No. 46295/99, Grand Chamber judgment of 28 May 2002, § 63; ECtHR, *Slivenko v. Latvia*, No. 48321/99, Grand Chamber judgments of 9 October 2003, § 147; ECtHR, *Kafkaris v. Cyprus*, No. 21906/04, Grand Chamber judgment of 12 February 2008, § 116; ECtHR, *Medvedev and Others v. France*, § 79; ECtHR, *El-Masri v. the former Yugoslav Republic of Macedonia*, No. 39630/99, Grand Chamber judgment of 13 December 2012, § 230; ECtHR, *Georgia v. Russia (I)*, No. 13255/07, Grand Chamber judgment of 3 July 2014, § 182.

6 ECtHR, *Winterwerp v. the Netherlands*, § 39. See also ECtHR, *X. v. the United Kingdom*, No. 7215/75, Judgment of 5 November 1981, § 43; ECtHR, *Van Droogenbroeck v. Belgium*, No. 7906/77, Judgment of 24 June 1982, § 48; ECtHR, *Ashingdane v. the United Kingdom*, No. 8225/78, Judgment of 28 May 1985, § 44; HRC, *Kemmache v. France* (no. 3), No. 17621/91, Judgment of 24 November 1994, § 42; ECtHR, *Gorshkov v. Ukraine*, No. 67531/01, Judgment of 8 November 2005, § 38.

the HRC, the ECtHR defines as “arbitrary” deprivation of liberty that is nothing more than unlawful from the point of view of national law.¹ This approach does not help to clarify the term “arbitrary detention”.

In the framework of another consistent stream of its jurisprudence, the ECtHR makes a sounder distinction between unlawful and arbitrary detention and, with few exceptions, manages to substantially clarify the meaning of these two terms. For the Court, “arbitrary” deprivation of liberty is a more general term than “unlawful”. The deprivation of liberty may be lawful from the point of view of national law and still be arbitrary and, therefore, in contradiction with Article 5(1).² In its judgment in the case of *Saadi v. the United Kingdom* of 2008, the Grand Chamber defines the characteristics that, taken alone or in combination, make a deprivation of liberty arbitrary. These include:³

- The presence of an element of bad faith or deception on the part of the authorities in imposing the measure;⁴
- Discrepancy between the detention order and its execution, and the purpose of the restriction permitted by the respective sub-paragraph of Article 5(1);
- Discrepancy between the ground of permitted deprivation of liberty and the place and conditions of detention;⁵
- Lack of necessity of detention to achieve the stated aim, which means that other, less severe measures to achieve the aim have not been considered;
- Lack of proportionality of the measure, i.e. its severity and/ or duration are incompatible with the importance of the right to liberty in a democratic society, even when the measure is necessary to achieve the objective.⁶

These, however, are not all the elements that make a detention arbitrary in the opinion of the ECtHR. Several judgments of the Court contain other characteristics as well. One of them is the speed with which domestic courts replace a detention order which has either expired or has been cancelled.⁷ Unjustified delay would make the detention arbitrary. The absence of reasons in the decision is another ground for finding the detention arbitrary.⁸

In its judgment in the case of *Saadi* and in several other judgments, the ECtHR held that the requirements on the protection against arbitrary deprivation of liberty under Article 5(1)(a) and under Article 5(1)(f) are different and weaker compared to those under the other grounds

1 See, for example, ECtHR, *Tsirlis and Kouloumpas v. Greece*, Nos. 19233/91, 19234/91, Judgment of 29 May 1997, § 62; ECtHR, *Assanidze v. Georgia*, No. 71503/01, Judgment of 8 April 2004, § 176.

2 Among the many judgments in this respect, see for example ECtHR, *A. and Others v. the United Kingdom*, No. 3455/05, Grand Chamber judgment of 19 February 2009, § 164; ECtHR, *Creangă v. Romania*, No. 29226/03, Grand Chamber judgment of 23 February 2012, § 84.

3 ECtHR, *Saadi v. the United Kingdom*, No. 13229/03, Grand Chamber judgment of 29 January 2008, §§ 69-70.

4 For example, detention and transfer to another country on a deportation order after unsuccessful attempts at extradition, as in the case *Bozano v. France* of 1986.

5 For example, as in the case *Bouamar v. Belgium* of 1988, lack of educational programmes at an institution where the juvenile applicant was detained for the purpose of “educational supervision”.

6 For example, in a case of an elderly applicant being detained by the police for more than 13 hours for identification purposes, as in the case *Vasileva v. Denmark* of 2003.

7 ECtHR, *Mooren v. Germany*, § 80.

8 ECtHR, *Stašaitis v. Lithuania*, No. 47679/99, Judgment of 21 March 2002, § 67; ECtHR, *Nakhmanovich v. Russia*, No. 55669/00, Judgment of 2 March 2006, § 71; ECtHR, *Belevitskiy v. Russia*, No. 72967/01, Judgment of 1 March 2007, § 91; ECtHR, *Yeloyev v. Ukraine*, No. 17283/02, Judgment of 6 November 2008, § 54; ECtHR, *Solovey and Zozulya v. Ukraine*, Nos. 40774/02 and 4048/03, Judgment of 27 November 2008, § 76; ECtHR, *Bakhtmutskiy v. Russia*, No. 36932/02, Judgment of 25 June 2009, § 113. In the case of *A. and others v. Bulgaria*, however, the Court was not impressed with the lack of reasons in the decisions of the Pleven District Court to place two of the applicants (A. and C.) in a CBS, and it did not find a violation of Article 5(1).

listed in that article. In the Court's opinion, "[...] the decision to impose a sentence of detention and the length of that sentence are matters for the national authorities rather than for the Court under Article 5(1)".¹ In other words, the Court would not accept to apply the requirement of proportionality in a situation where, for example, an excessively severe punishment was imposed for a relatively minor offence.² In terms of Article 5(1)(f), the Court holds that with regard to the deprivation of liberty of foreigners for the purposes of immigration control or extradition "[...] there was no requirement that the detention be reasonably considered necessary", and that the requirement of proportionality is applied "[...] only to the extent that the detention should not continue for an unreasonable length of time".³ Neither in *Saadi* nor in the preceding Grand Chamber judgment in a similar case, *Chahal v. the United Kingdom* of 1996, however, does the Court provide reasonable justification for such an approach. The *Saadi* judgment, in which the Court justified the detention of an asylum-seeker for seven days, even though he was cooperating with the authorities and had made no attempt at absconding, seems poorly justified by "[...] the difficult administrative problems with which the United Kingdom was confronted during the period in question, with increasingly high numbers of asylum-seekers".⁴

Unlike the ECtHR, the HRC does not exclude the deprivation of liberty on certain grounds from the requirement of necessity and proportionality. Thus, in the case of *Fernando v. Sri Lanka* of 2005, the Committee found that the deprivation of liberty of the applicant, who was summarily sentenced to one year of imprisonment combined with hard labour for contempt of court, was arbitrary and violated Article 9. It held that imposing a fine would have obviously been sufficient for the offence committed by the applicant. "Article 9 § 1, of the Covenant forbids any "arbitrary" deprivation of liberty. The imposition of a draconian penalty without adequate explanation and without independent procedural safeguards falls within that prohibition."⁵ Similarly, Rule 5(1) of the Beijing Rules requires that any reaction of the penal justice systems to juvenile offenders be "in proportion to the circumstances of both the offenders and the offence".⁶ Rule 17(a) requires that the reaction, when related to deprivation of liberty, be always "[...] in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society".⁷

4. Legitimate grounds for deprivation of liberty

In this section, we will review the legitimate grounds for deprivation of liberty under Article 5(1)(a)-(f) of the ECHR, with the exception of sub-paragraph (d), which treats the grounds for deprivation of liberty of children. They will be reviewed in the next chapter.

1 ECtHR, *Saadi v. the United Kingdom*, § 71. According to the Court's case law, the excessive duration of the deprivation of liberty of a juvenile may in principle constitute inhuman and degrading treatment and punishment in violation of Article 3 of the Convention. See ECtHR, *Hussain v. the United Kingdom*, No. 21928/93, Judgment of 21 February 1996; ECHR, *T. and Others v. the United Kingdom*, No. 24724/94, Judgment of 16 December 1999, § 103. However, in these two cases the Court mentions this possibility obiter dictum, without raising and solving this issue with regard to the specific facts of these cases.

2 However, when the sentence is restricting rights guaranteed by the Convention, the excessive severity of the punishment may constitute a violation of the requirement of proportionality of the restriction. See recently ECtHR, *Murat Vural v. Turkey*, No. 9540/07, Judgment of 21 October 2014 (related to restricting the right to freedom of expression under Article 10 of the Convention).

3 ECtHR, *Saadi v. the United Kingdom*, § 72. See also ECtHR, *Chahal v. the United Kingdom*, No. 22414/93, Grand Chamber judgment of 15 November 1996, §§ 112-113.

4 *Ibid.*, § 80.

5 HRC, *Fernando v. Sri Lanka*, No. 1189/2003, Views of 31 March 2005, § 9.2. See also HRC, *Dissanayake v. Sri Lanka*, No. 1373/2005, Views of 22 July 2008, § 8.3.

6 Beijing Rules, Rule 5.1.

7 *Ibid.*, Rule 17(a). Rule 17(c) in turn requires that deprivation of liberty should not be imposed unless the child is convicted of a serious act involving violence against another person or persistence in committing other serious offences, and unless there is no other appropriate response.

4.1. Conviction by a competent court

Deprivation of liberty after conviction by a competent court covers above all the conviction for an offence and the imposition of a prison sentence by a criminal court. As a rule, this entails proof of guilt,¹ although the rare cases of deprivation of liberty under criminal statutes allowing strict liability would probably also be compatible with Article 5(1).²

The Committee on the Rights of the Child requires the states that have established a low age of criminal responsibility to raise it to 12 years as “an absolute minimum”, and those that intend to lower the already established age of criminal responsibility below 14 years, to not do that.³

In ECtHR case law, the term “sentence” has an autonomous meaning which is not dependent on the provisions defining the offence at national level and is closely related to the Court’s autonomous understanding of “criminal charge”.⁴ Thus, the Court considers some punishments, imposed for offences that at the national level are not defined as crimes but, for example, as “administrative offences”, as resulting from “criminal charges”.⁵

The ECtHR requires that the deprivation of liberty by a competent court “follow” the sentence and have a causal relation with it. However, the Court’s approach to the interpretation of the requisite causal relation, as established in the case of *Van Droogenbroeck v. Belgium* of 1982, is outdated. The case is related to the sentencing of a 30-year-old multiple offender to two years of imprisonment for burglary, followed by his being “placed at the Government’s disposal” for ten years. The latter means that the person can be detained an unlimited number of times under an administrative procedure. In this case, after the applicant had served his sentence, he was detained several times under this procedure during almost the entire duration of the ten-year period, with the last one initiated almost nine years after the initial sentence was handed down. Despite this long temporal distance, the ECtHR held that there was a sufficient causal relation between the initial sentence and the subsequent detentions.⁶

The Court, however, did not find such a causal relation in its judgment in the case of *M. v. Germany* of 2009. In this case, at the time of the sentencing, the national court imposed “preventive detention” of the applicant due to the fact that he would pose a threat to society after the expiration of his sentence of five years imprisonment for attempted murder and robbery. Subsequent legislative changes allowed the retroactive extension of the maximum period of the “preventive detention”.⁷

1 ECtHR, *Van Droogenbroeck v. Belgium*, § 35.

2 In their case law the Strasbourg organs give certain leeway to the national legislator to formulate criminal statutes allowing strict liability under the condition that: the presumptions they contain remain within reasonable limits; they take into account the rights, which are affected, and they provide the opportunity for defence. See ECmHR, *G. v. the United Kingdom*, No. 37334/08, Decision of 30 August 2011, § 26, with references to previous case law.

3 CRC, General Comment No. 10: Children’s rights and juvenile justice, 25 April 2007, CRC/C/GC/10, §§ 32-33.

4 In the case of *Engel and Others v. the Netherlands* of 1976, the Court establishes three alternative criteria of “criminal charge” in relation to the applicability of the criminal limb of Article 6.1 of the Convention: the provisions defining the offence in national legislation, the nature of the offence and the severity of the expected punishment. (See ECHR, *Engel and Others v. the Netherlands*, No. 5100/71 et al., Judgment of 8 June 1976, § 82).

5 See for example the following Bulgarian cases: CEDH, *Kamburov c. Bulgarie*, Requête no 31001/02, Arrêt du 23 avril 2009; CEDH, *Stanchev c. Bulgarie*, Requête no 8682/02, Arrêt du 1er Octobre 2009. See also ECtHR, *Gurepka v. Ukraine*, No. 61406/00, Judgment of 6 September 2005, § 39; ECtHR, *Galstyan v. Armenia*, No. 26986/03, Judgment of 15 November 2007, §§ 55-60.

6 ECtHR, *Van Droogenbroeck v. Belgium*, §§ 40-41. The Court, however, found a violation of Article 5(4) due to the lack of an opportunity for judicial review of the lawfulness of the subsequent detentions.

7 ECtHR, *M. v. Germany*, No. 19359/04, Judgment of 17 December 2009, §§ 100-101. The Court found similar violations in several other cases against Germany which followed *M. and Others* and were based on the same legislative framework. However, when the preventive detention after the expiration of the sentence is not imposed retroactively, there is no violation (ECHR, *Schmitz v. Germany*, No. 30493/04, Judgment of 9 June 2011).

“After conviction by a competent court” does not mean that the deprivation of liberty on this ground is allowed only after a final verdict has been handed down. Already in its earliest case law, the Court has allowed the arrest and the detention of a person who was free but was convicted to imprisonment at first instance in criminal proceedings which allow for an appeal.¹ However, deprivation of liberty by a sentence handed down in absentia and without possibility of review, is not considered “after conviction by a competent court” and is a violation of Article 5(1).²

4.2. For non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law

Article 5(1)(b) of the Convention includes two grounds for legitimate deprivation of liberty by arrest or detention: for non-compliance with the lawful order of a court, and in order to secure the fulfilment of any obligation prescribed by law. In both cases, the measure is exclusively targeted at the fulfilment of a specific legal obligation or of a court decision, which is compatible with the Convention. Many situations related to both grounds involve trivial cases of non-compliance. This is why the Court attributes special significance to the fair balance in a democratic society between the importance of the compliance and the right to liberty and security.³ In the assessment of this balance, together with the nature of the obligation subject to enforcement, the Court also considers the necessity and the proportionality of the deprivation of liberty, i.e. whether enforcement can be realistically achieved by arrest or detention, the potential vulnerability of the detainee and the duration of the detention.

According to the ECtHR, this type of detention cannot be used as a punitive measure.⁴ However, the Strasbourg organs interpret this negative requirement quite narrowly. In earlier decisions, they have justified detention under Article 5(1)(b) in cases where it would be difficult to find anything other than a punitive purpose.⁵ In its recent judgment in the case of *Göthlin v. Sweden*, involving a court-ordered detention of a 67-year-old applicant with health problems for a period of a month and a half, the Court did not find a violation of Article 5(1). The purpose of the detention was to compel the applicant to give up the location of a mobile sawmill for which a writ of execution was issued for unpaid taxes. The applicant had hidden the sawmill and explicitly declared that he would not give up its location. In the end, the objective was not achieved, the applicant was released and the Court found that apart from being necessary, the measure had also been proportional.⁶

A court decision, the execution of which may be secured by deprivation of liberty, must above all be lawful. Decisions made in violation of the substantive or the procedural laws are unlawful and cannot be grounds for arrest or detention.⁷ In the case of *Ostendorf v. Germany* of 2013, however, the Court interpreted “obligation prescribed by law” widely, allowing short-term preventive detention of football fans known for past violations before and during a game, in order to prevent them from participating in a brawl.⁸ This contradicts, to some extent, the requirement for the presence of a specific obligation prescribed by law, and allows this type of detention to be used to prevent someone from doing something.⁹

1 See ECtHR, *Wemhoff v. Germany*, No. 2122/64, Judgment of 27 June 1968.

2 ECtHR, *Stoichkov v. Bulgaria*, No. 9808/02, Judgment of 24 March 2005.

3 ECtHR, *Gatt v. Malta*, No. 28221/08, Judgment of 27 July 2010, §§ 40-52.

4 See CEDH, *Epple c. Allemagne*, Requête no 77909/01, Arrêt du 24 mars 2005, § 37; ECtHR, *Gatt v. Malta*, § 46; ECtHR, *Ostendorf v. Germany*, No. 15598/08, Judgment of 7 March 2013, § 71.

5 See, for example, ECmHR, *Airey v. Ireland*, No. 6289/73, Decision on admissibility of 7 July 1977.

6 ECtHR, *Göthlin v. Sweden*, No. 8307/11, Judgment of 16 October 2014, § 67.

7 ECtHR, *Beiere v. Latvia*, No. 30954/05, Judgment of 29 November 2011, § 52.

8 See ECtHR, *Ostendorf v. Germany*, §§ 90-103.

9 See Harris, O’Boyle, Bates, Buckley, *Law of the European Convention on Human Rights*, p. 313. In *Ostendorf* the Court, clearly aware of the slippery slope it enters, held that such presumed acts must be “imminent” and sufficiently specific

A significant part of the Court's case law is dedicated to assessing the proportionality of the deprivation of liberty in relation to the necessity of execution under both the first and the second limb. In its judgment in the case of *Lolova-Karadzova v. Bulgaria* of 2012, the Court found a violation of Article 5(1) in the detention of the applicant on the order of the Plovdiv District Court hearing a criminal case in which the maximum penalty was a fine. The purpose of the detention was to secure her appearance in court, despite the fact that under Article 269(1) of the Criminal Procedure Code the presence of the accused in court is compulsory only in cases involving serious offences. The ECtHR found that the Bulgarian authorities have "[...] failed to strike a fair balance between the need to ensure the fulfilment of the applicant's obligation to attend a court hearing and her right to liberty".¹ In a similar case, under the second limb, *Vasileva v. Denmark* of 2003, the Court found that the detention at a police station of an elderly woman with health problems for 13 and a half hours for the purposes of identifying her after she was caught in a public bus travelling without a valid ticket, was disproportionate.² Both in this and in other cases, the Court held that deprivation of liberty is allowed only if the fulfilment of the obligation cannot be secured by less restrictive means.³

4.3. On reasonable suspicion of having committed an offence

Both Article 9 of the Covenant and Article 5 of the Convention specifically regulate detention on reasonable suspicion of having committed an offence.⁴ These are the most frequent cases of deprivation of liberty and the most contested at national level and before the international human rights bodies. Both provisions contain additional guarantees against arbitrary arrest or detention in such a situation (Article 9(3) of the Covenant and Article 5(3) of the Convention). The Beijing Rules require that detention at the pre-trial phase be used "only as a measure of last resort and for the shortest possible period of time", and, whenever possible, "be replaced by alternative measures".⁵ However, these requirements are not specific to children, as they are also applied to adults.⁶

Article 5(1)(c) of the Convention calls for the detention on suspicion of having committed an offence to be "reasonable" and "necessary". In addition, in its case law, the Court points out explicitly that in order to prevent arbitrariness, the measure must be both necessary and a "[...] proportionate measure to achieve the stated aim of securing the proper conduct of criminal proceedings [...]".⁷ Furthermore, the ECtHR interprets Article 5(1)(c) extremely narrowly. If read literally, this provision includes three circumstances in which detention is allowed: on reasonable suspicion of having committed a crime; to prevent the commission of a crime; and to prevent the person from fleeing after having committed a crime. The third circumstance is included within the first one, insofar as it presumes that the person has committed a crime, which in itself is an independent ground for detention, thus rendering the third circumstance

from the point of view of time, place and potential victims, and that their perpetrators must have refused to comply with a specific warning by the law enforcement bodies (§§ 93-94).

1 ECtHR, *Lolova-Karadzova v. Bulgaria*, No. 17835/07, Judgment of 27 March 2012, § 32.

2 ECtHR, *Vasileva v. Denmark*, No. 52792/99, Judgment of 25 September 2003, § 41. In the case of *Iliya Stefanov v. Bulgaria* of 2008, however, the Court held that the detention of the applicant for five hours at the police station for the purpose of questioning him in his capacity as a witness corresponded to the necessity of securing the fulfilment of the statutory obligation (ECtHR, *Iliya Stefanov v. Bulgaria*, No. 65755/01, Judgment of 22 May 2008, § 75).

3 See also ECtHR, *Khodorkovskiy v. Russia*, No. 5829/04, Judgment of 31 May 2011, § 136.

4 Here, as with regard to sub-paragraph a), "offence" should be interpreted in the light of the Court's autonomous understanding of "criminal charge".

5 Beijing Rules, rule 13(1) and 13(2).

6 This holds true also for the requirements formulated in §§ 79-81 of General Comment No. 10 of the Committee on the Rights of the Child.

7 ECtHR, *Ladent v. Poland*, No. 11036/03, Judgment of 18 March 2008, § 56. See also CEDH, *Ambruszkiewicz c. Pologne*, Requête no 38797/03, Arrêt du 4 mai 2006, §§ 31-32

redundant.¹ As for the second one, the ECtHR held that it allowed detention only in the context of the criminal proceedings and that it “[...] does no more than afford the Contracting States a means of preventing a concrete and specific offence as regards, in particular, the place and time of its commission and its victim(s).”² The Court consistently rejects the requests of some states³ and some of its own judges⁴ to legitimate preventive detention under this limb outside the context of criminal proceedings. The provision does not allow any policy of general prevention through the detention of persons regarded by the authorities as dangerous or inclined to commit crimes.⁵ This is logical not only because of the unpredictable risk of arbitrariness that permitting such a detention might cause, but also because of the fact that detention under sub-paragraph c) has the clearly defined purpose to bring the detained person before a competent judicial body whose functions are defined in Article 5(3). In this context, it is difficult to imagine any other role that such a body might have outside of criminal proceedings. In a series of cases the Court has held that Article 5(1)(c) “forms a whole” with the provision of Article 5(3).⁶

This narrow interpretation by the Court renders the second limb practically meaningless. The idea of preventing a specific offence that could be committed at a specific time, at a specific location and against specific victims means that the crime must be either in progress or in preparation. This is itself a crime, for which the detention falls under the first limb.

In order for detention under Article 5(1)(c) to not be arbitrary, the Court requires that it be based on “reasonable suspicion”. This means that law enforcement bodies should have facts or information capable of satisfying an objective observer that the person detained has probably committed a crime.⁷ In line with the requirement for lawfulness, the Court also finds a violation of Article 5(1)(c) when the detention order is formalistic and unjustified or its duration is not prescribed.⁸ The requirement on “reasonable suspicion”, however, does not mean that the person cannot be detained without being subsequently indicted, or that they must necessarily be brought to court after being detained.⁹

1 For more details on the inadequate formulation of art. 5(1)(c), see Trechsel, *Human Rights in Criminal Proceedings*, p. 423; Harris, O’Boyle, Bates, Buckley, *Law of the European Convention on Human Rights*, p. 316; Velu, *Ergec*, Convention européenne des droits de l’homme, p. 337.

2 ECtHR, *Schwabe and M.G. v. Germany*, Nos. 8080/08 and 8577/08, Judgment of 1 December 2011, § 70, with references to previous case law.

3 *Ibid.*, § 79.

4 See the concurring opinion of Judges Lemmens and Jaderblom in the *Ostendorf* case.

5 ECtHR, *Guzzardi v. Italy*, § 102; ECtHR, *Shimovolos v. Russia*, No. 30194/09, Judgment of 21 June 2011, § 54; ECtHR, *Al Husin v. Bosnia and Herzegovina*, No. 3727/08, Judgment of 7 February 2012, § 65; ECtHR, *Al Hamdani v. Bosnia and Herzegovina*, No. 31098/10, Judgment of 7 February 2012, § 60. See also ECtHR, *Jėčius v. Lithuania*, No. 34578/97, Judgment of 31 July 2000.

6 ECtHR, *Ciulla v. Italy*, No. 11152/84, Judgment of 22 February 1989, § 38; ECtHR, *Smirnova v. Russia*, Nos. 46133/99 and 48183/99, Judgment of 24 July 2003, § 56; ECtHR, *Korneykova v. Ukraine*, No. 39884/05, Judgment of 19 January 2012, § 38; ECtHR, *Osmanović v. Croatia*, No. 67604/10, Judgment of 6 November 2012, § 36.

7 ECtHR, *Fox, Campbell and Hartley v. the United Kingdom*, Nos. 12244/86, 12245/86 and 12383/86, Judgment of 30 August 1990, § 32; ECtHR, *Labita v. Italy*, No. 26772/95, Grand Chamber judgment of 6 April 2000, § 155; ECtHR, *Gusinskiy v. Russia*, No. 70276/01, Judgment of 19 May 2004, § 53; ECtHR, *Petkov and Profirov*, No. 50027/08 and 50781/09, Judgment of 24 June 2014, § 45. *O’Hara v. the United Kingdom* of 2001 (No. 37555/97) is a borderline case in which the Court integrates into the standard, not very convincingly, the subjective certainty of the arresting officer and his superior that the protected witnesses who have provided the information that was used as grounds for the arrest may be trusted.

8 ECtHR, *Kharchenko v. Ukraine*, No. 40107/02, Judgment of 10 February 2011, § 98; ECtHR, *Strelets v. Russia*, No. 28018/05, Judgment of 6 November 2012, § 72, with references to other judgments against Russia.

9 ECtHR, *Gusinskiy v. Russia*, § 53, as well as more recently ECtHR, *Ilgar Mammadov v. Azerbaijan*, No. 15172/13, Judgment of 22 May 2014, § 87.

4.4. For the prevention of the spreading of infectious diseases, addictions or vagrancy

If read literally, Article 5(1)(e) of the ECHR allows the detention of different, unrelated large groups of people on trivial grounds. In the case of detention for the prevention of the spreading of infectious diseases, the Convention does not differentiate between flu and Ebola. It is difficult to comprehend what its authors might have meant with the unclear terms “persons of unsound mind” and “alcoholics”, but these could include everything from acute schizophrenia, regular neurasthenia to the habitual use of alcohol in the evening after work. It also remains unclear what is the relation between all these groups and the vagrants and why the latter should be detained at all. In their jurisprudence, the Strasbourg organs have considerably narrowed the possibility of detention beyond the literal meaning of Article 5(1)(e), motivating themselves with one of the main purposes of Article 5: the protection against arbitrary deprivation of liberty. Generally, arrest and/ or detention on the grounds of this provision are allowed only when they are necessary to achieve an objective arising from a pressing public need or in order to protect the detained person,¹ under the condition that the detention is proportionate to the objective sought. ECtHR’s case law with regard to this provision is related mostly to cases involving the detention of people with mental disorders and, to a lesser extent, people abusing alcohol. Cases concerning the detention of people with the purpose of preventing the spreading of infectious diseases, or of “vagrants”, are very rare.

In its judgment, in the case of *Enhorn v. Sweden* of 2005, the Court held that the deprivation of liberty of people for the prevention of the spreading of infectious diseases is allowed only in cases where “[...] the spreading of the infectious disease is dangerous to public health or safety, and [...] detention of the person infected is the last resort in order to prevent the spreading of the disease, because less severe measures have been considered and found to be insufficient to safeguard the public interest”.² While the second of these criteria is unquestionable, the first one is deficient insofar as the Court does not make a distinction between the nature of infectious diseases and, respectively, the degree of danger to society. In this case, the ECtHR found a violation of Article 5(1) because an HIV-positive man was detained for a year and a half after he had infected another person, a 19-year-old man, and had refused to comply with the instructions of the regional sanitary officer. According to the judgment, the HIV virus is indeed dangerous to public health but the detention of the applicant was not imposed as a last resort, i.e. the Swedish authorities had not tried less restrictive means of limiting the infection.³

Starting from its earliest case law, the ECtHR has set comparatively strict criteria for the admissible deprivation of liberty of mentally ill persons.⁴ These include the following three cumulative conditions:

- It should be proven through an objective medical assessment that the person is suffering from a mental disorder, except in cases of emergency;
- The mental disorder must be of a type that justifies the involuntary placement for treatment, and the deprivation of liberty must be necessary with a view to the factual circumstances;

1 As early as the *Guzzardi* case, the Court opened that some of the categories of persons under Article 5(1)(e) are “socially maladjusted” and that their detention may be not only in the public interest but also in their own interest (ECtHR, *Guzzardi v. Italy*, § 98).

2 ECtHR, *Enhorn v. Sweden*, No. 56529/00, Judgment of 25 January 2005, § 44.

3 *Ibid.*, § 55.

4 The leading judgment in this respect is *Winterwerp v. the Netherlands* of 1979 (§ 39). The criteria were subsequently reaffirmed and supplemented in other cases: ECtHR, *Johnson v. the United Kingdom*, No. 22520/93, Judgment of 24 October 1997, § 60; ECtHR, *Varbanov v. Bulgaria*, No. 31365/96, Judgment of 5 October 2000, § 45; ECtHR, *Shtukaturvov v. Russia*, No. 44009/05, Judgment of 27 March 2008, § 114; ECtHR, *Kallweit v. Germany*, No. 17792/07, Judgment of 13 January 2011, § 45; ECtHR, *Ťupa v. the Czech Republic*, No. 39822/07, Judgment of 26 May 2011, §§ 46-47; ECtHR, *Stanev v. Bulgaria*, § 145; ECtHR, *D.D. v. Lithuania*, § 156.

- The mental disorder established on the basis of objective medical evidence must be present during the entire duration of the detention.

These criteria are applied to both the involuntary placement of people with mental disorders in institutions for active treatment and to placement in institutions for chronically ill with the purpose of long-term care. The Court held that the detention in such institutions might be admissible not only when a person needs therapy but also when they need only control and supervision to prevent them from causing harm to themselves or others.¹

The deprivation of liberty of a person with a mental disorder requires in all cases consultation with an appropriate medical specialist. When it is a matter of urgency, a medical opinion may be sought immediately after the detention. In all other cases, however, a preliminary consultation is necessary.² The assessment must be based on the actual mental health state of the person concerned and not solely on past events. Additionally, it cannot be seen as sufficient to justify deprivation of liberty if a significant period of time has elapsed between the time the assessment was made and the time of the detention.³

Similar, albeit not identical, principles are applied to the detention of persons who have abused alcohol. Key among these is the requirement for convincing evidence that persons detained on such grounds may cause harm to themselves, to others or to property as a consequence of having used alcohol. However, the person does not need to be a clinically diagnosed “alcoholic”; it is sufficient for the danger to arise from a single instance of alcohol abuse. At the same time, the ECtHR firmly rejects the possibility to have people arrested only because they have used alcohol;⁴ the use must lead to the above-mentioned danger.

In relation to the deprivation of liberty of vagrants, the ECtHR’s case law is exhausted by the old judgment in the case of *De Wilde, Ooms and Versyp v. Belgium* of 1971, in which the Court held that a “vagrant” is a person who has “no fixed abode, no means of subsistence and no regular trade or profession”.⁵ The Court accepted uncritically this definition of the Belgian Criminal Code, which was used to justify the detention of three persons for periods ranging between seven months and one year and nine months. It restricted itself to verifying whether the formal requirements of the law regulating their detention had been observed, finding no violation of Article 5(1) without even reviewing the necessity and the proportionality of the detention. Such an outdated approach should not be used to justify detentions in the 21st century. Unlike the other grounds for deprivation of liberty under Article 5(1)(e), the detention of “vagrants” contradicts by its very nature the requirement for necessity because it is based on a past condition of detainees, in which it is difficult to foresee danger to themselves or to society, and furthermore the detention could hardly contribute anything to change this condition.⁶

4.5. For control of migration or extradition

The last two sub-paragraphs of Article 5(1) of the Convention, (d) and (f), are the “pariah” among the grounds for detention in ECtHR’s jurisprudence. And while sub-paragraph (d) seems to be such de facto, in relation to sub-paragraph (f), which regulates the possibility

1 ECtHR, *Hutchison Reid v. the United Kingdom*, No. 50272/99, Judgment of 20 February 2003, § 52.

2 ECtHR, *Varbanov v. Bulgaria*, § 47; CEDH, R.L et M.-J.D. c. France, Requête no 44568/98, Arrêt du 19 mai 2004, § 117.

3 ECtHR, *Varbanov v. Bulgaria*, § 47. ECtHR, *Witek v. Poland*, No. 13453/07, Judgment of 21 December 2010, § 41; ECtHR, *O.G. v. Latvia*, No. 66095/09, Judgment of 23 September 2014, § 97.

4 ECtHR, *Witold Litwa v. Poland*, No. 26629/95, Judgment of 4 April 2000, §§ 61-62; ECtHR, *Hilda Hafsteinsdóttir v. Iceland*, No. 40905/98, Judgment of 8 June 2004, § 42; ECtHR, *Kharin v. Russia*, No. 37345/03, Judgment of 3 February 2011, § 34.

5 ECtHR, *De Wilde, Ooms and Versyp v. Belgium*, Nos. 2832/66; 2835/66; 2899/66, Judgment of 18 June 1971, § 68.

6 See also Rainey, Wicks, Ovey, *The European Convention on Human Rights*, p. 234.

of detention for the purpose of preventing unauthorised entry into a country or for the purpose of deportation or extradition, the Court explicitly states that the requirements of the protection against arbitrary deprivation of liberty are lesser than under the other grounds.¹ Although the Court does not provide a systematic explanation of this approach, the most probable among several possible reasons is the one pointed out in its judgment in the case of *Amuur v. France* of 1996: “Contracting States have the undeniable sovereign right to control aliens’ entry into and residence in their territory.”² This old-fashioned and not altogether rights-based approach, which continues to, nonetheless, enjoy a special status in international law, has been reaffirmed by the Court in other judgments.³

Sometimes, the Court goes too far in sacrificing immigrants’ right to liberty for trivial reasons. Thus, in the case of *Saadi*, it held that the state had the right to detain asylum-seekers in order to deal with the “difficult administrative problem” it faced due to their growing numbers, and in order to be able to review their applications faster.⁴ The applicant was an asylum-seeker whom the authorities allowed temporary residence in the territory while his case was being reviewed. For three days, he diligently presented himself at the Heathrow Airport admission centre and fulfilled all obligations related to the review of his application. On the fourth day he was detained for seven days in order to have his case decided through a fast-track procedure. The main question in this case was whether his detention was arbitrary. The Court found that it was not and that the prohibition of arbitrary detention under Article 5(1)(f) does not include an obligation that the detention is necessary, while the requirement for proportionality was restricted only to reasonable duration. Insofar as the deportation procedure is in progress without interruption, the detention is thus justified.⁵ These two principles, of the reasonable duration and of the procedure being uninterrupted, are the backbone of the protection against arbitrariness under Article 5(1)(f) according to the case law based on *Saadi*. The Court also adds that the detention must be carried out in good faith, under appropriate conditions and must be closely connected to the intended purpose.⁶ This restrictive approach, which considerably undermines the status of the right to liberty under the Convention, has been reaffirmed in a series of subsequent judgments.⁷

Some standards formulated in other international documents, including within the Council of Europe, explicitly require necessity and proportionality of detention for the purposes of migration control. According to the HRC, detention for the purposes of controlling migration “must be justified as reasonable, necessary and proportionate in light of the circumstances, and reassessed as it extends in time”. Guideline 6 of the Twenty Guidelines on Forced Return of the Committee of Ministers of the Council of Europe allows deprivation of liberty for the purpose of forced return only after “a careful examination of the necessity of deprivation of

1 See 3.2 above.

2 ECtHR, *Amuur v. France*, No. 19776/92, Judgment of 25 June 1995, § 41.

3 See, inter alia, ECtHR, *Saadi v. the United Kingdom*, § 64; CEDH, *Mehemi c. France* (no 2), Requête no 53470/99, Arrêt du 10 avril 2003, § 55; ECtHR, *Mikolenko v. Estonia*, No. 10664, Judgment of 8 October 2009, § 65; CEDH, *Yoh-Ekale Mwanje c. Belgique*, Requête no 10486/10, Arrêt du 20 décembre 2011, § 114; CEDH, *Popov c. France*, Requête no 39472/07 et 39474/07, Arrêt du 19 janvier 2012, § 117; CEDH, *Ahmade c. Grèce*, Requête no 50520/09, Arrêt du 25 septembre 2012, § 134; CEDH, *Tatishvili c. Grèce*, Requête no 26452/11, Arrêt du 31 juillet 2014, § 51.

4 ECtHR, *Saadi v. the United Kingdom*, § 80.

5 *Ibid.*, § 72.

6 *Ibid.*, § 74. In terms of the “place and conditions of detention”, the Court notes that the national authorities should bear in mind that “the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country”. Such reasoning implies that in the Court’s opinion the perpetrators of crimes deserve to be held in more severe conditions than the foreigners.

7 See, for example, ECtHR, *A. and Others v. the United Kingdom*, § 164; ECtHR, *Mikolenko v. Estonia*, No. 10664/05, Judgment of 8 October 2009, § 59; ECtHR, *Raza v. Bulgaria*, No. 31465/08, Judgment of 11 February 2010, § 72; CEDH, *Yoh-Ekale Mwanje c. Belgique*, § 117; CEDH, *M.S. c. Belgique*, Requête no 50012/08, Arrêt du 31 janvier 2012, § 150; ECtHR, *James, Wells and Lee v. the United Kingdom*, Nos. 25119/09, 57715/09 and 57877/09, Judgment of 18 September 2012, § 195.

liberty in each individual case”, with the authorities being obligated to have tried other measures, different than detention, to ensure the fulfilment of the deportation order and for these measures to have proven ineffective.¹

Directive 2008/115/EC allows the detention of third-country nationals subject to return procedures only if other, less coercive measures cannot be effectively applied, and more specifically, when there is a danger that the affected third-party national might abscond or avoid or hamper the preparation of the return or the removal process.² Similarly, Directive 2013/33/EU contains a requirement of necessity and proportionality of the detention of applicants for international protection and defines exhaustive conditions under which they can be detained.³ Thus, immigration detention under EU legislation is allowed only when all possible alternatives have been fully considered.⁴

Despite the fact that until now the exclusion or restriction of the assessment of necessity and proportionality of detention under Article 5(1)(f) dominates ECtHR’s case law, in several cases the Court has made and required such an assessment. Thus, in the case of *Rusu v. Austria* of 2008, the Court found a violation of Article 5(1) because when the applicant was detained for deportation, the authorities did not try to use other less restrictive measures, although they had such an opportunity.⁵ Similarly, in its judgment in the case of *Jusic v. Switzerland* of 2010, the Court found that the detention constituted a violation of Article 5(1) because the national authorities did not provide proof that the applicant could have absconded from the procedure for his forced return to his country of origin, even though such proof was required by the national legislation.⁶

The requirement that the “place and conditions of detention be appropriate” is interpreted by the Court as a requirement for the reasonable adaptation of the detention conditions in an immigration context to the specific vulnerability of certain groups, including children. In several cases, the Court found violations of Article 5(1) for the detention of children in immigration centres which were used to also detain adults, despite the fact that in some instances, the children were placed there with their parents.⁷ In the case of *Rahimi v. Greece* of 2011, the Court did not accept the automatic detention of an unaccompanied minor at an immigration centre without the consideration of the possibility of another, less restrictive measure, and found a violation of Article 5(1).⁸ Thus, although in such cases the Court uses the standards of *Saadi*, in reality it does set a requirement of necessity and proportionality of the detention of children in an immigration context.⁹ Such a requirement with regard to children is contained in other Council of Europe documents as well.¹⁰

1 Committee of Ministers (2005) *Twenty Guidelines on Forced Return*, CM(2005)40 Add., 20, Guideline 6. See also Committee of Ministers (2009) *Guidelines on human rights protection in the context of accelerated asylum procedures*, XI.4.

2 Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, Article 15.

3 Directive 2013/33/EU of the European Parliament and Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), Article 8, para 2 and 3.

4 FRA, ECtHR (2013) *Handbook on European law relating to asylum, borders and immigration*, Luxembourg, Publications Office of the EU, p. 140.

5 ECtHR, *Rusu v. Austria*, No. 34082/02, Judgment of 2 October 2008, § 58. However, the reference to *Saadi* in this paragraph is quite inappropriate.

6 CEDH, *Jusic c. Suisse*, Requête no 4691/06, Arrêt du 2 décembre 2010, §§ 81-82. Seels CEDH, *Yoh-Ekale Mwanje c. Belgique*, § 124.

7 See ECtHR, *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, No. 13178/03, Judgment of 12 October 2006; CEDH, *Muskhadzhieva ea autres c. Belgique*, Requête no 41442/07, Arrêt du 19 janvier 2010; CEDH, *Kanagaratnam et autres c. Belgique*, Requête no 15297/09, Arrêt du 13 décembre 2011; CEDH, *Popov c. France*, § 119.

8 CEDH, *Rahimi c. Grèce*, Requête no 8687/08, Arrêt du 5 avril 2011, § 109.

9 See Harris, O’Boyle, Bates, Buckley, *Law of the European Convention on Human Rights*, p. 334.

10 See Committee of Ministers, Recommendation Rec(2003)5 on measures of detention of asylum seekers, 16 April 2003, §§ 20, 22-23.

5. Deprivation of liberty of minors for the purpose of educational supervision or for the purpose of bringing them before the competent legal authority

Although different types of detention facilities have existed throughout the history of mankind, most of those stipulated in Article 5 of the Convention are a product of modernity and are means of solving specific problems arising from the very nature of this epoch. The undermining of informal social control by eroding family relations, the anonymity and alienation of urban life, the drawing of distinct boundaries between states, the medicalisation of the social control of deviant behaviour due to mental disorders, and the humanisation of criminal justice policy are examples of this. The use of deprivation of liberty of minors under Article 5(1)(d) of the Convention has an even more expressly manifested modern origin. In all circumstances, the possibility to deprive minors of their liberty is restricted to a greater extent than if applied to adults. This is enshrined both in special, mostly “soft” international standards, and in the case law of the international human rights bodies, including the ECtHR. At the same time, Article 5 the Convention provides for two special grounds for detention applicable only to minors: educational supervision and ensuring that they are brought before a competent legal authority.

The preparatory materials to the Convention make it clear that these specific grounds appear in the work on the formulation of Article 5 one after the other. A shortened version of the text containing only the first limb of Article 5(1)(d) (on “educational supervision”) was proposed by the British government in February 1950. After its adoption, in August 1950, it was expanded with the second limb upon proposal by the same government.¹ The British government also proposed almost identical wording to that of Article 5(1)(d) during the discussions on the IC-CPR at the Eighth Session of the UN Human Rights Commission in 1952.² At the same time, a significant number of other states proposed or supported formulations which allowed deprivation of liberty of children with an apparently similar purpose.³ In the end, however, the view that no grounds for deprivation of liberty should be listed in the final version of Article 9 of the Covenant prevailed.

The discussions of the Convention and the Covenant took place at a time when institutional solutions to the problems of social control and to the care of both children and other vulnerable groups were widely accepted and used by modern societies. As late as in the beginning of the new millennium, in one of the key judgments related to deprivation of liberty of children for the purposes of educational supervision, the Court of Appeal of England and Wales held that „[...] an appropriate level of supervision of the child to enhance his development, where necessary, by restricting his liberty is permitted“.⁴ In the then communist countries, the institutionalisation of children also had an ideological justification – it was the policy of the authorities to remove them from the “reactionary” family environment and include them in forms of socialisation in which the communist state, with its “progressive” ideology, had a leading role.

Nowadays, however, in the advanced societies of Europe and North America trust in institutional solutions to any problem related to social control or to the care of children and people with mental disorders is very low. The implementation of wide-scale deinstitutionalisation programmes in many countries over the last several decades resulted in the almost com-

1 European Commission of Human Rights, *Preparatory work on Article 5 of the European Convention on Human Rights*, DH (56) 10, Strasbourg, 8 August 1956, §§ 9,18 (hereinafter ECmHR, *Travaux préparatoires* of Article 5).

2 Bossuit, *Guide to the “travaux préparatoires” of the ICCPR*, p. 196.

3 *Ibid.*, pp. 189-196.

4 *Re K (a child) (secure accommodation order: right to liberty)* [2001] 2 All ER 719 (CA) at [107].

plete elimination of child institutions. Institutionalisation itself, far from being a solution to anything, is increasingly perceived as a pathogenic factor and a source of violations of fundamental human rights. Scientific research consistently reveals its damaging effects on the physical, emotional, social and cognitive development of children, especially in the early years of life.¹ In line with this, Rule 19.1 of the Beijing Rules requires that “[...] the placement of a juvenile in an institution shall always be a disposition of last resort and for the minimum necessary period”.²

These changes in the scientific understanding and in the social and political attitudes to institutionalisation were inevitably reflected in the case law of the international human rights bodies. Of these, the UN Committee on the Rights of the Child has demonstrated significant proactiveness and sensitivity towards the damaging effects of the institutionalisation of children in all its forms. Since the mid-1970s, the ECtHR has also developed a considerable volume of case law in which it has grown increasingly sensitive to the institutionalisation of persons with mental disorders, thus narrowing to a great extent the possibilities of their deprivation of liberty in any context.

This innovative approach of the ECtHR’s jurisprudence, however, did not encompass the deprivation of liberty of minors under Article 5(1)(d). This can be attributed to many factors, the most important of which are related to the primitive systems of guardianship operating in most European countries and the inadequate access of children to legal assistance in cases outside the criminal justice system. The Court’s case law in this respect is extremely scarce and, to the extent to which it is consistent, is quite conservative. The scarcity of judgments is a function of the small number of applications filed, and in the context of the widespread arbitrariness in the deprivation of children of their liberty in many European countries, it is evidence of deficiencies in the victims’ access to quality legal assistance. Although when establishing the legal principles applicable to this type of deprivation of liberty the Court does not exclude Article 5(1)(d) from the requirements on the protection against arbitrariness, some of its judgments are shockingly permissible of outdated laws and practices, which are far from the standards of necessity, proportionality and legal certainty established under the other grounds for deprivation of liberty under Article 5(1).

Above all, the formulation of Article 5(1)(d) poses a serious challenge to its interpretation. When the British government proposed the second limb in addition to its initial proposal, it declared that “[m]any children brought before the courts have committed no offence at all and the purpose of their detention is to secure their removal from harmful surroundings, so that they are not covered by Article 5(1)(c)”.³ This interpretation is considerably different from the purpose stated in the text itself. Furthermore, no one at the time when the institutionalisation of children was used to solve all types of problems raised the question of whether and to what extent the deprivation of children of their liberty is an appropriate means of removing them from “harmful surroundings”. This rather inadequate from a modern point of view statement of the purpose of this type of detention was followed by another, equally inadequate, decision of the Commission of December 1979 on the case of *X. v. Switzerland*, the leading case in the

1 See, for example: MacLean, K. (2003) “The impact of institutionalization on child development”. *Development and Psychopathology*, Issue 4, December 2003; Bos, K., Fox, N., Zeanah, Ch., Nelson, Ch. (2009) “Effects of early psychological deprivation on the development of memory and executive function”, *Frontiers in Behavioral Neuroscience*, Vol. 3, September 2009; Bos, K., Zeanah, Ch., Fox, N., Drury, S., McLaughlin, K., Nelson, Ch. (2011) “Psychiatric Outcomes in Young Children with a History of Institutionalization”, *Harvard Review of Psychiatry*, Vol. 19, No. 1, January/February 2011; McCall, R., van IJzendoorn, M., Juffer, F., Groark, C., Groza, Grotevant, V.H. (2012) *Children Without Permanent Parents: Research, Practice and Policy*, Boston, Wiley-Blackwell. For a recent review of the literature on developmental hazards of institutionalization see Nelson, Ch., Fox, N., Zeanah, Ch. (2014) *Romania’s Abandoned Children: Deprivation, Brain Development and the Struggle for Recovery*, Boston, Harvard University Press, pp. 124-154.

2 Beijing Rules, Rule 19.1.

3 ECmHR, *Travaux préparatoires of Article 5*, § 18.

interpretation of this limb of Article 5(1)(d). The case is related to the 8-month detention of a 16-year-old boy at a special “observation centre” in the context of an investigation of theft and traffic offences. The purpose of the detention was to prepare a medical and psychiatric report to be used as a basis for imposing an appropriate educational measure on the boy. The Commission opened that the preparation of the report had taken quite a long time, yet it concluded that “this fact alone is however not of itself such as to cast doubt on the purpose of detention or its conformity with Article 5(1)(d).”¹ The Commission, therefore, found the application inadmissible as manifestly ill-founded. The justification does not include any mention whatsoever of the necessity and the proportionality of the detention. The only thing that the Commission focused on is its formal conformity with the national law.

According to some interpretations, detention under the first limb of Article 5(1)(d) is justified for the purpose of ensuring the fulfilment of a “[...] legal obligation, normally found in state law requiring children to attend school.”² Indeed, in a series of cases the ECtHR found violations of Article 5(1) when it established that the detainee had not been granted access to education. Such is the case, for example, with the judgment *Bouamar v. Belgium* of 1988. The case concerns the multiple detentions of a 16-year-old young person with deviant behaviour for the purposes of “educational supervision” at an investigative detention facility, which however provided no education whatsoever. In the Court’s opinion, if a country has chosen a system of detention for the purposes of educational supervision, it is

“[...] under an obligation to put in place appropriate institutional facilities which meet the demands of security and the educational objectives of the 1965 Act, in order to be able to satisfy the requirements of Article 5(1)(d) of the Convention [...] The detention of a young man in a remand prison in conditions of virtual isolation and without the assistance of staff with educational training cannot be regarded as furthering any educational aim.”³

The Court allows the detention of children who are temporarily denied access to education, but only if this is “[...] speedily followed by actual application of such a [educational] regime in a setting (open or closed) designed and with sufficient resources for the purpose.”⁴ The Court adheres to this approach in its subsequent case law.⁵

Closely connecting “educational supervision” to the obligation to attend school, however, does not always correspond to the meaning attached to this term by the Court, as it allows the detention of children for this purpose without their inclusion in formal education. Thus, in its decision in the case of *Koniarska v. the United Kingdom* of 2000, the Court held that Article 5(1)(d) allows the detention for the purposes of educational supervision of a “minor”, which is different from the detention of a person aged below the compulsory education age under the national legislation. It also makes a distinction between detention “for the purposes of educational supervision” and detention during which the person is actually involved in educational activities. The applicant in this case was a 17-year-old girl suffering from a mental disorder. She was detained for five months at a juvenile detention centre due to risk of aggressive behaviour and inflicting harm to herself. The measure was contested both by her and her parents. The centre offered some educational activities but since at national level education was compulsory only until the age of 16, she was not obligated to participate in these the Court held that her detention was for the purposes of “educational supervision”, which how-

1 ECmHR, *X. v. Switzerland*, No. 8500/79, Decision of 15 December 1979.

2 Harris, O’Boyle, Bates, Buckley, *Law of the European Convention on Human Rights*, p. 320.

3 ECtHR, *Bouamar v. Belgium*, § 52.

4 *Ibid.*, § 50.

5 ECtHR, *D.G. v. Ireland*, No. 39474/98, Judgment of 16 May 2002, §§ 81-84; ECtHR, *Ichin and Others v. Ukraine*, Nos. 28189/04 and 28192/04, Judgment of 21 December 2010, § 39; ECtHR, *Blokhin v. Russia*, No. 47152/06, Judgment of 14 November 2014, §§ 112-115.

ever “[...] must not be equated rigidly with notions of classroom teaching. In particular, in the present context of a young person in local authority care, educational supervision must embrace many aspects of the exercise, by the local authority, of parental rights for the benefit and protection of the person concerned.”¹ Thus, in its aspiration not to be rigid in this case, the Court expanded the scope of the term “educational supervision” to an extent where it could include a wide range of impacts, which the body ordering or effecting a detention may deem to be in the interest of children or for their protection.

This extremely wide understanding of “educational supervision” does not allow the Court to differentiate between three types of deprivation of liberty:

- Punitive, imposed for a specific period, aimed at individual and general prevention in response to the deviant behaviour of the child;
- Social, medical or educational, imposed for the purpose of protection against violence or another type of serious harm arising in the family, or when a child is at risk of violence or harm as a result of their own behaviour, for a short period and only until the measures are necessary;
- Institutionalisation for the purpose of providing care to children who are not at risk of violence or harm and whose behaviour does not violate norms applicable to adults.

Making a distinction between the above alternatives is necessary above all due to the fact that each one of them justifies deprivation of liberty to a different degree. The last one, in line with the modern approach to child development and contrary to what was accepted 60 years ago, does not justify it to any degree at all. The Riyadh Guidelines allow the institutionalisation of children only as a measure of last resort, for the minimum period necessary and only in the following cases:

“(a) where the child or young person has suffered harm that has been inflicted by the parents or guardians;

(b) where the child or young person has been sexually, physically or emotionally abused by the parents or guardians;

(c) where the child or young person has been neglected, abandoned or exploited by the parents or guardians;

(d) where the child or young person is threatened by physical or moral danger due to the behaviour of the parents or guardians;

(e) where a serious physical or psychological danger to the child or young person has manifested itself in his or her own behaviour and neither the parents, the guardians, the juvenile himself or herself nor non-residential community services can meet the danger by means other than institutionalization.”²

Differentiating between the different cases of deprivation of liberty for “educational supervision” is also of key importance to the formulation of an adequate approach to the protection against arbitrary deprivation of liberty. It is also necessary insofar as a significant number, if not all, of the cases involving deprivation of liberty of children with deviant behaviour, and especially those related to long-term deprivation of liberty in closed institutions, would fall

1 ECtHR, *Koniarska v. the United Kingdom*, No. 33670/96, Decision of 12 October 2000. See also ECtHR, *D.G. v. Ireland*, § 80; ECtHR, *Ichin and Others v. Ukraine*, § 39; ECtHR, *P. and S. v. Poland*, No. 57375/08, Judgment of 30 October 2012, § 147; ECtHR, *Blokhin v. Russia*, § 110.

2 Riyadh Guidelines, § 46. Elsewhere the Riyadh Guidelines require that national legislation does not penalise in any way the behaviour of a child, which would not constitute an offence if committed by an adult (*Ibid.*, § 56).

within the scope of the ECtHR's autonomous term of "criminal charge". This means both enhanced judicial protection against unlawful or arbitrary deprivation of liberty and reinforced guarantees for a fair trial under Article 6 of the Convention.

The judgment in the case of *A. and Others v. Bulgaria* of 2011 is an example of the deficiencies of the Court's approach to the deprivation of liberty of children for the purposes of "educational supervision". The applicants are five girls who were placed in a correctional boarding school (CBS) for running away from home, truancy, sexual contacts with adults and, in two of the cases, prostitution. These are all acts that are not regarded as offences if committed by adults. At the time of the events, four of the applicants were adolescents (14-18 years of age) and one was a minor (below 14) under Bulgarian law. In line with the habitual approach of the courts under the Juvenile Delinquency Act, they were placed at a CBS for the maximum possible duration of three years; the actual time they spent there, however, varied between seven and a half months and two years and two months, and was around two years for most of them. For one applicant, the placement in a CBS was the first measure pursuant under this law. Three of them were placed through reasoned court decisions, while the remaining two - by protocol rulings which lacked any reasons, in an obvious violation of the Juvenile Delinquency Act. In neither case was there a subsequent review of the measure by a court to determine whether it was still necessary. Prior to her placement in the CBS, one of the applicants was placed in a crisis centre for children, an institution created under the Child Protection Act whose main purpose is to provide protection and care (and not correction).

The applicants complained primarily about the punitive nature of their placement in a CBS. In their opinion, its nature is punitive in view of the purpose of the law, namely "to combat juvenile delinquency", as well as the purpose and the presumed effect of their detention (placement), justified by their "antisocial behaviour", i.e. to prevent such behaviour. Many placement decisions under this law and in other cases are justified by the deterrent effect of the placement¹ and most often have a period of validity for three years, the maximum which needs to be "served", i.e. the placement is regarded as a punishment. The period of detention is not fixed on the basis of its necessity and with a view of its periodic assessment. The nature of the placement, a deprivation of liberty for a prolonged period of time, should also be taken into consideration in assessing its nature. In reality, in Bulgaria the system of imposing "educational measures" is a parallel penal system for children inherited from the communist regime, despite the fact that officially it is not part of the criminal justice system.² In fact, the official opinion of the Bulgarian government, as expressed in the Concept for State Policy in the Field of Juvenile Justice adopted a few months before the Court's judgment, is the same. The Concept explicitly states that "[t]here is no clear distinction between punishment and educational-protective measure, which gives the entire state policy a strongly repressive character". In terms of the punishment of antisocial acts under the Juvenile Delinquency Act, the Concept states that "[...] preference is given to the repressive approach, in contradiction with the civil rights principles enshrined in the Constitution and the provisions of international law".³

1 Among the many decisions in this respect, see Veliko Tarnovo District Court (2011), No. 1466/2011; Yambol District Court (2010), No. 504/2010; Kotel District Court (2011), No. 43/2011; Ruse District Court (2008), No. 1517/2008; Peshtera District Court (2009), No. 16/2009.

2 The UN Committee on the Rights of the Child makes the same assessment when reviewing some country reports (all of them submitted by countries with former or current communist regimes). See CRC, *Concluding observations on Bulgaria*, CRC/C/BGR/CO/2, 23 June 2008, § 69c; CPC, *Concluding observations: Ukraine*, CRC/C/UKR/CO/3-4, 21 April 2011, §§ 85-86; CPC, *Concluding observations: Tajikistan*, CRC/C/TJK/CO/2, 5 February 2010, §§ 72-73; CPC, *Concluding observations: Kazakhstan*, CRC/C/15/Add.213, CRC/C/15/Add.213, § 66; CPC, *Concluding observations: Czech Republic*, CRC/C/CZE/CO/3-4, 4 August 2011, § 69; CPC, *Concluding observations: Cuba*, CRC/C/CUB/CO/2, 20 June 2011, § 54.

3 Concept for State Policy in the Field of Juvenile Justice, adopted by decision of the Council of Ministers of 3 August 2011, available at: <http://www.strategy.bg/Publications/View.aspx?lang=bg-BG&Id=117>.

In its judgment in *A. and Others v. Bulgaria*, the Court held that the placement in a CBS, as well as the placement in a crisis centre for children, is a legitimate measure to ensure educational supervision under the first limb of Article 5(1)(d). In its opinion, this provision allows the deprivation of liberty of a child “[...] regardless of whether he/she is suspected of committing a crime or is just a child ‘at risk’”.¹ Furthermore, the state, according to the Court, has positive obligations to provide for the protection of the children, including their removal from a harmful environment.² The Court found that a deprivation of liberty for three years at a CBS could be a necessary and proportional measure for achieving this purpose. It inquired only into the formal lawfulness of the measure and the conformity between the detention and its purpose and, having found no issue in this respect,³ left a significant part of the remaining assessments to the discretion of the national authorities. Thus, the Court found that the complaints regarding the placement in a CBS were manifestly ill-founded.

The Court’s approach to the necessity and the proportionality of detention in this case is quite puzzling. Since the applicants claimed that their deprivation of liberty at a CBS had a punitive nature, in line with the Court’s approach to deprivation of liberty under Article 5(1)(a), they did not raise the issue of the necessity and the proportionality of the measure. The Court in turn held that the measure fell within the scope of Article 5(1)(d) and then, without raising this issue, “[...] notes [...] that even though it is not certain that the other applicants had been imposed other educational measures prior to their placement, they have not complained of not having been subjected to less severe measures prior to their placement.”⁴ Also, the Court did not inquire into the continuous necessity and the proportionality of the measures in every single case beyond the formal requirement of the Juvenile Delinquency Act (which had not been respected in all cases) that the placement in a CBS be preceded by other less restrictive measures.

The deprivation of liberty is an encroachment on one of the most fundamental human rights, which is placed on a high pedestal by the Convention. Of all groups for which such a possibility is foreseen in Article 5(1), children are probably the most vulnerable, and the effect of the deprivation of liberty in the early age, when human personality is still developing, is the most destructive. This holds true both for those measures that are a reaction to deviant behaviour and for those aimed at providing care for children at risk. Achieving an educational objective by placing children behind bars, restricting their movement, subjecting them to an impersonal institutional routine and to all other restrictions intrinsic to the deprivation of liberty, is alien to the pedagogy of a free society. The means itself are harmful and cannot serve a constructive purpose. Therefore, any deprivation of liberty of a child should allow for an assessment of its justification before a national or international tribunal with a rebuttable presumption of its inadmissibility. Unfortunately, the current international jurisprudence has a long way to go until this happens.

6. Guarantees for protection against unlawful and arbitrary deprivation of liberty

The provisions of Article 9(2)-(4) of the Covenant and of Article 5(2)-(4) of the Convention, are aimed at providing protection against unlawful and arbitrary deprivation of liberty. Article 9(3) of the Covenant and Article 5(3) of the Convention are related exclusively to deprivation of liberty in pre-trial criminal or quasi-criminal proceedings. Article 9(2) and (4) of the Covenant and Article 5(2) and (4) of the Convention refer to all types of deprivation of liberty.

1 CEDH, *A. et autres c. Bulgarie*, § 66.

2 *Ibid.*, § 73.

3 Despite the ambiguity of the term “antisocial act” – see 3.1 above.

4 *Ibid.*, § 73.

6.1. Information about the reasons for the arrest/ detention and about the charges

Both Article 9(2) of the Covenant and Article 5(2) of the Convention guarantee the right to information about the reasons for the arrest and, when the latter is related to criminal charges, also about the charges brought against the detainee. The wording of the two provisions differs. The Covenant refers to an obligation to inform about the reasons for the arrest “at the time of arrest” and about the charges “promptly” (*dans le plus court délai*), while in the wording of the Convention information about both must be provided “promptly”. Theoretically, this means the quicker provision of information in relation to the first of the two obligations under the Covenant. This interpretation is supported also by some writers.¹ However, currently the jurisprudence of the HRC and the Strasbourg organs does not provide clear indicators to differentiate between the obligations to provide information “at the time of arrest” and “promptly”. The other difference between the treaties is the absence in the Covenant of an obligation to inform the detainee “in a language he understands”. However, General Comment No. 35 of the HRC states that such an obligation exists also in the Covenant.²

Both texts refer to “arrest” and do not mention “detention”. But since the “arrest” is essentially the initial act of placing a person under physical control, the exclusion of detention as such from the scope of the obligation to inform would be illogical.³ The use of “arrest” alone is rather related to the requirement for speediness. The provision of information is required even when the legal ground for the deprivation of liberty has been amended while the person is already in detention and there had been no new arrest, for example, if someone placed involuntarily in a psychiatric clinic commits a crime and has to be detained on remand.⁴

The provision of information has two objectives. Above all, in the ECtHR’s terms this is an “elementary safeguard” which requires that every person arrested should know why they are being arrested.⁵ The second objective is related to that under Article 5(4). In its judgment in the case of *Van der Leer v. the Netherlands* of 1990, the Court points out that “[a]ny person who is entitled to take proceedings to have the lawfulness of his detention decided speedily cannot make effective use of that right unless he is promptly and adequately informed of the reasons why he has been deprived of his liberty”.⁶ In an earlier judgment in *X. v. the United Kingdom* of 1981, the Court considered the obligation of the state to inform about the reasons for detention as arising from Article 5(4).⁷ According to the HRC, “[...] one of the most important reasons for the requirement of “prompt” information on a criminal charge is to enable a detained individual to request a prompt decision on the lawfulness of his or her detention by a competent judicial authority”.⁸

The right to receive information has four basic aspects, which are related to:

- the deadline for the provision of information after the arrest;
- the manner in which the information is provided;
- the content of the information that is provided;
- the language in which the information is provided.

1 See Nowak, *CCPR Commentary*, p. 228.

2 HRC, General comment No. 35, § 26. However, the case law referred to by the Committee is not unquestionable in this respect.

3 See ECtHR, *Van der Leer v. the Netherlands*, No. 11509/85, Judgment of 22 January 1990, § 28. This case refers to the provision of information to a person with a mental disorder. The Court found a violation of Article 5(2) even though “arrest” is not mentioned in the text of article 5(1)(e) which was used as legitimate ground for the detention.

4 See Trechsel, *Human Rights in Criminal Proceedings*, p. 457.

5 ECtHR, *Fox, Campbell and Hartley v. the United Kingdom*, § 40.

6 ECtHR, *Van der Leer v. the Netherlands*, § 28.

7 ECtHR, *X. v. the United Kingdom*, No. 7215/75, Judgment of 5 November 1981, § 66. In later case law the Court abandoned this approach.

8 HRC, *Campbell v. Jamaica*, No. 248/1987, Views of 30 March 1992, § 6.3.

In terms of the deadline, the HRC's case law is not very clear on what should be understood by "at the time of arrest" and "promptly". In most of the cases in which the Committee has found violations of Article 9(2) in this aspect, no information had been provided for months or at all.¹ The small number of cases beyond these hypotheses lead to the conclusion that a delay in the provision of information on a criminal charge of between three hours and two days would constitute a violation of Article 9(2). Thus, in its decision in the case of *Ismailov v. Uzbekistan* of 2011, the HRC found that a two-day delay in informing the applicant of a criminal charge against him constituted a violation of Article 9(2).² In the decision in the case of *Hil and Hil v. Spain* of 1997, a three-hour delay in providing information about a criminal charge after the detention was not a violation of the requirement on "promptness".³

In its jurisprudence in relation to the deadline, the ECtHR holds that it depends on the specific circumstances of the case. Law enforcement authorities would have fulfilled their obligation to inform if they do so within "a few hours".⁴ As to the content, the Court allows the authorities to be flexible, allowing in the interests of speed that the factual and legal grounds be communicated to the detainee at the time of the arrest in a simple and understandable language, but not necessarily in their entirety.⁵ When an arrest is for the purpose of extradition, the content of the information is allowed to be even more fragmentary.⁶

The ECtHR applies a flexible approach also to the manner in which information is provided, but goes too far in that direction, assuming that the initial deficits in the provision of information can be made up by other, follow-up activities of law enforcement bodies, such as by interrogation, through which the detained person should be able to guess the reasons for his arrest, without a requirement to be informed separately. In such cases, the Court does not even refer to "informing" the arrested person but rather to "bringing to their attention" the reasons for their arrest.⁷ In turn, the Commission assumes that the person does not need to be informed specifically about the reasons for their arrest when they are obvious from the concomitant circumstances.⁸ As rightly pointed out by some observers, this practice represents an unacceptable dilution of one of the main safeguards against unlawful and arbitrary deprivation of liberty.⁹

6.2. Guarantees with regard to detention on suspicion of having committed an offence

The Covenant and the Convention provide special guarantees to persons who are detained on suspicion of having committed an offence,¹⁰ i.e. under Article 5(1)(c) of the Convention. These guarantees are contained in Article 9(3) of the Covenant and Article 5(3) of the Convention and include: bringing the person automatically and "promptly" before a judge or other officer

1 See Nowak, *CCPR Commentary*, p. 229.

2 HRC, *Ismailov v. Uzbekistan*, No. 1769/2008, Views of 25 March 2011, § 7.2. See also HRC, *Ashurov v. Tajikistan*, No. 1348/2005, Views of 20 March 2007, § 6.4.

3 HRC, *Hil and Hil v. Spain*, No. 526/93, Views of 2 April 1997, § 12.2. The Committee accepts, however, the presence of "exceptional circumstances" in this case, related to the necessity of providing an interpreter for the two detainees (HRC, General Comment No. 35, §27).

4 ECtHR, *Kerr v. the United Kingdom*, No. 40451/98, Decision of 7 December 1999; ECtHR, *Fox, Campbell and Hartley v. the United Kingdom*, § 42.

5 ECtHR, *Fox, Campbell and Hartley v. the United Kingdom*, § 40; ECtHR, *Murray v. the United Kingdom*, No. 14310/88, Grand Chamber judgment of 28 October 1994, § 72. However, being "simply told" of the reasons for the arrest and nothing else, is not sufficient (ECtHR, *Fox, Campbell and Hartley v. the United Kingdom*, § 42).

6 ECtHR, *Kaboulov v. Ukraine*, No. 41015/04, Judgment of 19 November 2009, § 144.

7 ECtHR, *Murray v. the United Kingdom*, § 77.

8 ECmHR, *Freda v. Italy*, No. 8916, Decision 7 October 1980.

9 Harris, O'Boyle, Bates, Buckley, *Law of the European Convention on Human Rights*, p. 337.

10 What is meant in this case is not just any offence but an offence included in a criminal law or subject to a "criminal charge" according to the HRC's and ECtHR's autonomous interpretation of this term.

authorised by law to exercise judicial power; right to trial “within a reasonable time”; and right to release pending trial conditioned by guarantees to appear for trial. All three guarantees are provided in response to the acknowledgment of the special value of the right to liberty and aim to ensure protection against unlawful and arbitrary detention. They complement the generally applicable guarantees under Article 9(4) of the Covenant and Article 5(4) of the Convention, which regulate the right to “speedy” judicial review of the lawfulness of detention on request by the detainee.

The first question that arises in relation to the provisions of Article 9(3) and Article 5(3) is why these guarantees are provided only to people subject to criminal charges but not to the other groups that can also be legitimately deprived of their liberty.¹ Unfortunately, the jurisprudence and the doctrine do not provide a convincing justification for this. In several cases, including some reviewed by the Grand Chamber, the ECtHR held that the automatic and prompt judicial review of the detention of persons being held on criminal charges is necessary because they can be victims of abuse, and as such “[...] might be incapable of lodging an application asking for a judge to review their detention”, and because they might include vulnerable groups “such as the mentally frail or those ignorant of the language of the judicial officer”.² This justification is also adopted by the HRC in General Comment No. 10.³ However, in reality these reasons are not applicable only to persons held on criminal charges, but, to various extents, to all other categories under Article 5(1) of the Convention. Furthermore, for some of the latter, such as children, including those, detained for the purposes of “educational supervision” as understood by the Strasbourg organs – i.e. including also placement in an institution when the child has committed an act that may be categorised as a serious offence – there are even more reasons to be automatically brought before a judge than adult suspects or accused persons.

A series of cases reviewed by both the ECtHR and the HRC brought up the issue of who else but a judge may be the “other officer authorised by law to exercise judicial power”. Specifically with regard to Bulgaria, the question of whether this might be a representative of the prosecution, which is a part of the judiciary, was brought up as early as 1998 in a case related to the detention of a 14-year-old boy on criminal charges, *Asenov and Others v. Bulgaria*. The Court gave a firm negative response to this question and found a violation of Article 5(3). According to the Court, the said officer should be independent from both the executive power and the parties in the case and should be impartial. “[I]f it appears at that time that the “officer” may later intervene in subsequent criminal proceedings on behalf of the prosecuting authority, his independence and impartiality may be open to doubt”.⁴ The Court has reaffirmed this approach in other cases too, both before and after *Asenov*, including in Grand Chamber judgments.⁵ The HRC uses a similar approach.⁶

The main issue that the judge or the “officer” must review is that of the lawfulness of the detention, including the presence of reasonable suspicion. In its case law, the ECtHR considers that the review should be sufficiently wide-ranging as to encompass the various circumstanc-

1 Article 7.5 of the American Convention on Human Rights guarantees the right of every detained person, regardless of the grounds for the detention, to “be brought promptly before a judge or other officer authorized by law to exercise judicial power”.

2 ECtHR, *McKay v. the United Kingdom*, § 34 See also ECtHR, *Aquilina v. Malta*, No. 25642/94, Grand Chamber judgment of 29 April 1999, § 49; ECtHR, *Medvedyev and Others v. France*, § 118; ECtHR, *Ladent v. Poland*, § 74. These arguments are also accepted, or at least not contested, in the doctrine. See, for example, Van Dijk, van Hoof, van Rijn, Zwaak, *Theory and Practice of the European Convention on Human Rights*, p. 487; Trechsel, *Liberty and Security of Person*, p. 333.

3 HRC, General Comment No. 35, § 34.

4 ECtHR, *Assenov and Others v. Bulgaria*, No. 24760/94, Judgment of 28 October 1998, § 146.

5 See, for example, ECtHR, *McKay v. the United Kingdom*, § 35; ECtHR, *Medvedyev and Others v. France*, § 124.

6 See HRC, General Comment No. 35, § 32, with references to applicable case law.

es militating for or against detention.¹ Also, the body should have the authority to order the release of the detained person. It is not required, however, that the issue of the lawfulness of the detention, its prolongation or the possible amendment of the measure should be reviewed together by the same court during the initial review.²

The requirement for “promptness” in the jurisprudence of both the HRC and the ECtHR does not permit national authorities much flexibility. In the case of *Brogan and Others v. the United Kingdom* of 1988, the ECtHR held that a delay of four days and six hours “[...] falls outside the strict constraints as to time permitted by the first part of Article 5 para. 3”.³ In its judgment in the *McKay* case, the Grand Chamber, referring to the *Brogan* judgment, held that the maximum time for bringing a detainee before court is four days.⁴ However, this deadline is indicative and does not mean that there would not be a violation in cases with shorter time periods if the competent authorities have not demonstrated due speed in preparing the case for judicial review. In reality, there are such cases in the case law of both the Court and the HRC. For instance, in *Kandzhov v. Bulgaria* of 2008, the Court found a violation of Article 5(3) in a case where the applicant was brought before a judge after three days and twenty-three hours. The Court held that the authorities had the obligation to do this earlier if there were no “special difficulties or exceptional circumstances”.⁵ Similarly, in the case of *Gutsanovi v. Bulgaria* of 2013, the Court found a violation when one of the applicants was brought before a judge after three days, five hours and thirty minutes. The Court took into account his psychological vulnerability after being subjected to degrading treatment during his arrest, as well as the absence of any circumstances justifying the decision not to bring him before a judge on the second and the third day of his detention.⁶ In the case of *Ipek and Others v. Turkey* of 2009, related to a criminal charge against three 16-year-old children, the Court found a violation of Article 5(3) even though they were brought before a judge three days and nine hours after being arrested. The Court considered most of all the fact that at the time they were underage, as well as the lack of legal counsel during their detention by the police and the fact that the only activity in which they took part during their detention was their interrogation.⁷

The HRC has also found violations of Article 9(3) in cases where the applicants were brought before a judge in less than four days.⁸ The Committee on the Rights of the Child, in its General Comment No. 10, requires greater urgency in cases of detention of children on criminal charges. In such situations, children must be brought before the competent body within 24 hours and the lawfulness of their detention should be reviewed regularly, “preferably every two weeks”.⁹ General Comment No. 10 provides an interpretation of Article 37(d) of the Convention on the Rights of the Child, which does not refer to criminal charges but to the right of children to contest their deprivation of liberty on whatever ground before an independent and impartial body. On the other hand, the Comment as a whole is focused on justice for children in conflict with the law. In it, the Committee on the Rights of the Child does not make

1 ECtHR, *Aquilina v. Malta*, § 52.

2 ECtHR, *McKay v. the United Kingdom*, § 47.

3 ECtHR, *Brogan and Others v. the United Kingdom*, Nos. 11209/84, 11234/84, 11266/84 and 11386/85, Judgment of 29 November 1988, § 62.

4 ECtHR, *McKay v. the United Kingdom*, § 47.

5 ECtHR, *Kandzhov v. Bulgaria*, No. 68294/01, Judgment of 6 November 2008, § 66.

6 CEDH, *Gutsanovi c. Bulgarie*, Requête no 34529/10, Arrêt du 15 octobre 2013, § 159.

7 ECtHR, *Ipek and Others v. Turkey*, Nos. 17019/02 and 30070/02, Judgment of 3 February 2009, § 36.

8 HRC, *Borisenko v. Hungary*, No. 852/1999, Views of 14 October 2002, § 7.4. The applicant was brought before court after three days. The HRC found a violation due to “absence of an explanation from the State party on the necessity to detain the author for this period”.

9 CRC, General Comment No. 10: Children’s rights and juvenile justice, § 83. In General Comment No. 35 the HRC sustained the CRC’s standard for a 24-hour period to bring a detained child before a judge (§ 33).

the necessary distinctions to clarify the applicable standard on the form and speed of judicial review in cases of children deprived of their liberty without being subject to criminal charges.

The requirement of “promptness”, however, may far exceed the maximum of four days in cases of detention under extraordinary circumstances. Thus, in the case of *Medvedyev and Others v. France* of 2010, the ECtHR’s Grand Chamber did not find a violation of Article 5(3) in relation to the detention of a large group of sailors in open seas on suspicion of drug trafficking. They were brought before a judge only after being taken ashore 13 days later. The Court, however, did not find a violation as escorting them and bringing them before an investigative judge did not take more time than what was needed given the circumstances.¹

Article 5(3) also guarantees the right of the detained to have their case reviewed within a reasonable time. According to the ECtHR’s case law, this period is counted from the day of the arrest until the sentence of the court of first instance.² The period of detention between a sentence handed at first instance and the final sentence after the appeals does not fall within the scope of Article 5(3). The Court is guided by an assessment of the nature of the charges and the presence of continuous actions on behalf of the investigating bodies while the person is detained, and does not fix any deadlines. Thus, the Court finds that in some factually complex cases, detention periods of four,³ or even five and a half,⁴ years do not violate the “reasonable time” requirement if the law enforcement bodies have acted with the necessary speed and there were no periods of inaction. In its judgment in the case of *Toshev v. Bulgaria* of 2006, however, the Court held that a detention on remand for almost six years for a non-violent offence constituted in itself a violation of Article 5(3).⁵

In terms of the timelines for the detention of juveniles, the Committee on the Rights of the Child has not hesitated to determine them in General Comment No. 10. It requires that in cases of detention the period until the case is brought before the first instance does not exceed 30 days, and that the overall time until the sentence is handed down, including the possibility of staying the case during the trial phase, does not exceed six months.⁶ Recommendation Rec(2003)20 of the Committee of Ministers of the Council of Europe also requires that the period of detention of a juvenile on criminal charges generally does not exceed six months, allowing exceptions to this rule only in exceptional circumstances.⁷ The Covenant contains a special provision on the duration of the detention, Article 10(2)(b), which stipulates that juveniles must be tried “as speedily as possible”.⁸ These specific standards have influenced the case law of the ECtHR. In its judgment in the case of *Nart v. Turkey* of 2008, the Court found a violation of Article 5(3) with regard to the pre-trial detention for 48 days of a 17-year-old charged with armed robbery. The Court held that the duration in itself is too long given the age of the applicant, taking also into account the fact that he was placed in a prison with adults.⁹

1 ECtHR, *Medvedyev and Others v. France*, §§ 131-134. For other applicable ECtHR case law in similar cases, see Harris, O’Boyle, Bates, Buckley, *Law of the European Convention on Human Rights*, p. 340.

2 Among the many judgments, see ECtHR, *Ilijkov v. Bulgaria*, No. 33977/96, Judgment of 26 July 2001, §§ 33, 76; ECtHR, *Kalashnikov v. Russia*, No. 47095/99, Judgment of 15 July 2002, § 110.

3 ECtHR, *W. v. Switzerland*, No. 14379/88, Judgment of 26 January 1993, § 29. The case is related to charges of financial fraud where the investigation had taken a long time. In addition, the ECtHR also considered the behaviour of the applicant who had appealed his detention on numerous occasions.

4 ECtHR, *Chraidi v. Germany*, No. 65655/01, Judgment of 26 October 2006, § 47. The case involved serious charges of international terrorism resulting in three deaths and more than a hundred other victims.

5 ECtHR, *Toshev v. Bulgaria*, No. 56308/00, Judgment of 10 August 2006, § 72.

6 CRC, General Comment No. 10: Children’s rights and juvenile justice, § 83.

7 Recommendation (Rec (2003)20) of the Committee of Ministers of the Council of Europe concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, adopted on 24 September 2003, § 16.

8 According to Nowak, this means quicker than under the requirement of “reasonable time” (Nowak, *CCPR Commentary*, p. 233).

9 ECtHR, *Nart v. Turkey*, No. 20817/04, Judgment of 6 May 2008, §§ 33-34. For a similar approach which takes into con-

In terms of the justification of continuous detention, four permissible reasons to deny release on bail can be distinguished in ECtHR's jurisprudence:

- **Risk that the detainee might abscond.** This danger cannot be assessed solely on the basis of the gravity of the offence and the severity of the sentence faced.¹ The risk of abscondment should be assessed in light of the factors relating to the person's character, morals, housing situation, employment status, assets, family ties and other links within the country.²
- **Hindering the proper conduct of the proceedings.** This can occur in many different forms: destruction of documents; warning other suspects or conspiring with them; pressuring witnesses. Whatever the case, such justification must be supported by concrete facts.³

The risk of hindering the proper conduct of the proceedings diminishes with the passage of time.⁴

- **Preventing a crime.** This justification, which is available in the Court's older case law, may serve as a ground to deny release on bail if it might be reasonable to assume that the detainee might commit another serious crime, similar to that for which they were detained.⁵ Previous convictions may be taken into consideration in support of such an assumption.⁶
- **Preservation of public order.** This justification, resting on a rather unsound foundation, was first proposed in the judgment in the case of *Latellier v. France* of 1991. It allowed denial of release on bail in situations where "[...] by reason of their particular gravity and public reaction to them, certain offences may give rise to a social disturbance capable of justifying pre-trial detention". This, however, can be taken into consideration only in "exceptional circumstances" and solely if it is based on facts that can prove that the release of the detainee might really lead to disturbances of public order.⁷

Some authors add a fifth justification: for the detainee's own protection.⁸ Such a possibility, in "exceptional circumstances", is mentioned by the ECtHR in its judgment in the case of *I.A. v. France* of 1998.⁹ In the Court's subsequent case law, however, with the judgment in the case of *Lelièvre v. Belgium* of 2007, it is explicitly dismissed.¹⁰

The guarantees foreseen by Article 9(3) of the Covenant and Article 5(3) of the Convention as a condition for the release of the detainee are aimed at ensuring participation in the criminal

sideration the specific vulnerability of juveniles, see also ECtHR, *Selçuk v. Turkey*, No. 21768/02, Judgment of 10 January 2006, § 35; ECtHR, *Güveç v. Turkey*, No. 70337/01, Judgment of 20 January 2009, § 109.

1 ECtHR, *Idalov v. Russia*, No. 5826/03, Grand Chamber judgment of 22 May 2012, § 145, with references to applicable case law. See also ECtHR, *Ilijkov v. Bulgaria*, § 81, as well as the series of judgments against Bulgaria in which violations of Article 5(3) were found due to the excessive weight given by the Bulgarian courts to the gravity of the charges when refusing to replace the measure "detention on remand" with a less restrictive one.

2 ECtHR, *Becciev v. Moldova*, No. 9190/03, Judgment of 4 October 2005, § 58.

3 *Ibid.*, § 59.

4 ECtHR, *Clooth v. Belgium*, No. 12718/87, Judgment of 12 December 1991, § 43.

5 ECtHR, *Matznetter v. Austria*, No. 2178/64, Judgment of 10 November 1969, § 7.

6 ECtHR, *Selçuk v. Turkey*, § 34.

7 ECtHR, *Latellier v. France*, No. 12369/86, Judgment of 26 June 1991, § 51. See also ECtHR, *Alexander Makarov v. Russia*, No. 15217/07, Judgment of 12 March 2009, § 136; ECtHR, *Perica Oreb v. Croatia*, No. 20824/09, Judgment of 31 October 2013, § 117; ECtHR, *Lakatoš and Others v. Serbia*, No. 3363/08, Judgment of 7 January 2014, § 97; ECHR, *Geisterfer v. the Netherlands*, No. 15911/08, Judgment of 9 December 2014, § 39.

8 See Clayton, R., H. Tomlinson. *The Law of Human Rights*, Vol. I, Second edition, Oxford: Oxford University Press, 2009, p. 654.

9 ECtHR, *I.A. v. France*, No. 28213/95, Judgment of 23 September 1998, § 108.

10 CEDH, *Lelièvre c. Belgique*, Requête no 11287/03, Arrêt du 8 novembre 2007, § 104.

proceedings. Until 2010, ECtHR's case law was consistent in its focus on this objective. In one of its oldest judgments, *Neummeister v. Austria* of 1968, the Court considered that specifically with regard to the possibility for granting a bail the attempt "[...] to fix the amount of the guarantee to be furnished by a detained person solely in relation to the amount of the loss imputed to him does not seem to be in conformity with Article 5 (3) of the Convention".¹ In a series of cases it held that the authorities should define the amount of the bail by taking into consideration the various factors which would impact on the presence or absence of the defendant in the proceedings, as well as their financial circumstances and ability to pay the guarantee.²

With its judgment in the case of *Mangouras v. Spain* of 2010, the Court reversed its previous jurisprudence and decided that the amount of the bail may be determined by taking into account the damage imputed to the defendant, irrespective of his financial circumstances and ability to pay the bail. The case concerns the detention for 83 days of a ship's Master who in an emergency situation released a large quantity of oil into the sea, causing significant pollution. He was charged with causing damage to the environment by negligence. The amount of the bail was set at three million euro, which he was unable to pay and thus, he was not released until the insurance company paid. ECtHR justified the reversal of more than 40 years of case law with "the growing and legitimate concern both in Europe and internationally in relation to environmental offences".³ However, such an objective could hardly justify the setting of impossible bail terms for an unintentional act, regardless of the amount of damage it has caused.⁴

6.3. Judicial review of the lawfulness of the deprivation of liberty

Article 9(4) of the Covenant and Article 5(4) of the Convention guarantee the right of detained persons to contest the lawfulness of their detention before a court. The court must rule speedily/ without delay and order the release of the detainee in case of unlawful detention. The Covenant and the Convention use different terms with regard to the time within which the ruling should take place: "speedily" (the Convention) and "without delay" (the Covenant). Although the literal meaning of these terms suggests that the Covenant requires a quicker ruling than the Convention, the case law of the HRC and the ECtHR does not support such a distinction. The two provisions are based on the British-American law of habeas corpus and are sometimes referred to in this way in the case law of both the Committee and the Court.⁵ However, the proposal during the preparatory work on Article 9(4) of the Covenant to have the term habeas corpus included in the wording of the provision was rejected, in order to allow it to flexibly adapt to the different national legal systems of states parties.⁶ The scope of states parties' obligations under Article 9(4) of the Covenant and Article 5(4) of the Convention is wider than what is understood by habeas corpus in common law countries. In fact, the Grand Chamber of the ECtHR found the British legislation on habeas corpus inconsistent with the provision of the Convention due to the inadequate control exercised by national courts related to a decision to detain the applicant for the purposes of deportation on national security grounds.⁷

1 ECtHR, *Neummeister v. Austria*, No. 1936/63, Judgment of 27 June 1968, § 14.

2 For Bulgarian cases, see for example, CEDH, *Bojilov c. Bulgarie*, Requête no 45114/98, Arrêt du 22 décembre 2004, § 60; ECtHR, *Toshev v. Bulgarie*, § 68; CEDH, *Hristova c. Bulgarie*, Requête no 60859/00, Arrêt du 7 décembre 2006, § 111.

3 ECtHR, *Mangouras v. Spain*, No. 12050/04, Grand Chamber judgment of 28 September 2010, § 86.

4 This is sustained by seven of the Grand Chamber judges in their strong dissenting opinion. They believe that setting of impossible bail terms is an "apparent violation" of Article 5(3) of the Convention.

5 See, for example, CEDH, *Shamsa c. Pologne*, nos 45355/99 et 45357/99, Arrêt du 27 novembre 2003, § 59; ECtHR, *Castravet v. Moldova*, No. 23393/05, Judgment of 13 March 2007, § 47; HRC, General Comment No. 35, § 39.

6 Bossuit, *Guide to the "travaux préparatoires" of the ICCPR*, p. 222.

7 See ECtHR, *Chahal v. the United Kingdom*, § 132. See also ECtHR, *H. L. v. the United Kingdom*, No. 45508/99, Judgment of 5 October 2004, §§ 136-142.

Both Article 9(4) of the Covenant and Article 5(4) of the Convention concern the right of the detainee to appeal to a court, and not the right to be automatically brought before one as under 9(3) and Article 5(3). In other words, the possibility to initiate the mechanism of judicial review of the lawfulness of the detention is left to the discretion of the detainee. Thus, despite the fact that the ECtHR defines the right to contest the lawfulness of detention as a “cornerstone guarantee”,¹ this requirement places some categories of detainees, such as persons suffering from certain mental disorders and children detained for the purposes of “educational supervision”, in a specifically vulnerable position with regard to taking advantage of this opportunity. However, neither the provisions nor the case law of the HRC and the ECtHR provide for this mechanism to be adapted to their situation, for example, through a requirement for automatic initial review of the detention by a court and subsequent automatic judicial review of the lawfulness of the deprivation of liberty for these categories, as well as the provision of effective legal assistance immediately after the detention.² In the *Bouamar* judgment the ECtHR imposed an obligation for a hearing and effective legal assistance of a child brought to court for the purposes of Article 5(4) who was deprived of his liberty on the grounds of “educational supervision”,³ but not for providing such at the time of detention.

The right to contest the detention before a court is applicable to all grounds on which deprivation of liberty is allowed under Article 9 and Article 5, except for the cases where the person has been convicted and sentenced to imprisonment in the context of criminal proceedings (Article 5(1)(a) of the Convention). In such cases, Article 9(4) and Article 5(4) do not require subsequent judicial review of the lawfulness of the deprivation of liberty for the fixed period of the detention on the assumption that it is subject to review and confirmation of its lawfulness *a priori* by the court which sentenced the detainee.⁴ Both the Covenant (Article 14(5)) and the Convention (Article 2 of Protocol No. 7), however, guarantee the right to a one-off appeal of the initial verdict before a higher court. Appeal before a court is required in all cases where the grounds for the deprivation of liberty are subject to change over time.⁵

Article 9(4) and Article 5(4) do not require a two-tier judicial review of the lawfulness of detention. However, when such is foreseen in the national legislation, the guarantees available at the second instance must be the same as those available at the first instance.⁶

In the jurisprudence of the HRC and the ECtHR, the concept of “court” is wide and includes both statutory courts and bodies which may act as courts under Article 9(4) and Article 5(4) without being part of the ordinary courts system. In all cases, the body must be independent both of the executive power and of the parties in the case.⁷ In its decision in the case of *Rameka et al. v. New Zealand* of 2003, the HRC held that the Parole Board, which is not part of

1 ECtHR, *Rakevich v. Russia*, No. 58973/00, Judgment of 28 October 2003, § 43.

2 ECtHR directs towards such a requirement, albeit in a more restricted sense, in the cases of “voluntary” placement in psychiatric institutions of persons of restricted legal capacity on the will of their guardians (See ECtHR, *Sykora v. the Czech Republic*, No. 23419/07, Judgment of 22 November 2012, § 67).

3 ECtHR, *Bouamar v. Belgium*, § 60. In the case of *A. and others v. Bulgaria*, however, the Court did not see an issue with Article 5(4) or with any other provision of the Convention in a situation where one of the applicants was represented during court hearings by a civil servant with no legal education and, both in her case and in that of the other applicants who were represented by lawyers, their representatives pleaded in support of their placement in CBS, in contradiction with the applicants’ explicit wishes as stated in court.

4 HRC, *Gavrilin v. Belarus*, No. 1342/2005, Views of 28 March 2007, § 74; ECtHR, *De Wilde, Ooms and Versyp v. Belgium*, § 76.

5 ECtHR, *Stafford v. the United Kingdom*, § 72; ECtHR, *Wynne v. the United Kingdom*, No. 15484/89, Judgment of 18 July 1994, § 33; ECtHR, *Waite v. the United Kingdom*, No. 53236/99, Judgment of 10 December 2002, § 56; ECtHR, *Lebedev v. Russia*, No. 4493/04, Judgment of 25 October 2007, § 112; ECtHR, *Akram Karimov v. Russia*, No. 62892/12, Judgment of 28 May 2014.

6 See, for example, ECtHR, *Kučera v. Slovakia*, No. 48666/99, Judgment of 17 July 2007, § 107; HRC, General Comment No. 35, § 48.

7 ECtHR, *Gavril Yosifov v. Bulgaria*, No. 74012/01, Judgment of 6 November 2008, § 56.

the New Zealand judiciary, may act as a “court” under Article 9(4) when reviewing whether to terminate or extend the deprivation of liberty of persons sentenced to indefinite detention who have served the non-parole period of the sentence. The Committee finds it sufficient that this is a body that is statutorily independent, its case review procedure meets the requirements for fair trial and its decisions may be appealed in court.¹ The ECtHR in turn accepts that the investigating judge in the Italian system of criminal justice may act as “court” under Article 5(4) of the Convention due to his independence and due to the existence of sufficiently strict procedural guarantees to appeal the detention.² This ruling is quite controversial, as the investigative judge’s main function is to successfully complete the investigation, i.e. to collect sufficient evidence to prove the defendant’s guilt. By itself, this attributes a prosecutorial role to this figure, in contradiction with one of the basic functions of the court: its impartiality.³

The court under Article 9(4) of the Covenant and Article 5(4) of the Convention rules on the “lawfulness” of the detention, regardless of the grounds for it. This includes not only its formal compliance with the procedural law but also the legitimacy of its purpose, its necessity and proportionality, as well as other possible factors that can make a detention arbitrary. The ECtHR endorses a similarly wide understanding of lawfulness in a series of cases.⁴ During the review, the national court has the obligation to explore the specific grounds for legitimate deprivation of liberty under the Convention. For example, in case of detention during pre-trial proceedings, it should verify on the basis of the available facts whether and to what extent there is reasonable suspicion that the person has committed the offence, and whether the facts justify the continued detention. Respectively, in case of placement of a child in an institution for the purposes of educational supervision, the national court should verify at the initial stage whether, given the specific facts, the deprivation of liberty for a certain period is necessary and proportionate and in subsequent reviews, the court should verify whether the factors justifying the initial detention are still in place and whether they override the damaging effects of child institutionalisation. Some of the issues that the national court needs to explore are related also to possible violations of other provisions of the Convention and the Covenant, insofar as the grounds for the measure must be consistent with the place and conditions of detention, which may be inhuman and/ or degrading in violation of Article 3 of the Convention and Article 7 of the Covenant.⁵ Should this be the case, the detained person should be released.⁶

The procedural guarantees of judicial review in ECtHR’s case law contain only some of the requirements for fair trial under Article 6 of the Convention and vary depending on the case and the type of deprivation of liberty. In the opinion of the Court, they should in all cases have “a judicial character”.⁷ This means that the equality of the parties must be ensured.⁸ In a series of judgments, the Court has held that a hearing with the participation of the parties

1 HRC, *Rameka et al. v. New Zealand*, No. 1090/02, Views of 6 November 2003, § 7.4. ECtHR shares this view with regard to a similar system in England and Wales: ECtHR, *Waite v. the United Kingdom*, §§ 54, 56-60.

2 ECtHR, *Bezicheri v. Italy*, No. 11400/85, Judgment of 26 September 1989, § 20.

3 For a strong critique of this approach, see Trechsel, *Human Rights in Criminal Proceedings*, p. 480.

4 ECtHR, *Brogan and Others v. the United Kingdom*, § 65; For Bulgarian cases, see ECtHR, *Nikolova v. Bulgaria*, No. 31195/96, Grand Chamber judgment of 25 March 1999, § 58; ECtHR, *Shishkov v. Bulgaria*, No. 38822/97, Judgment of 9 January 2003, § 77; ECtHR, *Yankov v. Bulgaria*, No. 39084/97, Judgment of 11 December 2003, § 184; ECtHR, *Tanko Todorov v. Bulgaria*, No. 51562/99, Judgment of 9 November 2006, §§ 52-53; ECtHR, *Bochev v. Bulgaria*, No. 73481/01, Judgment of 13 November 2008, § 64.

5 See 4.5 above.

6 Rodley, N., Polard, M. (2009) *The Treatment of Prisoners under International Law*, Oxford/New York, Oxford University Press, p. 468.

7 ECtHR, *A. and Others v. the United Kingdom*, § 203; ECtHR, *Idalov v. Russia*, § 161.

8 ECtHR, *Sanchez-Reisse v. Switzerland*, No. 9862/82, Judgment of 21 October 1986, § 51; ECtHR, *A. and Others v. the United Kingdom*, § 204.

is necessary in cases under Article 5(1)(c).¹ The Court imposes the same requirement with regard to the deprivation of liberty of children for the purposes of educational supervision.² The hearing does not have to be public, although in some cases this might be necessary.³ The ECtHR justifies this approach with the requirement for speediness in proceedings under Article 5(4).⁴ When necessary, the national court should be capable of also hearing witnesses.⁵

According to the ECtHR, the equality of the arms and the effectiveness of judicial review require that the defense be allowed to acquaint itself with the evidence justifying the lawfulness of detention. However, this is a tricky issue in the pre-trial phase of criminal proceedings, when the prosecution is still collecting evidence, some of which could be compromised if disclosed, while some might come from secret sources. In one of the key judgments under Article 5(4), *Garcia Alva v. Germany* of 2001, the Court deems legitimate the interest of the effectiveness of the investigation, which may require that some evidence be kept secret during the appeal of the lawfulness of detention. However, “this [...] cannot be pursued at the expense of substantial restrictions on the rights of the defence. Therefore, information which is essential for the assessment of the lawfulness of a detention should be made available in an appropriate manner to the suspect’s lawyer”.⁶ In the Grand Chamber judgment in the case *A. and Others v. the United Kingdom* of 2009, concerning the situation of several persons detained on suspicion of involvement in terrorist activities, the Court held that not disclosing some evidence to the defense is admissible in principle but that there would be a violation of Article 5(4) if the material provided consisted only of general assertions and the detention was based solely or to a decisive degree on closed material.⁷ On the other hand, in its judgment in the case *Andrei Georgiev v. Bulgaria* of 2007, the ECtHR did not find a violation of Article 5(4) in a case in which the applicant complained of lack of access to case materials when he was appealing his detention on criminal charges. However, there was no indication that these materials were essential to determine the lawfulness of the detention.⁸

In its early case law on cases related to the detention of persons suffering from mental disorders, the ECtHR held that in some cases “[...] the very nature of the deprivation of liberty under consideration would appear to require a review of lawfulness to be available at reasonable intervals”.⁹ The Court justifies this with the possibility of subsequent appearance of “[...] new issues affecting the lawfulness of the detention”,¹⁰ for example, changes in the health condition of the detained person that would mean further deprivation of liberty is not required. Later, the Court adopted this approach also with regard to some of the other conditions of legitimate deprivation of liberty under Article 5(1).¹¹ The frequency of the periodical review depends on the type of detention. In case of pre-trial detention on criminal charges, the Court held that a

1 See, for example, the following judgments of the Grand Chamber: ECtHR, *Nikolova v. Bulgaria*, § 58; ECtHR, *A. and Others v. the United Kingdom*, § 204. In General Comment No. 35 the HRC, following the UN Principles for the Protection against Detention, endorses this right for all categories of persons deprived of their liberty (§ 42).

2 ECtHR, *Bouamar v. Belgium*, § 60.

3 ECtHR, *Reinprecht v. Austria*, No. 67175/01, Judgment of 15 November 2005, § 41. According to the Court, “[...] the detainee’s personal presence is always required when the court has to assess his personality, the risk of his absconding or his predisposition to further offences, when the court changes the basis for the detention or when it prolongs the detention after a significant lapse of time [...]” (ECtHR, *Lebedev v. Russia*, § 113).

4 ECtHR, *Reinprecht v. Austria*, § 40.

5 ECtHR, *Becciev v. Moldova*, § 72; ECtHR, *Țurcan and Țurcan v. Moldova*, No. 39835/05, Judgment of 23 October 2007, §§ 67-70; ECtHR, *A. and Others v. the United Kingdom*, § 204.

6 ECtHR, *Garcia Alva v. Germany*, No. 23541/94, Judgment of 13 February 2001, § 42.

7 ECtHR, *A. and Others v. the United Kingdom*, § 220.

8 ECtHR, *Andrei Georgiev v. Bulgaria*, No. 61507/00, Judgment of 26 July 2007, § 89.

9 ECtHR, *Winterwerp v. the Netherlands*, § 55; See also ECtHR, *X. v. the United Kingdom*, § 51.

10 ECtHR, *X. v. the United Kingdom*, § 51. See also ECtHR, *Stoichkov v. Bulgaria*, § 65.

11 See Harris, O’Boyle, Bates, Buckley, *Law of the European Convention on Human Rights*, pp. 363-364.

period of one month meets the requirement on “reasonableness”, underlining that in principle this type of detention requires “short intervals”.¹ In case of detention of persons with mental disorders, it allows longer periods of periodical review, holding that periods of up to one year are acceptable, while those which exceed this limit are in principle too long and violate Article 5(4).²

ECtHR’s jurisprudence does not clarify to what extent the requirement on access to review of the lawfulness of detention at reasonable intervals is applicable also to the deprivation of liberty for the purposes of educational supervision.³ In the *A. and Others v. Bulgaria* judgment, the Court, having accepted that the placement of the applicants in a CBS meets the purposes of educational supervision, does not rule on this, although Bulgarian legislation does not provide for such a possibility. In principle, this type of deprivation of liberty ought to be subject to periodical judicial review at short intervals, given the damaging effect of institutionalisation on child development, and also given its nature. It is entirely possible for non-institutional alternatives for educational supervision to become available over time and the competent authorities should be obliged to constantly seek such alternatives for every institutionalised child. One of the objectives of the judicial review of this type of deprivation of liberty should be for them to prove to a court that they are actually doing this.

The temporal aspect of the judicial review of the lawfulness of the deprivation of liberty includes two elements: the period within which the detainee is given the opportunity to appeal the lawfulness of the detention and the period within which the court rules on the complaint. In the jurisprudence of both the HRC and the ECtHR, the right of the detainee to file a complaint should be guaranteed in principle from the moment of arrest.⁴ As for the period in which the national court rules on the complaint, the ECtHR has found violations in cases when the delay of the ruling was 12 days in a case of pre-trial detention on criminal charges⁵ and 13 days in a case of detention for extradition purposes.⁶ On the other hand, the Commission found that a five-day delay of the court ruling in a case of detention on criminal charges does not constitute a violation of Article 5(4).⁷ In the case of *Letellier v. France* of 1991, the Court held that periods ranging from 8 to 20 days in a case of pre-trial detention on criminal charges, where the applicant had in a short period of time filed several consecutive complaints, do not constitute a violation of Article 5(4).⁸ Longer delays are also admissible where the case is factually complicated, where there is a necessity to seek expert opinion, as well as in the court of second instance, where the national legislation allows such.⁹ The HRC in turn accepts that periods of eight days at first instance, three weeks at second instance and two months at third instance do not constitute a violation of Article 9(4) of the Covenant.¹⁰

In several cases, the ECtHR underlines that the requirement of “speediness” under Article 5(4) of the Convention does not involve such urgency as the requirement of “promptness” un-

1 ECtHR, *Bezicheri v. Italy*, § 21. There is no obligation, however, that the applicant be heard by court every time he/she files a complaint (ECtHR, *Çatal v. Turkey*, No. 26808/08, Judgment of 17 April 2012, § 33).

2 ECtHR, *Blackstock v. the United Kingdom*, No. 59512/00, Judgment of 21 June 2005, § 44.

3 Some commentators who claim that such an obligation exists also in this ground for legitimate deprivation of liberty refer to the Bouamar judgment, which however does not contain such an explicit requirement (See Harris, O’Boyle, Bates, Buckley, *Law of the European Convention on Human Rights*, p. 364).

4 HRC, General Comment No. 35, § 42; ECtHR, *Petkov and Profirov v. Bulgaria*, § 67.

5 ECtHR, *Talat Tepe v. Turkey*, No. 31247/96, Judgment of 21 December 2004, § 73.

6 ECtHR, *Khomullo v. Ukraine*, No. 47593/10, Judgment of 27 November 2014, § 83.

7 ECmHR, *Egue v. France*, No. 11256/84, Decision of 5 September 1988.

8 ECtHR, *Letellier v. France*, §§ 56-57.

9 See ECtHR, *Baranowski v. Poland*, § 72; ECtHR, *Shakurov v. Russia*, No. 55822/10, Judgment of 5 June 2012, § 179.

10 HRC, *J.S. v. New Zealand*, No. 1752/2008, Decision on admissibility of 26 March 2012, §§ 6.3-6.4.

der Article 5(3).¹ The Court justifies this with the fact that the issues, which arise when ruling on the lawfulness of the detention “[...] are often of a more complex nature than those which have to be decided when a person detained in accordance with Article 5(1)(c) is brought before a judge or other judicial officer as required by paragraph 3 of the Article”.² This approach of the Court is confusing and contradicts other legal principles established in its case law with regard to Article 5(4). More specifically, the Court often underlines that the assessment on whether a court has ruled “promptly” after the appeal cannot be made in abstracto but depends on the type of detention and the particular features of the case.³ It also held that when the national legislation has established some form of legal remedy as a protection against unlawful deprivation of liberty, it is the state’s obligation to make it accessible and effective given the specific circumstances.⁴

Within the different grounds of legitimate deprivation of liberty under Article 5(1), there could be cases where if the court does not rule within one or two days, or sometimes even within hours after the appeal, the very nature of judicial protection might become meaningless. Thus, in its judgment in the case of *Petkov and Profirov v. Bulgaria* of 2014, the Court found a violation of Article 5(4) due to the absence of a possibility for the applicants, detained by the police for 24 hours without clear factual grounds on suspicion of having committed an offence, to contest the lawfulness of their detention and to get a court ruling on their complaints in the framework of a statutory procedure. The Bulgarian courts reviewing the complaints, however, interpret this provision as providing for judicial review of the lawfulness of the detention *post factum*, for the purpose of awarding compensation, but not while the person is detained, with the purpose of eventual release. According to the Court, such remedy does not meet the requirements of Article 5(4).⁵

7. Treatment of children deprived of their liberty in institutions

The main purpose of the deprivation of liberty of both children and adults is not retribution but their reformation and social rehabilitation. This is a legally binding norm established in Article 10(3) of the Covenant and reproduced and specified in a series of “soft” standards.⁶ At the same time, deprivation of liberty must be carried out in conditions which guarantee and encourage to the maximum extent the respect for children’s fundamental rights. Rule 13 of the Havana Rules stipulates: “Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty”.⁷ This is a leading principle in the treatment of both children and adults at institutions for the deprivation of liberty. It corresponds to the doctrine of “inherent limitations” adopted by the Strasbourg organs in their earliest case law. According to this doctrine, the limitation to a greater extent of some rights and freedoms guaranteed by the Convention with regard to certain categories of people, such as persons deprived of their liberty, psychiatric patients, soldiers and civil servants, is intrinsic to their rank and legal status.⁸ These

1 ECtHR, *E. v. Norway*, No. 11701/85, Judgment of 29 August 1990, § 64; ECtHR, *Eminbeyli v. Russia*, No. 42443/02, Judgment of 26 February 2009, § 66.

2 ECtHR, *E. v. Norway*, § 64.

3 CEDH, *Pantea c. Roumanie*, no 33343/96, Arrêt du 3 juin 2003, § 253; ECtHR, *Frasik v. Poland*, No. 22933/02, Judgment of 5 January 2010, § 63; CEDH, *M.S. c. Belgique*, § 163.

4 ECtHR, *Čonka v. Belgium*, No. 51564/99, Judgment of 5 February 2002, §§ 44, 55; ECtHR, *Eminbeyli v. Russia*, § 63; ECtHR, *Proshkin v. Russia*, No. 28869/03, Judgment of 7 February 2012, § 88; ECtHR, *Perica Oreb v. Croatia*, § 129; ECtHR, *Margaretić v. Croatia*, No. 16115/13, Judgment of 5 June 2014, § 114; ECtHR, *Petkov and Profirov v. Bulgaria*, § 67.

5 ECtHR, *Petkov and Profirov v. Bulgaria*, § 68.

6 See, for example, Rule 26.1 of the Beijing Rules, as well as Rule 79.2 of the European Rules for Juvenile Offenders.

7 Havana Rules, Rule 13.

8 Van Dijk, van Hoof, van Rijn, Zwaak, *Theory and Practice of the European Convention on Human Rights*, pp. 345-346.

limitations, however, are different for children and adults deprived of their liberty, being considerably more favourable for children.

The Havana Rules, the European Rules for Juvenile Offenders, as well as other documents of the United Nations and the Council of Europe, contain standards on the treatment of children deprived of their liberty in several areas, of which five will be addressed here: placement and physical conditions; activities and education; medical care; contacts with the external world; and disciplinary practices and the use of force. Despite the fact that the Havana Rules introduce standards mainly for juvenile offenders who are deprived of their liberty, they explicitly stipulate that these standards may be applied to other similar institutions.¹ In turn, the European Rules for Juvenile Offenders stipulate that the standards they introduce are also applied to all persons held in institutions for juvenile offenders.²

7.1. Placement and material conditions

One of the most important specific requirements with regard to the placement of children in institutions is that the latter should be small and the children placed in them few in number, so as to allow for the provision of individualised care.³ The Havana Rules add the requirement that they should be decentralised so as to allow the children placed in them to maintain closer contacts with their families and to ensure their better integration into the local social, economic and cultural environment.⁴ They also require that juveniles should be held at open detention facilities.⁵

The international standards on the separation of children from adults allow for them to be placed together under certain conditions. Above all, Article 37(c) of the Convention on the Rights of the Child, while requiring as a general rule that children be separated from adults in detention facilities, still add the stipulation “[...] unless it is considered in the child’s best interest not to do so [...]”. In its General Comment No. 10, the Committee on the Rights of the Child is quite cautious towards the possibility of mixing them, given the ample evidence that the placement of children in institutions together with adults poses a threat to their safety and to the opportunities for their effective rehabilitation. The Committee, therefore, states that the exceptions from the general rule of separation “[...] should be interpreted narrowly; the child’s best interests does not mean for the convenience of the States parties. States parties should establish separate facilities for children deprived of their liberty, which include distinct, child-centred staff, personnel, policies and practices.”⁶

According to the Havana Rules, the placement of children in institutions should be aimed at meeting their specific needs in respect of their age, personal characteristics, sex, type of offence, physical and mental health, as well as at guaranteeing their personal safety and protecting them against harmful influences and risk factors.⁷ As with adults, children deprived of their liberty should be placed in individual cells overnight. Their placement in premises together with other children is allowed only when they have chosen it themselves.⁸ If placed

1 Havana Rules, Rule 15.

2 European Rules for Juvenile Offenders, Rule 22.

3 European Rules for Juvenile Offenders, Rule 53.4; Havana Rules, Rule 30.

4 Havana Rules, Rule 30. See also European Rules for Juvenile Offenders, Rule 55.

5 Havana Rules, Rule 30. See also European Rules for Juvenile Offenders, Rule 56.

6 CRC, General Comment No. 10, § 85.

7 Havana Rules, Rule 28.

8 European Rules for Juvenile Offenders, Rule 63.3. Literally the same standard is formulated as generally applicable in the European Prison Rules, Rule 18.5. This is one of the most commonly violated standards both with regard to children and adults. However, in their case law the HRC and the ECtHR do not treat this violation as one creating a compliance problem with any provision of the Covenant or the Convention.

in common premises, children's compatibility with each other should be ensured and they should be allowed to choose their cellmates.¹

The generally applicable standards on overpopulation, hygiene, ventilation, food, clothing and bedding, access to and condition of sanitary facilities are also applicable to children. When they are lacking to some extent in an institution, their combined effect on the everyday life of the child might exceed the "minimum degree of severity" of treatment, categorising it as inhuman and degrading in contradiction with Article 7 of the Covenant or Article 3 of the Convention. According to the ECtHR, the assessment of whether "the minimum degree of severity" of treatment has been exceeded depends on many factors, including the victim's specific vulnerability. Age is one of the factors in determining vulnerability in the jurisprudence of the Court.² However, in its case law, this barrier is often raised quite high, including with regard to juvenile detainees, far exceeding the requirements of the "soft" standards applicable to the treatment of children deprived of their liberty. The judgment in the case of *Georgiev v. Bulgaria* of 2005 is an example of this. In this case, the applicant, who was 17-year-old at the time of the events, complained of the material conditions at the Pazardzhik investigative detention facility where he was held for a month and a half, most of the time in an underground cell without access to natural light. An adult was also held in his cell for some of this time. The applicant was not taken outside for open-air walks and had access to the lavatory only two or three times a day. During the rest of the time, he used a bucket inside the cell for his toilet needs. During his stay at the detention facility, he was not provided with the opportunity to take part in any activities. The applicant also complained of the bad hygiene and the low quality of the food that was provided. With four votes to three, the Court found that the treatment had not reached the minimum degree of severity "[...] more specifically due to its relatively short duration".³

7.2. Activities and education

The international standards put a special emphasis on the organisation of various activities for all children deprived of their liberty, corresponding to their capabilities and needs, as well as on ensuring their access to quality education. The European Rules for Juvenile Offenders require that the regime in juvenile detention facilities provides opportunities for various activities, including education, vocational training, sports, work and occupational therapy, individual and group therapy and inclusion in rehabilitation programmes.⁴ Providing education to all children is the most important one among these.⁵ The regime should allow for time to be spent in meaningful activities outside the sleeping accommodation as much as possible, but not less than eight hours a day,⁶ including on weekends.⁷

Both the Havana Rules and the European Rules for Juvenile Offenders require, whenever possible, that the education in children's institutions be provided "[...] outside the detention facility in community schools [...]" and, in any case, by qualified teachers through programmes integrated with the education system of the country.⁸ The diplomas or educational certificates

1 European Rules for Juvenile Offenders, Rule 63.2.

2 See ECtHR, *Ireland v. the United Kingdom*, No. 5310/71, Judgment of 18 January 1978, § 162. This approach was confirmed in scores of later judgments.

3 CEDH, *Georgiev c. Bulgarie*, Requête no 47823/99, Arrêt du 15 décembre 2005, § 65.

4 European Rules for Juvenile Offenders, Rule 77.

5 For some unclear reason HRC's General Comment No. 10 speaks of ensuring the right to education only to "every child of compulsory school age". (CRC, General Comment No. 10, § 89).

6 European Rules for Juvenile Offenders, Rule 80.1.

7 *Ibid.*, Rule 80.2.

8 Havana Rules, Rule 38; European Rules for Juvenile Offenders, Rules 78.2, 78.5.

awarded should not indicate in any way that the child has been institutionalised.¹ Access to education and work should also be provided to the children detained on remand in pre-trial proceedings.² Children of foreign origin and those from ethnic minorities, who have difficulties with the official language, should also be provided with education and language training.³

Children deprived of their liberty should have access to work, whenever possible organised in the community instead of in the institution, integrated with their vocational training and appropriately paid. The purpose of the work should not be carried out for the purpose of making a profit but to prepare children for their social reintegration.⁴ Education and vocational training in the detention facilities should have priority over work.⁵ All regime activities that children participate in during work time should be rewarded in the same way as if they were working.⁶

7.3. Medical care

In the field of medical care in detention facilities, the United Nations and the Council of Europe bodies have formulated many generally applicable standards concerning its various aspects.⁷ Inadequate medical and psychiatric care in detention facilities may in itself constitute inhuman and degrading treatment in violation of Article 7 of the Covenant and Article 3 of the Convention.⁸ And in case of deliberate medical negligence, the treatment, apart from being degrading, could also be inhuman.⁹

One of the major principles of the organisation of medical care in detention facilities is the requirement for its integration, both in terms of organisation and quality, with the national medical care system.¹⁰ Persons deprived of their liberty cannot be discriminated in their access to the medical care available in the country on the basis of their legal status.¹¹ The Havana Rules require that the medical care of children deprived of their liberty should be provided, whenever possible, in the community.¹² Apart from equal treatment, other major principles of medical care in detention facilities include adequacy of access, informed consent, confidentiality and the professional independence of medical staff serving the inmates.¹³

The European Prison Rules require that every prison employs at least one qualified general medical practitioner, full-time or part-time depending on the number of inmates, and to provide access to one “at all times” in case of emergency.¹⁴ According to Recommendation R (98) 7 “[p]risoners should have access to a doctor, when necessary, at any time during the

1 Havana Rules, Rule 40.

2 *Ibid.*, Rule 18b.

3 *Ibid.*, Rule 38; European Rules for Juvenile Offenders, Rule 106.4.

4 *Ibid.*, Rules 42, 45-46.

5 European Rules for Juvenile Offenders, Rule 78.1.

6 *Ibid.*, Rule 82.3. See also European Prison Rules, rule 28.4.

7 For a concise but comprehensive overview by 2007, see World Health Organization (2007) *Health in prisons: A WHO guide to the essentials in prison health*, WHO Europe, Copenhagen, pp. 7-13.

8 See ECtHR, *Hummatov v. Azerbaijan*, Nos. 9852/03 and 13413/04, Judgment of 29 November 2007, §§120-121; ECtHR, *Petrea v. Romania*, No. 4792/03, Judgment of 29 April 2008, § 48; ECtHR, *Groni v. Albania*, No. 25336/04, Judgment of 7 July 2009, § 132.

9 See ECtHR, *Moussel v. France*, No. 67263/01, Judgment of 14 November 2002, § 48; ECtHR, *Pilčić v. Croatia*, No. 33138/06, Judgment of 17 January 2008, § 42; ECtHR, *Pitalev v. Russia*, No. 34393/03, Judgment of 30 July 2009, § 49.

10 Committee of Ministers, Recommendation No. R (98) 7 concerning the ethical and organizational aspects of health care in prison, 8 April 1998, § 10. See also European Prison Rules, Rule 40.2.

11 European Prison Rules, Rule 40.3.

12 Havana Rules, Rule 49.

13 Recommendation No. R (98) 7, Section I.

14 European Prison Rules, Rules 41.1-41.3.

day and the night. Someone competent to provide first aid should always be present on the prison premises”.¹

The Havana Rules and the European Rules for Juvenile Offenders, as well as many other documents of the United Nations and the Council of Europe, reaffirm one of the oldest requirements in relation to medical care in detention facilities: medical examination immediately upon arrival at the institution.² This examination has a two-fold purpose: to document evidence of ill-treatment and to establish physical or mental conditions which require treatment. Clinical trials involving children are prohibited.³ In this respect, the standard is different than that in the European Prison Rules, which allows such trials to be carried out with the consent of the inmates.⁴

The parents and guardians of children deprived of their liberty, as well as other persons designated by them, should be notified of their health status on request and in all cases when important changes occur. They must be notified also in case of death, a disease requiring the transfer of the child to an outside medical facility, or a condition which requires clinical care for more than 48 hours.⁵ In case of death, the closest relatives have the right to inspect the death certificate, see the body and determine the method of disposal of the body. In all cases of death of a child in an institution, as well as when the death has occurred within six months of their release from such an institution, an independent investigation of the cause of death should be carried out and the results should be presented to the closest relatives.⁶

7.4. Contacts with the outside world

The international standards on the treatment of children deprived of their liberty pay special attention to their contacts with the outside world. This includes both contacts with parents and relatives and with organisations and institutions in the community. Such contacts should not only be permitted but should also be actively encouraged, and should include both the opportunity to visit the child in the detention facility and the opportunity for children to visit their home.⁷

The Havana Rules require that the child should have the opportunity to receive “[...] regular and frequent visits, in principle once a week and not less than once a month [...]”.⁸ This standard far exceeds the one for adults. Apart from family and friends, the child should also have the opportunity to meet representatives of “outside organisations”.⁹ The Havana Rules place an emphasis on the need for the contacts with the family and the defence counsel to be carried out in confidentiality and to be “unrestricted”.¹⁰ In this aspect, the European Rules for Juvenile Offenders have been formulated in an unacceptably broad manner. They provide a possibility for the restriction and monitoring of any communication necessary for the purposes of “[...] continuing criminal investigations, maintenance of good order, safety and security, prevention of criminal offences and protection of victims of crime”.¹¹ Apart from being unacceptably

1 Recommendation No. R (98) 7, § 4.

2 Havana Rules, Rule 50; European Rules for Juvenile Offenders, Rule 62.5; CRC, General Comment No. 10, § 89.

3 Havana Rules, Rule 55; European Rules for Juvenile Offenders, Rule 72.2

4 European Prison Rules, Rule 48.1.

5 Havana Rules, Rule 56.

6 *Ibid.*, Rule 57.

7 See CRC, General Comment No. 10, § 89; Havana Rules, Rule 59.

8 Havana Rules, Rule 60.

9 *Ibid.*, Rule 59; European Rules for Juvenile Offenders, Rule 83. This is a generally applicable standard introduced also by Rule 24.1 of the European Prison Rules.

10 Havana Rules, Rule 60.

11 European Rules for Juvenile Offenders, Rule 85.2.

comprehensive, this formulation also contains unclear grounds, such as “maintenance of good order, safety and security”. It also lacks a requirement on the proportionality of the restriction. In principle, insofar as the right to communication and visits is a part of the right to private and family life, restricting it should be consistent with the standards under Article 17 of the Covenant and Article 8 of the Convention, and in the case of children, for whom the need for maintaining contacts with the family and the outside world are higher, the restrictions should be even more narrowly formulated than in the general case.

The right to contacts with the outside world includes also access to the media. The Havana Rules acknowledge the right of children deprived of their liberty to be informed of news and current affairs through newspapers and other publications, as well as through radio, television, cinema and visits by representatives of any lawful club or organisation in which the child is interested.¹ The ECtHR allows in its case law for inmates to be interviewed by the media, with their consent, including inside the detention facility, consistent with the requirements of Article 10 of the Convention.² However, the issue of the access of inmates, including children, to the Internet is not regulated clearly. In its scarce case law on this topic so far, the ECtHR has adopted an approach that seems too restrictive.³ This is an extremely important area, in which abundant case law is to be expected in the near future.

7.5. Disciplinary practices and use of force

The disciplinary practices and the use of force in juvenile detention facilities are subject to more restrictions than those applied to adults. This is due to children’s specific vulnerability. The starting point for the international standards in this respect is that maintaining good order in juvenile detention facilities in the interest of everyone’s safety is easier and can be achieved by less restrictive means in relation to children than to adults. Also, measures that are acceptable when used against adults could become inhuman and degrading treatment or punishment when applied against children. The ECtHR takes into account children’s specific vulnerability in cases when physical force is used against them.⁴

The Havana Rules and the European Rules for Juvenile Offenders impose several specific restrictions which do not exist at the level of the generally applicable standards. One of them is the prohibition to place children in solitary confinement.⁵ The denial of contacts with family as a form of punishment is also prohibited.⁶ The Havana Rules unconditionally prohibit the carrying of firearms in all juvenile detention facilities.⁷ The European Rules for Juvenile Offenders, however, allow it in case of “operational emergency”.⁸ The Havana Rules require that force and restraint in juvenile detention institutions should be used only “in exceptional cases, where all other control methods have been exhausted and failed” and restrict the cases in which this is possible to situations in which it is necessary to prevent the infliction of injury to oneself or to others or the serious destruction of property.⁹

1 Havana Rules, Rule 62.

2 ECHR, *Schweizerische Radio- und Fernsehgesellschaft SRG v. Switzerland*, No. 34124/06, Judgment of 21 June 2012.

3 See, for example, ECtHR, *Helander v. Finland*, No. 10410/10, Judgment of 10 September 2013. There are several pending applications on this subject which are yet to be considered by the Court.

4 CEDH, *Darraj c. France*, n° 34588/07, Arrêt du novembre 2010, § 44.

5 Havana Rules, Rule 67; European Rules for Juvenile Offenders, Rule 95.3.

6 Havana Rules, Rule 67; European Rules for Juvenile Offenders, Rule 95.6. The European Rules allow the contacts to be restricted if “the disciplinary offence relates to such contacts or visits”.

7 Havana Rules, Rule 65.

8 European Rules for Juvenile Offenders, Rule 92.

9 Havana Rules, Rule 64.

With regard to both adults and children, national legislation should clearly define the acts that constitute disciplinary violations, the punishments imposed for such acts, the procedures that are followed in imposing the punishments, the body that can impose them and the possibilities for appeal.¹ The European Prison Rules and the Havana Rules require the appeals of disciplinary punishments to be carried out before an independent and impartial body.² However, what exactly this means and whether it refers to appealing before a court is not very clear. In its early case law, the ECtHR restricted access to court for persons deprived of their liberty in disciplinary proceedings, and especially the applicability of the criminal limb of Article 6 of the Convention.

Later, however, the Court has allowed court appeals under the civil limb of that provision in situations where “civil rights” are infringed.³

Conclusion

Both the legally binding international standards and those found in soft law impose on states significantly more restraints with regard to the deprivation of liberty of children in situations where such is also admissible for adults. They underline the specific vulnerability of the children in such situations and impose stricter requirements in relation to the use of deprivation of liberty, as well as in relation to the necessity and proportionality of the measures constituting deprivation of liberty. The standards on the treatment of the children in places for deprivation of liberty are significantly more favourable than those applicable to adults. This holds true both for the material conditions of the detention and for other elements of the treatment, such as inclusion in purposeful activities, education, contacts with the outside world, medical care, disciplinary measures and the use of force.

At the same time, the conservative standards which allow for psychologically mature children to be placed in institutions on arbitrary grounds by their parents in exercising their parental authority seem unacceptable today. The current criteria on the evaluation of the quality of the national legislation regulating the detention of children are also too low and unacceptable from the point of view of the requirements on lawfulness in restricting one of the most important human rights. The formulation of the guarantees against unlawful and arbitrary deprivation of liberty, as well as of some of the generally applicable legal principles established in the jurisprudence of the international bodies, have an adverse effect on the ability of children to take advantage of these guarantees.

The possibility to deprive children of their liberty for the purposes of educational supervision provided by international law poses a serious problem. The excessively broad meaning attributed by the European Court of Human Rights to this term, as well as the view, endorsed in its case law, that educational and reformatory goals can be achieved by a long-term restriction of a fundamental human right, a right put on a high pedestal by the Convention, seems inconsistent with the pedagogy of a free society and contradicts the modern scientific understanding of the damaging effects of institutionalisation on the physical, emotional, social and cognitive development of the child. Currently, the Court’s jurisprudence does not impose the requirements of necessity and proportionality of child detention for the purposes of educational supervision with the same rigour applied to some other legitimate grounds for deprivation of liberty.

1 European Prison Rules, Rule 57.2; Havana Rules, Rule 68; European Rules for Juvenile Offenders, Rule 94.3.

2 European Prison Rules, Rule 61; Havana Rules, Rule 70.

3 See ECtHR, *Ganci v. Italy*, No. 41576/98, Judgment of 30 October 2003, §§ 20-26; ECtHR, *Gülmez v. Turkey*, No. 16330/02, Judgment of 20 May 2008, §§ 24-31; ECtHR, *Enea v. Italy*, No. 74912/01, Grand Chamber judgment of 17 September 2009, §§ 97-107.

This approach of the Court contradicts the approach of the UN Committee on the Rights of the Child and many soft standards. As the ECtHR is a key player in the field of human rights in Europe and in the world, further reform of the system of deprivation of liberty of children depends to a large extent on the change of its approach to the practices at the national level on deprivation of liberty for the purposes of “educational supervision”.

CHAPTER 2

Country report: Bulgaria

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LIST OF ABBREVIATIONS

APIA	Access to Public Information Act
ARL	Asylum and Refugees Law
BC	Border checkpoint
BHC	Bulgarian Helsinki Committee
BPD	Border police department
CAM	Compulsory administrative measure
CBS	Correctional boarding school
CC	Crisis centre
CC	Criminal Code
CEDH	Cour Européenne des Droits de l'homme
CPA	Child Protection Act
CPC	Civil Procedure Code
CPC	Criminal Procedure Code
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CRC	Committee on the Rights of the Child
DCPH	Decree N° 904 on Combating Petty Hooliganism
DPD	District police department
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EPDG	Execution of Penalties Directorate General
HCDPC	Home for children deprived of parental care
HRC	Human Rights Committee
HRC	Human Rights Council
HTPMA	Home for temporary placement of minors and adolescents
IACHR	Inter-American Court of Human Rights

ICCPR	International Covenant on Civil and Political Rights
JDA	Juvenile Delinquency Act
LEPD	Law on Execution of Penalties and Detention
LFRB	Law on Foreigners in the Republic of Bulgaria
LGBT	Lesbian, gay, bisexual, and transgender people
LPAD	Law on Protection Against Discrimination
MES	Ministry of Education and Science
MH	Ministry of Health
MJ	Ministry of Justice
MLSP	Ministry of Labour and Social Policy
MoI	Ministry of Interior
MoIA	Ministry of Interior Act
NEMC	National Expert Medical Commission
NGO	Non-governmental organisation
NPM	National Preventive Mechanism
NRA	National Revenue Agency
OCA	Obligations and Contracts Act
PFA	Persons and Family Act
RHI	Regional Health Inspectorate
RIE	Regional Inspectorate of Education
SAA	Social Assistance Agency
SAA	Social Assistance Act
SACP	State Agency for Child Protection
SAD	Social Assistance Directorate
SEN	Special Educational Needs
SG	State Gazette
SHTPF	Special home for temporary placement of foreigners
SPBS	Social-pedagogical Boarding School
TC	Transit Centre
TEMC	Territorial Expert Medical Commission
UN	United Nations
UNCRC	UN Convention on the Rights of the Child

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PREFACE

The present study was conducted within the framework of the Children Deprived of Liberty in Central and Eastern Europe: Between Legacy and Reform project. The two-year project was implemented by the Bulgarian Helsinki Committee (BHC), the leading organisation, together with the Helsinki Foundation for Human Rights (Poland), Hungarian Helsinki Committee (Hungary), Association for the Defence of Human Rights in Romania – the Helsinki Committee (Romania) and the Centre for Legal Resources (Romania). It was financed by the specific programme Fundamental Rights and Citizenship, for the period 2007 – 2013, as part of the General Programme Fundamental Rights and Justice at the Directorate-General for Justice of the European Commission.

The project aims to provide a systematic overview of those closed institutions where children are deprived of liberty, including those for children with imposed criminal sanctions or measures for other purposes (educational supervision, medical treatment, deportation etc.) in Bulgaria, Hungary, Poland and Romania.

The Bulgarian report presents the results from a two-year period of legal and field research, which assesses the conditions of children deprived of liberty throughout the country. As part of the project, BHC prepared an analysis of secondary information and conducted interviews to evaluate the compliance of national legislation with European and international standards. The evaluation served to establish violations or important gaps in the legislative framework and so propose adequate changes and alternatives to the existing legislation. In addition, the organisation carried out nearly 60 monitoring visits to closed institutions, including reformatories, pre-trial detention facilities, police custody facilities, migrant detention centres, social institutions and services.

The juvenile justice system in Bulgaria is a result of turbulent historical developments influenced by various social-political and ideological movements. Juvenile delinquent behaviour under communism was dealt with by two systems: the criminal justice system and the juvenile delinquency system, both closely following the Soviet model, established in the 1950s. Today, these systems clash with the newly created child protection system introduced by the Child Protection Act. The coexistence of conceptually incompatible acts has led to irreconcilable viewpoints on the nature of antisocial behaviour of children as well as appropriate and preferred preventive measures and procedures. The lack of distinction between criminal and educational/ protective measures illustrates the highly repressive nature of the existing system.

On 1 March 2013, the Council of Ministers adopted a Road Map for the Implementation of the Concept of State Policy on Juvenile Justice (2013-2014). Despite being a positive attempt to reform the juvenile justice system, the Road Map lacks an integral approach to dealing with children in conflict with the law. The strategy is entirely focused on juvenile delinquency institutions such as social-pedagogical boarding schools and correctional boarding schools, but not reformatories and other institutions or procedures part of the criminal justice and juvenile justice systems. This piecemeal approach to reform has resulted in an uncoordinated state policy regarding children in conflict with the law. In this regard, this study presents a comprehensive overview of the social protection system and the juvenile justice and criminal justice systems and sets the basis for an in-depth discussion on the implementation of future policies and reforms in the field of juvenile justice.

Traditionally, projects on children deprived of liberty adopt an approach that limits monitoring to institutions, pertaining formally or informally to the criminal justice system. The current project uses a broadened scope to include other institutions that inherently replicate the placement and living conditions of closed institutions (reformatories, detention facilities, police custody facilities), where children are placed by a judicial, administrative or other authority and from which they cannot leave at will. This approach provides a comprehensive analysis of the forms of deprivation of liberty, conditions and guarantees provided, and whether they meet the standards for the protection of children's rights.

The report begins with the methodology which defines the scope and type of institutions visited. The definition of deprivation of liberty, adopted by the study, is enshrined in the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. For the study, BHC selected a total of 11 different types of institutions. The methodology provides a detailed overview of the selected institutions, including the total number in the country and the total number of visited institutions. Issues relating to the access to institutions and monitoring methods are also addressed.

In addition, the chapter outlines the various aspects investigated during the monitoring visits – placement, judicial review and access to legal aid, material conditions, access to health care, access to education and other activities, disciplinary practices, contact with the outside world, staff and inspections. The last part of this section provides an overview of the primary and secondary information sources used, as well as an analysis of the obstacles to carrying out the study. One of the main obstacles, established during the study, was the lack of centrally collected data by institutions regarding children deprived of liberty. This deficit prevents the formation of indicators that would track and measure the system's effectiveness.

Chapter 1 provides an assessment of the compliance of the national legislation with European and international standards on the rights of children, deprived of liberty. Its objective is to analyse all possibilities of institutional detention of children in Bulgaria. The analysis outlines the general problems regarding the juvenile justice system, including the fact that Bulgaria has not secured adequate implementation of the requirements of international instruments. Bulgaria has not fulfilled requirements regarding the establishment of a comprehensive juvenile justice system – no specialised courts or adequately developed crime prevention strategies and no support for children at risk at an early age. In addition, access to and quality of legal aid for children in conflict with the law suffers from serious shortcomings.

Chapter 1 also analyses the legal framework in Bulgaria, enabling institutional detention of children, and explains why each type of detention/ placement is considered to be a deprivation of liberty for the following groups of children: children in conflict with the law, children at risk, requiring placement in social care institutions or services, child migrants and asylum seekers, and children in need of treatment in a psychiatric institution.

Chapter 2 describes the results of monitoring visits conducted within the framework of the project by type of institution: (1) reformatories, (2) pre-trial detention facilities, (3) district police departments and border police departments, (4) social-pedagogical boarding schools and correctional boarding schools, (5) homes for temporary accommodation of minors and adolescents, (6) shelters for neglected children, (7) crisis centres, (8) homes for children deprived of parental care, (9) special homes for temporary placement of foreigners, (10) transit centres and registration and reception centres. Each section evaluates various aspects of the institution such as placement, judicial review and access to legal aid, material conditions, health care, disciplinary practices, quality and access to education and recreational activities, contact with the outside world and inspections.

Chapter 3 presents the most important findings and conclusions of the study, based on the analysis of the national legal framework, as well as on the monitoring visits. This chapter also includes recommendations from the BHC to the Bulgarian authorities for measures that should be taken in order to bring national legislation in line with the international standards, to improve the situation in the places for detention and to secure the protection of the rights of the children.

RESEARCH METHODOLOGY

1. The concept of “deprivation of liberty” and the institutions included in the study

Within the Children Deprived of Liberty in Central and Eastern Europe: Between Legacy and Reform project, the BHC conducted 57 visits to a total of 11 different types of custodial sites,¹ which accommodate minors and adolescents and function under the authority of five different ministries. The visited institutions belong to the criminal justice system, the juvenile delinquency system, the child protection system, as well as institutions for migrants and asylum seekers.² A total of 169 in-depth interviews were conducted with children deprived of their liberty (see Table 1). The interviewed children are Bulgarian nationals and foreign citizens.³

Table 1: Type of institutions and number of visits and interviews

Type of institution	Institutions visited	Number of visits	Conducted interviews
Institutions belonging to the criminal justice system	23	26	25 (2 girls)
Reformatories	2	4	22 (2 girls)
Detention facilities	10	11	3 boys
District police departments (DPD)	6	6	None
Border police departments (BPD)	5 ⁴	5	None

1 Subchapter C.3. Crisis centres presents a summary of the findings of two thematic reports of the BHC from 2011 and 2013. Thus, it is for this reason that they have not been included in the number of institutions visited.

2 For a detailed list of all institutions visited see Appendix 1: Visits, conducted by the BHC.

3 For detailed information about all institutions visited see Appendix 2: Interviewed children according to their gender, Appendix 3: Interviewed children according to their nationality, Appendix 4: Interviews conducted with minors and adolescents who are foreign nationals (number, gender, status).

4 A monitoring visit was conducted at the border checkpoint in the village of Kapitan Andreevo (Municipality of Svilengrad) where there is a functioning detention facility for children. This visit is included in Subchapter A.3. District Police Departments and Border Police Departments.

Institutions belonging to the juvenile delinquency system	12	16	92 (30 girls)
Correctional boarding schools (CBS)	4	6	55 (21 girls)
Social-pedagogical boarding schools (SBS)	3	3	33 (8 girls)
Homes for temporary placement of minors and adolescents (HTPMA)	5	7	4 (1 girl)
Institutions belonging to the child protection system	9	9	28 (16 girls)
Homes for children deprived of parental care (HCDPC)	5	5	21 (10 girls)
Shelters for neglected children	4	4	7 (6 girls)
Institutions for refugees, asylum seekers and migrants	5	6	24 (6 girls)
Special homes for temporary placement of foreigners (SHTPF)	2	3	8 (2 girls)
Transit centres (TC) and registration and reception centres (RRC)	3	3	16 (4 girls)
Total: 11 types of institutions	48 institutions visited	57 visits	169 (54 girls)

Source: BHC

For the purposes of the present study, BHC will use the definition of “deprivation of liberty” or closed institutions. According to the Optional Protocol to the Convention of the United Nations against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, “deprivation of liberty” is “*any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority*”.¹ Almost identical is the definition of “deprivation of liberty” grounded in Article 11b of the UN Rules for the Protection of Juveniles Deprived of Their Liberty: “*any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority*”.²

According to the above definitions, children placed in all institutions visited within this project are deprived of their liberty – the children are placed with a judicial or administrative act; they are not entitled to freedom of movement outside the institution and are declared wanted by the police in case of an unannounced departure from the confines of the institution or fail to respect the deadline for returning to the institution.

1 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, GA resolution 57/199 of 18 December 2002, Art. 4(2).

2 United Nations Rules for the Protection of Juveniles Deprived of Their Liberty, GA resolution 45/113 of 14 December 1990, Art. 11b (hereinafter: Havana Rules).

In theory, the placement facilities of the State Agency for Refugees fall into the category of open institutions. The reason for their falling within the scope of this study is that, according to data from different sources, at the end of 2013 the right to freedom of movement of asylum seekers in the newly opened centre in Harmanli was limited.¹ The purpose of the visits and the monitoring carried out in the refugee centres was to establish the extent to which the freedom of movement of children placed there in 2014 was restricted.

The first type of institutions that were visited were **reformatories**. They are governed by the Ministry of Justice (MJ). These institutions accommodate adolescents aged between 14 and 18 serving a sentence involving the deprivation of liberty, as well as adolescents who are detained on remand pending trial. There are two reformatories on the territory of Bulgaria: in the towns of Boychinovtsi and Sliven. The BHC team visited both. Visits took place without prior notice and were carried out on the basis of an agreement with the MJ for a period of five months, between 20 February and 10 July 2014. The two institutions were visited twice. A total of 22 in-depth interviews were conducted, two of which were with girls. Two of the children interviewed were foreign nationals – a girl from Iran and a boy from Iraq.

Other custodial institutions visited were **detention facilities**, which are under the authority of the Ministry of Justice (MJ). These institutions accommodate adolescents aged between 14 and 18 with an imposed measure of detention on remand in criminal pre-trial and court proceedings by order of a prosecutor. Such facilities detain children for up to 72 hours or on other grounds expressly stipulated by law and in relation to meeting the needs of the criminal investigation. On the territory of Bulgaria, there are 42 detention facilities. The BHC team visited 10 of them (the detention facilities in Plovdiv, Pazardzhik, Sofia (situated on G. M. Dimitrov Blvd.), Slivnitsa, Burgas, Sliven, Varna, Ruse, Pleven and Vidin). Their selection was not randomly made and was based on previous monitoring visits of the BHC throughout the years, during which specific issues and violations were identified in these detention facilities. In addition, the selection was made based on information obtained from children during monitoring visits within this project. The visits took place without prior notice, and were carried out on the basis of an agreement with the MJ for a period of three months between 11 April and 10 July 2014. One of the detention facilities was visited twice. A total of three interviews were conducted with the express permission of the respective supervising prosecutor. The children interviewed were boys, one of whom is a foreign citizen from Afghanistan detained in the Slivnitsa Detention Facility.

Monitoring visits took place in **district police departments (DPD)** and **border police departments (BPD)**, which are governed by the Ministry of Interior (MoI). An administrative detention is imposed on minors and adolescents placed in DPDs and BPDs for up to 24 hours under the Ministry of Interior Act. On the territory of Bulgaria there are 179 district police departments and 38 border police departments. The BHC team visited six district police departments (First Sofia DPD, Second Sofia DPD, Third Sofia DPD, Sixth Sofia DPD, Fourth Plovdiv DPD and Sixth Sofia DPD) and four border police departments (in the cities of Bregovo, Ruse, Svilengrad, and Vidin). Monitoring was carried out also in the border checkpoint in Kapitan Andreevo, because the detention facility of the Svilengrad BPD is located on the territory of the checkpoint. The selection of the visited DPDs was not randomly chosen and was based again on problems and violations identified during previous monitoring visits of the BHC, as well as on information obtained from children interviewed during the monitoring of other institutions. The selection of the visited BPDs was also not randomly made and took into ac-

1 Ombudsman of the Republic of Bulgaria, National Preventive Mechanism (2013), *Report on the inspection and evaluation of migration and refugee issues in the Republic of Bulgaria*, 15 October 2013, available on: <http://www.ombudsman.bg/national-prevention/2819#middleWrapper> (Here and further down the hyperlinks were last accessed on 1 December 2014); Bulgarian Helsinki Committee, Programme for Legal Protection of Refugees and Migrants (2013), *Annual report on monitoring the procedure for granting status in the Republic of Bulgaria in 2013*, available at: http://www.bghelsinki.org/media/uploads/documents/reports/2013_annual_rsd_monitoring_report_bg.pdf.

count the flow of foreign nationals passing from Turkey and heading for Bulgaria's northern and western borders with Romania and Serbia to Western Europe. Visits were conducted with prior notification by letters of access during a period of two months between 29 April and 12 June 2014 for DPDs and for a period of one month between 3 June and 9 July 2014 for BPDs. No interviews were conducted with children because, at the time of the monitoring, no children were detained on the territory of the visited DPDs and BPDs.

Another two types of closed institutions for children that were visited were **correctional boarding schools (CBS)** and **social-pedagogical boarding schools (SBS)**. They are under the authority of the Ministry of Education and Science. In these institutions, children aged between eight and 18 are placed with a correctional measure under the Juvenile Delinquency Act (JDA). The legal difference between them is that CBSs accommodate minors and adolescents who have committed antisocial acts or crimes, while SBS – children who have committed antisocial acts or there is a prerequisite for them to commit such acts. At the time of the monitoring on the territory of Bulgaria there were seven institutions – four CBS (Angel Uzunov CBS in the town of Rakitovo, Hirsto Botev CBS in the village of Podem, Municipality of Dolna Mitropoliya, Sv. Sv. Kiril and Metodi CBS in the village of Kereka, Municipality of Dryanovo, and N. Y. Vaptzarov CBS in the town of Zavet) and three SBS (SBS in the town of Straldzha, Hristo Botev SBS in the village of Dragodanovo, Municipality of Sliven, and Hristo Botev SBS in the village of Varnentsi, Municipality of Tutrakan).¹ The BHC team visited all seven boarding schools. Visits took place without prior notification, based on an agreement with the Ministry of Education and Science for a period of three months between 14 November 2013 and 13 February 2014. A total of 88 interviews were conducted, 29 of them with girls. In some institutions, follow-up visits took place.

The **homes for temporary placement of minors and adolescents (HTPMA)** are another type of institutions that fall under the authority of the Ministry of Interior. They accommodate children aged between six and 18 for up to two months under the JDA. The grounds for placement of a child in HTPMA are different: unidentified address of residence; involvement in vagrancy, begging or prostitution; abuse of alcohol, drugs and other substances; running away from a closed institution; commitment of anti-social acts; being neglected. Children are also placed there while being convoyed by police or with a measure of police protection. The BHC team visited all five homes for temporary placement that exist on the territory of the country (in the cities of Burgas, Gorna Oryahovitsa, Plovdiv, Sofia and Varna). The visits took place after prior notification by letters for access during a period of about a month between 16 April and 30 May 2014. A total of four interviews were conducted, two of them with girls and two with boys. In some homes follow-up visits took place.

The eighth type of visited institutions for children were the **homes for children deprived of parental care (HCDPC)**, which fall under the authority of the Ministry of Labour and Social Policy (MLSP) and are governed by the mayor of the municipality on whose territory they are located. The HCDPC are institutions that provide social services for raising and educating children at risk. Children are placed under the Child Protection Act and the Social Assistance Act with a measure for permanent care and a measure for weekly or daily care respectively. These homes are divided into two types: homes for children of preschool age – from three to seven years of age; and homes for children from first to twelfth school grade (from seven to 18). The second type of homes fell within the scope of the BHC monitoring, where children and young adults (not older than 20) can stay until graduation from school. By the end of 2013, there were a total of 53 homes on the territory of Bulgaria. The BHC team visited five of

¹ Following the inspections and the great number of violations identified in one of the social-pedagogical boarding schools in the country (SBS in the town of Straldzha), it has been closed down and is not functioning as of the beginning of the 2014-2015 school year. The children accommodated there have been redirected to the Varnentsi SBS and the Dragodanovo SBS.

them (Olga Skobeleva HCDPC and Maria Luiza HCDPC in the city of Plovdiv, Hristo Raykov HCDPC in the city of Gabrovo and P. R. Slaveykov HCDPC and Asen Zlatarov HCDPC in Sofia). The selection of homes visited was based on problems and violations identified during previous monitoring visits of the BHC, as well as media publications and information obtained from children interviewed during this monitoring, who had resided in them. The visits took place with prior notification by letters for access during a period of two months between 14 May and 3 July 2014. A total of 21 interviews were conducted, 10 of them with girls. The obstacles faced by the BHC while carrying out monitoring in this type of homes arose from the refusal of some municipalities to allow researchers to interview children in private. Interviews were allowed only in the presence of an official from the corresponding child protection department.

The **shelters for neglected children** accommodate children under the Juvenile Delinquency Act and the Child Protection Act. These institutions also fall under the authority of the MLSP and are governed by the mayor of the municipality on whose territory they are located. There are five shelters for children on the territory of the country, of which the BHC team visited four (the Gavroche Shelter in the city of Varna and the shelters in the cities of Dobrich, Pernik and Ruse). The visits took place with prior notification by letters of access during a period of one month between 29 May and 30 June 2014. A total of seven interviews were conducted; six of which were with girls.

Subchapter C.3. **Crisis centres** presents a summary of the findings of two thematic reports of the BHC from 2011¹ and 2013.² The latest visits to crisis centres in the country were carried out by BHC researchers within another project in the period July-November 2013. At the end of September 2014, in Bulgaria there were 15 crisis centres with an overall capacity of 155 places for children victims of violence or trafficking.³

The **special homes for temporary placement of foreigners** (SHTPF) fall under the authority of the Ministry of Interior. They accommodate children migrants and asylum seekers under the Law on Foreigners in the Republic of Bulgaria. There are a total of two homes on the territory of Bulgaria. The BHC team visited both of them – two visits in August and September 2013 to SHTPF in the neighbourhood of Busmantsi in Sofia, and one visit to the SHTPF in the town of Lyubimets. The visits were conducted on the basis of a request for access addressed to the Ministry of Interior. After the onset of the refugee crisis in Bulgaria in 2014, an attempt was made to conduct a follow-up visit. In 2013, the BHC received temporary access for the purposes of the project for children deprived of their liberty, but after sending an identical application in 2014, the BHC was denied access on the grounds that “[the] accompanied minors and adolescents cannot be attributed to the category of ‘children deprived of their liberty’ as [the BHC] classified them”, and because of criticism expressed by the BHC and Human Rights Watch⁴ regarding access to territory and placement conditions for asylum seekers in Bulgaria.⁵ A total of eight interviews were conducted, two of them with girls.

1 Bulgarian Helsinki Committee (2011), *Crisis centres for children in Bulgaria – between the social service and the institution*, available on: http://www.bghelsinki.org/media/uploads/special/finalen_kc_15.pdf.

2 Bulgarian Helsinki Committee (2013), *Crisis Centres in Bulgaria in 2013*, available on:

http://www.bghelsinki.org/media/uploads/documents/reports/special/2014-krizisni_centrove.2013.pdf.

3 Agency for Social Assistance (2014), *A List of the crisis centres for children victims of violence or trafficking in Bulgaria*, 30 September 2014, available at: http://www.asp.government.bg/ASP_Files/APP/KC%20za%20deca.xls.

4 Human Rights Watch presented its report on the situation of the access to the territory and the conditions under which asylum seekers are received in Bulgaria on 29 April 2014. The report was supported by the Bulgarian Helsinki Committee during the press conference and media interviews. Human Rights Watch (2014), *Containment Plan: Bulgaria's Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants*, available on: http://www.hrw.org/sites/default/files/reports/bulgaria0414_ForUpload_0_0.pdf.

5 Ministry of Interior, Migration Directorate, Letter with Ref. No. 536400-9521 from 30 May 2014.

Accompanied and unaccompanied children seeking asylum are placed in **transit centres (TC)** and **registration and reception centres (RRC)**. These centres fall under the authority of the State Agency for Refugees. On the territory of Bulgaria, there is one transit centre in the village of Pastrogor, Municipality of Svilengrad, which was visited by a team of the BHC. Two centres were visited by a team of researchers - RRC in the town Harmanli and the village of Banya, Municipality of Nova Zagora. The visits took place without prior notification and were performed on the basis of an agreement with the State Agency for Refugees on 3 and 4 June 2014. A total of 16 interviews were conducted, four of them with girls. The interviewed children were from Syria, Afghanistan, Iran, Algeria, and Ghana. The accompanied children were interviewed in the presence of family members.

Psychiatric hospitals for children were also among the institutions that the BHC intended to visit in the framework of this project. Due to the lack of an agreement with the Ministry of Health, visits did not take place, although several meetings were conducted in this regard. The change of government during this period further delayed the process of preparing an agreement.

2. Studied aspects

The aspects monitored in institutions for children deprived of their liberty were included in a protocol drawn up on the basis of the applicable international and national standards. Two sets of international standards should apply with priority regarding institutions for children deprived of their liberty – those of the UN bodies¹ and of the Council of Europe.² The national standards include the Constitution as well as all laws and subordinate legislation which regulate the accommodation and the operation of the institutions where children are placed by an official (state or municipal) authority against their will and which they cannot leave at their own will.³

The aspects of deprivation of liberty that were the focus of the research were the **placement** of children – official acts and the legal basis for placement, duration of placement, application of other less restrictive measures, notification of relatives, children's knowledge of contacts of organisations outside the institution and of the internal order rules, and other issues.

Another topic that was assessed was the **judicial review** and the access of children to **legal aid** – their appearance before the court, the presence of a representative of the child in court and her actions, detainees' awareness of the trial process, and other issues.

The **material conditions** is the next topic that was investigated, which focused on the existence of effective separation of children, overcrowding, ventilation, access to natural light, heating, and hot water. Other issues were the maintenance of hygiene, accessibility to, and adequacy of, bathrooms, as well as access to stay in the open, food, clothing, and other identified issues.

1 United Nations Standard Minimum Rules for the Administration of Juvenile Justice, GA resolution 40/33 of 29 November 1985 (hereinafter: Beijing Rules); CRC, General Comment No. 10: Children's rights and juvenile justice, CRC/C/GC/10, 25 April 2007 (hereinafter: CRC, General Comment No. 10).

2 European Prison Rules, Recommendation CM/Rec (2006)2 of the Committee of Ministers of the Council of Europe of 11 January 2006 (European Prison Rules), and the ECtHR decisions on the guarantees for deprivation of liberty in general and, especially, where children are involved. Leading decisions are: ECtHR, *Saadi v. the United Kingdom*, No. 13229/03, Grand Chamber judgment of 29 January 2008, ECtHR, *Bouamar v. Belgium*, No. 9106/80, Judgment of 29 February 1988 and CEDH, *A. et autres c. Bulgarie*, no 51776/08, Arrêt du 29 novembre 2011.

3 We assume that these are children for whom the Bulgarian legislation acknowledges that they can form a valid will of their own, that is, children older than 10.

Health care in the institutions was also evaluated. Here, the research included the type of medical units that serve children, the quantity and qualification of the medical staff and their independence, medical examinations, conditions of treatment, notification of relatives, cases of injuries and death, clinical testing with drugs, and other issues.

Access to **education and activities** was another part of the study and the specific topics that were researched were the existence of individual programmes for working with the children, type of activities available during leisure time and their accessibility, quality of education and vocational training, educational institutions and their profile, work opportunities, and other issues.

The next study topic was **contacts with the outside world**, which included visits, contacts of children with family members and other persons, privacy of correspondence, telephone calls, visits and contacts with organisations, and other issues.

Disciplinary practice, use of force and appeals were also part of the evaluated topics. The types of applied punishments, schedules, registration of the punishments, provision of a written copy of the imposed disciplinary punishment and the effect of the punishment were researched. Furthermore, the possibilities for submission of appeals, their number and to which institutions they had been submitted, as well as whether legal and other assistance had been provided to children in writing appeals and the role of NGOs and family members for submitting such, were also researched. Finally, instances where force was used, including for medical purposes, cases of disciplinary isolation, labour as punishment, and other issues, were also investigated.

Personnel and inspections are two other study topics, which include the number of personnel and distribution by category, qualifications, turnover and payment. Furthermore, the types of inspections and their frequency, manner of their implementation, and their recommendations and outcomes were also investigated.

The last studied topic concerned **fundamental human rights and their protection**, which includes maltreatment and abuse, including sexual abuse, opportunity to express an opinion and punishments for expressing such, right to freedom of religion, freedom from discrimination and other issues related to the implementation of international and national standards.

3. Methods used in the study

3.1. Primary information

The main source of information in this study were **in-depth interviews with children** placed in closed institutions. A special questionnaire was prepared with open questions for children corresponding to each type of visited institution. The duration of the individual in-depth interviews was between 30 and 60 minutes. Conversations with the children were conducted in an environment close to their daily lives and their anonymity was guaranteed.

Another method used as a source of primary information was **monitoring**. Monitoring of the institutions' facilities was carried out in residence buildings/ boarding-houses, schools and other adjacent buildings such as dining rooms, gyms, workshops, etc., as well as open-air places – yards, sport facilities and playgrounds. The conditions of the facilities in each institution were investigated. The behaviour of children and the staff working in the institution were also assessed during the monitoring visits. Photos of the visited institutions were collected.

Interviews were conducted with the staff of each institution visited on the topics outlined above. Officials who participated in the interviews occupied different positions, such as directors, assistant directors, teachers, including resource teachers, educators, supervisors, inspec-

tors, social workers, psychologists, medical personnel, maintenance staff, suppliers, sanitary cleaners, cooks, etc.

A review of the available documentation in the visited institutions was also carried out. This included analysis of the following documents: procedures, registers, regulations, statutory recommendations, curricula and educational-correctional programmes, weekly menu, personal files of the children – judgments, medical certificates, etc.

A poll was conducted with children placed in the Boychinovtsi Reformatory. The questionnaire consisted of several closed questions related to the pre-trial proceedings, the first instance court proceeding, the access to legal counsel, detention and use of physical force during detention in the police department and in the detention facility. The respondents numbered 48 adolescents.

3.2. Secondary information

The secondary sources of information were documents obtained under the Access to Public Information Act.¹ Information was requested on written references, reports, records of check-ups and inspections, protocols, statistics, recommendations by state institutions (including the Ministry of Interior, the Institute of Psychology at the Ministry of interior, the Office of the Prosecutor, the Ministry of Justice, the Ministry of Labour and Social Policy, the Social Assistance Agency, the Ministry of Education and Science, the Execution of Penalties Directorate General, the State Agency for Child Protection, the Central Commission for Combatting Juvenile Delinquency, regional inspectorates of education, regional health inspectorates, the National Legal Aid Bureau and district police departments) on various issues affecting the present study.

A number of meetings were conducted with representatives from various institutions, including: the National Legal Aid Bureau, the Local Commission for Combatting Juvenile Delinquency, social assistance directorates, the Ombudsman of the Republic of Bulgaria in his role of a National Preventive Mechanism, the Border Police Directorate General within the Ministry of Interior and others.

Outside the project, other actions were also taken such as requesting additional information from institutions visited, reports were submitted to the Prosecutor's Office and other supervisory bodies, and legal proceedings were initiated.

4. Obstacles to conducting the study

Obstacles to conducting the study in the institutions varied. One difficulty was the hampered access to interviews with children under various pretexts – not accepting the existing agreement, prevention of conducting conversations with children in private and insistence on the presence of a staff member, engagement of the children at the time of the visit, the venue of the interview, the selection of children for interview, the preparation by the staff of the children for the visit by the BHC team, and the lack of inmates at the time of the visit.

In some institutions access to documentation was difficult. The BHC team encountered difficulties also during the monitoring of the facilities, where access to some of the premises and buildings was limited. The inability to carry out monitoring visits without prior notice in some institutions was a considerable obstacle to properly evaluating the conditions of the facility. In some institutions, key members of staff were absent during the visits, and interviews with them were not conducted.

¹ Access to Public Information Act (2000).

The access to statistics and information on the children deprived of their liberty turned out to be one of the main challenges in the implementation of the project. The responsible institutions do not publish or publish a very limited amount of data on children deprived of liberty even when data is collected and summarised in reports. This problem delays and increases the cost of collection of data. It also demonstrates a lack of interest in the topic on the part of the institutions. For the purpose of ensuring the comprehensiveness of its study, the BHC submitted more than 100 applications for access to public information. Despite the small number of refusals, the information submitted was often incomplete or the institutions said that they did not collect and summarise the data requested.

5. Presentation of the results

The findings of this report were presented on 16 December 2014 during a press conference which was held in the Bulgarian News Agency.¹

The results of this research were further presented at a round table that was organised by the Bulgarian Helsinki Committee and was held on 18 December 2014. Participants in the round table were representatives of various institutions and organisations, responsible for and involved in the operation and organisation of the child institutions included in the project. After a summary of the report was presented, all participants had the opportunity to share their opinion on the discussed topics. The institutions participating in the round table were invited to submit their written statements regarding the findings of the report. Such written statements were sent by the Ministry of Education and Science, the Silistra Regional Inspectorate of Education and the director of the Boychinovtsi Reformatory. The comments of the participants were integrated in the respective parts of this report.

1 Bulgarian Helsinki Committee (2014), "Report of the BHC: Children in Bulgaria are being deprived of their liberty illegally and arbitrarily", Press release, 16 December 2014, available on: <http://www.bghelsinki.org/bg/novini/press/single/pressobshtenie-doklad-na-bhc-v-blgariya-deca-se-lishavat-ot-svoboda-nezakonno-i-proizvolno/>.

1. ANALYSIS OF THE NATIONAL LEGAL FRAMEWORK

Daniela Furtunova

A. Purpose and scope

This analysis reviews the consistency of Bulgarian legislation with international standards on the protection of children deprived of liberty. It also aims to review all options for the deprivation of liberty of children in Bulgaria.

The analysis is based mainly on the following international human rights and child justice documents:

1. UN Convention on the Rights of the Child (CRC)¹ and General Comment No. 10 (2007) of the UN Committee on the Rights of the Child on children's rights in juvenile justice (General Comment No. 10);²
2. Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR), 1950³ whose Article 5 regulates the essence of the deprivation of liberty and the guarantees thereto, also binding for the Republic of Bulgaria;
3. United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules"), 1985;
4. United Nations Rules for the Protection of Juveniles Deprived of their Liberty ("Havana Rules"), 1990;
5. United Nations Guidelines for the Prevention of Juvenile Delinquency ("Riyadh Guidelines") 1990;
6. European Rules for Juvenile Offenders subject to Sanctions or Measures ("European Rules for juvenile offenders");⁴
7. Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice ("Guidelines on Child-Friendly Justice").⁵

1 Convention on the Rights of the Child, GA resolution 44/25 of 20 November 1989 (hereinafter: Convention on the Rights of the Child).

2 CRC, General Comment No. 10.

3 Council of Europe Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No. 5, 1950 (hereinafter: ECHR).

4 European Rules for juvenile offenders.

5 Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 1098th meeting of the Ministers' Deputies on 17 November 2010 (hereinafter: Guidelines on child-friendly justice).

Under the Constitution of the Republic of Bulgaria (hereinafter: the Constitution)¹, the CRC and ECHR are part of national legislation and have precedence over contradicting national rules.

The Havana Rules, the Beijing Rules, the Riyadh Guidelines, the Guidelines on Child-Friendly Justice are not legally binding but establish the standards desired by the international community that every UN or Council of Europe member state should aspire to adhere to.

The analysis is based on the assumption that the rights of the children deprived of their liberty, as recognised by the Convention on the Rights of the Child, are equally applicable to both children in conflict with law and to children placed in institutions for the purpose of providing care, protection or treatment. This is also stipulated by the Havana Rules.²

As the Bulgarian legislation divides children into “minors” (up to 14 years old) and “adolescents” (14 to 18 years old), these terms will be used when referring to national provisions. Since the various international sources use different terms to denote children (people under the age of 18), the analysis uses the terms “children” and “juveniles” when referring to international standards.

B. General issues of juvenile justice on which Bulgaria has not provided adequate compliance with the requirements stipulated by international standards

1. Establishment of specialised rules and a juvenile justice system

*Bulgaria has failed to comply with the requirements on the establishment of a comprehensive juvenile justice system. In its 2008 concluding observations on Bulgaria, the United Nations Committee on the Rights of the Child expresses concern that the state has not established specialised juvenile courts or chambers within the existing structures. It therefore recommends the state set up an adequate system of juvenile justice, including juvenile courts with specialised judges for children throughout the country.*³

UN member states must seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children in conflict with the law.⁴ This suggests the establishment of an efficient organisation and of a comprehensive juvenile justice system.⁵ The latter requires the allocation of parts of the police, the courts, the prosecutors’ offices, as well as specialised defenders (or other representatives) who would provide legal or other appropriate assistance to the child. The Committee on the Rights of the Child recommends that the member states establish either independent courts for children or specialised juvenile justice divisions within the existing district/ regional courts.⁶ The efficient coordination of the activities of all specialised divisions, offices and services within the juvenile justice system should be always encouraged. Under the Beijing Rules, each national jurisdiction should aspire to create laws and rules specifically applicable to juvenile offenders, as well as bodies

1 Constitution of the Republic of Bulgaria (1991), Art. 5(4).

2 Havana Rules, Rule 11(b). These rules must be applied to any form of “detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority”.

3 CRC, Concluding observations on Bulgaria (2008), §§ 68(a) and 69(d).

4 Convention on the Rights of the Child, Art. 40(3).

5 CRC, General Comment No. 10, §§ 90-94.

6 Where this cannot happen immediately, the member states must appoint specialised judges or magistrates to review juvenile justice cases and to set up services (such as probation, consulting or supervision), including day treatment centres and, where necessary, centres for the placement and treatment of juvenile offenders.

authorised to dispense justice and capable of meeting the different needs of juvenile offenders in the course of defending their rights.

2. Preventing juvenile delinquency

*Bulgaria does not comply with requirements on the prevention of juvenile delinquency. In its 2008 concluding observations on Bulgaria, the UN Committee on the Rights of the Child expresses concern about the large number of children placed in correctional institutions and recommends that the state focuses on crime prevention strategies, so that children at risk are supported at an early stage.*¹

Under the Riyadh Guidelines, a juvenile justice policy without a set of measures aimed at preventing juvenile delinquency is considered seriously deficient. UN member states have to completely integrate these guidelines into their juvenile justice policies.² Special attention should be paid to prevention policies that help to successfully integrate all children, mostly through the family, community, peer groups, schools, vocational training, employment, as well as through voluntary organisations.³ Prevention programmes should be focused on support for particularly vulnerable families, the involvement of schools in education on basic values (including the rights and the obligations of children and parents) and in providing special care and attention to juveniles at risk. Support from peer groups and the active participation of parents are also recommended. The Beijing Rules also recommend the provision of care for juveniles before their involvement in criminal activities. Such an approach would reduce both the need for intervention on behalf of the juvenile justice system and the damages caused by such an intervention.

3. Accessible, quality legal assistance. Right to assistance during appeal

In contradiction of the Havana Rules, the provision of legal assistance to children in Bulgaria is marred by serious deficiencies. Even in the case of compulsory provision of legal assistance (e.g. in case of detention under the Criminal Procedure Code), its quality is not guaranteed as there is no requirement that the lawyers delivering the assistance be qualified in the field of juvenile justice.

The guarantees under Article 30 of the Constitution, concerning the right to legal assistance from the moment of detention and the right of the person to meet their lawyer in private, are also disregarded. Albeit statutory⁴, the first requirement is not applied when the law does not explicitly state that legal assistance is compulsory. Since Bulgarian law does not treat the placement in many juvenile institutions as detention/ deprivation of liberty, legal assistance is not provided. The second requirement is violated by court-appointed lawyers, who are not explicitly required to meet their child client before the procedural action. Also, the legislation lacks provisions on informing the child about this right, as such an obligation has not been imposed on anyone.

Despite the imperative nature of the Child Protection Act provision on the right to legal assistance, it is not supported by a mechanism on the procedures of its provision.⁵ Apart from this provision and the cases of compulsory provision of legal assistance to juveniles, there are no provisions that guarantee unconditional access to legal assistance and to exercising the right of appeal. Under the Persons and Families Act (PFA),⁶ persons who have not reached the

1 CRC, Concluding observations on Bulgaria (2008), §§ 68e and 69h.

2 General Comment No. 10, § 17.

3 *Ibid.*, § 18.

4 Child Protection Act (2000), Art. 15(8) and amendments from 2013 of to the Legal Aid Act (2005).

5 Child Protection Act (2000), Art. 15(8) (former § 7 – SG, No. 36 of 2003). The child shall be entitled to legal counsel and to appeal in all proceedings concerning his rights or interests.

6 Persons and Families Act (1949), Art. 3.

age of 14 are considered minors and legal actions may be performed on their behalf by their legal representatives, parents or guardians; persons aged 14 to 18 are considered adolescents and may perform legal actions with the consent of their parents or trustees.¹ These provisions make access to legal assistance and the right of appeal conditional and dependent on the will of the person representing the child. There is also no free access to external persons or agencies, including organisations. The sole exception is the institution of the ombudsman which, however, does not provide legal counselling and legal assistance.

The right of the child to contest any fact or opinion stated in any report (legal, medical or disciplinary) or file on him/ her² is also not foreseen in Bulgarian legislation. The child's access to their personal documents and information is not free but is statutorily dependent on the permission/ consent of the parent/ guardian or the trustee.

The public defence may turn out to be practically inefficient when appealing the respective detention, as the lawyer appointed to defend the child during the placement proceedings may fail to notify the child of the right of appeal and often pleads not on behalf of the child but based on their understanding of the child's best interest.

4. Other requirements envisioned by the recommended standards

*None of the proceedings described below are completely consistent with the Council of Europe's requirements on child-friendly justice.³ In Bulgarian legislation and practice, the right of the child to receive **a copy of the rules governing the detention facility**, a written description of their rights and obligations in a language they can understand, **the address of the authorities** competent to receive complaints, as well as the address of public or private agencies and organisations which provide legal assistance, is not guaranteed.⁴*

Bulgaria does not comply with the requirements of the Havana Rules on access to adequate medical assistance during their stay in an institution⁵ and on immediate access to adequate medical facilities.⁶

Bulgarian law does not include rules on the due friendly attitude of judiciary or law enforcement staff towards the juveniles.

4.1. Notifying vulnerable groups about their rights

The requirements on informing the child about their rights are superficially included in some laws, such as the Ministry of Interior Act. The requirement to provide an interpreter, "when-ever necessary" and especially during medical examinations and disciplinary proceedings, is not explicitly guaranteed. As a rule, it is not applied to Roma people as the Bulgarian legislator assumes that Roma children speak Bulgarian as their native language. There are also no legal rules on the right of people who are illiterate to receive information in a manner that allows them to completely understand it.⁷ The sole exception is a provision in a seldom applied

1 *Ibid*, Art. 4.

2 Havana Rules, Rule 19.

3 Guidelines on child-friendly justice (2010), according to the definition under II(c): "Child-friendly justice" refers to justice systems which guarantee the respect and the effective implementation of all children's rights at the highest attainable level, bearing in mind the principles listed below and giving due consideration to the child's level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to, and focused on, the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity".

4 Havana Rules, Rule 24.

5 General Comment No. 10, § 80.

6 Havana Rules, Rule 51.

7 *Ibid*, Rule 24.

act, which stipulates that a person who is illiterate shall be informed about their rights by a staff member and in the presence of a witness, and shall certify this with their signature.¹

4.2. Access to health care

There is no procedure for notifying the director of the detention facility or an independent body of a potential risk to the physical and mental health of a child established by a medical officer.² At the detention facilities, there are no procedures for informing the child's family/guardian about the child's health status, eventual treatment at the detention facility or an external medical facility and about their death.³ There are also no requirements to independently investigate causes of death or to notify a next of kin about the results of such an investigation.⁴ The only existing provision concerns the performance of a compulsory autopsy and the notification of relatives of children who have died at a medical facility or at an institution in which they were placed under the provisions of the Child Protection Act.⁵

4.3. Friendly attitude

The Code of Ethics of Staff Working with Children⁶ is not legally binding. The lack of explicit rules in this regard contradicts the Beijing Rules. The same holds true for the ban on staff to carry and use weapons, and for the availability of sanitary facilities that provide good hygiene and privacy.⁷

C. Children in conflict with the law

1. Police detention

The judicial review of the measure is ex-post and violates the right of the child detained and deprived of their liberty to appear before a competent body for a review of the lawfulness of their deprivation of liberty (and the extension thereof) within 24 hours.⁸ Bulgarian legislation only regulates specifically the rights of the child during the pre-trial detention phase in exceptional cases,⁹ the right of the parents to be informed about the detention, transfer and release of the child,¹⁰ the right of the detained child to remain silent,¹¹ as well as the right of the child to be informed about the grounds for detention and of the possible outcomes.¹²

The Bulgarian Ministry of Interior Act (MoIA) contains no guarantees for the proportionality of child detention, priority and accelerated review of child detention, the equipment of facilities,¹³ the

1 Ministry of Interior and Ministry of Justice (1963), Rules on the Implementation of Decree No. 904 on Combatting Petty Hooliganism (hereinafter: Rules on the Implementation of Decree No. 904) (1963), Art. 13, (4) (New – SG, No. 70 of 2006): detainees who are foreigners, illiterate, do not understand Bulgarian or are deaf, shall fill in the declaration with the assistance of a member of staff from the respective structural unit; the statements shall be made by the person himself with the assistance of an interpreter or translator, and when the person is illiterate, also in the presence of a witness, who can certify the truthfulness of the statement with their signatures.

2 Havana Rules, Rule 52.

3 *Ibid*, Rule 56.

4 *Ibid*, Rule 5.

5 Health Act (2004), Art. 98.

6 Code of Ethics of Staff Working with Children, available on:

<http://sacp.government.bg/normativna-uredba/kodeksi/etichen-kodeks/>.

7 Havana Rules, Rules 6 and 34.

8 CRC, General Comment No. 10, § 83 regarding Art. 37d of the Convention on the Rights of the Child.

9 Havana Rules, Rule 17.

10 *Ibid*, Rule 22.

11 Beijing Rules.

12 CRC, General Comment No. 10, § 44.

13 Ministry of Interior (2009), Instruction No. Iz-1711 for the equipment of the premises for placement of detained

organisation of meaningful activities¹ and stay in the open. There are also no guarantees safeguarding children against police arbitrariness and violence.

1.1. Why is detention a deprivation of liberty? Procedure

Detention under MoIA constitutes deprivation of liberty under ECHR because it is carried out by the police body, against the will of the person, when the statutory circumstances have occurred, at constantly guarded detention facilities. The person is not free to leave the detention facility or the district police department. The police authority issues a detention order which is handed to the detainee. The duration of the detention may not exceed 24 hours.² The procedures for carrying out the detention, equipping the detention facility and the rules governing the detention facilities are defined by an instruction of the minister of interior.³ The current instruction is No. Iz-1711 of 15 September 2009 for the equipment of premises used for placement of detainees at the structural units of the MoI and order in them (hereinafter: Instruction No. Iz-1711).⁴

1.2. Judicial review

The detainee has the right to appeal the legality of the detention in court, under the Administrative Procedure Code (APC).⁵ The MoIA stipulates that the court rules on the appeal “immediately”; however, APC does not contain such a requirement, so it is not implemented in practice. This is recognised by the ruling of the European Court of Human Rights (ECHR) in the case of *Petkov and Profirov v. Bulgaria*.⁶ The case concerns two adult applicants who were detained for 24 hours on information that they had committed a crime.

The 24-hour detention may be extended by 72 hours by a prosecutor to have the accused⁷ appear before a court.⁸ The court reviews the case “immediately” in an open hearing, with the participation of the prosecutor, the accused and their lawyer, and may decide to keep them in remand or impose another, less restrictive measure under the Criminal Procedure Code (CPC). However, the duration of this detention is inconsistent with the requirement that children be brought before a judge within 24 hours.⁹ Also, the European Committee for the Prevention of Torture (CPT) points out that the duration of the detention for a total of 96 hours (24 hours of police detention plus 72 hours of detention by order of the prosecutor), without judicial sanction, is problematic.¹⁰

persons at the structural units of the Ministry of Interior and the order therein, Art. 74 (hereinafter: Instruction No. Iz-1711); Havana Rules, Rule 3.

1 Havana Rules (1990), Rule 12.

2 Ministry of Interior Act (2014), Art. 73.

3 *Ibid.*, Art. 72(9).

4 Instruction No. Iz-1711 (2009).

5 Ministry of Interior Act (2014), Art. 72(4); Administrative Procedure Code (2006), Art. 149.

6 ECtHR, *Petkov and Profirov v. Bulgaria*, Nos. 50027/08 and 50781/09, Judgment of 24 June 2014, §§ 66-68. The Court found a violation of Art. 5(4) of the ECHR as appealing the detention order before the administrative court is not capable of leading to the release of the defendant. The Court points out that despite the explicit requirement of the law that courts rule on the legality of the detention “immediately”, the courts have interpreted that provision as only permitting subsequent judicial review of the respective detention order, which, if successful, could lead to an award of compensation.

7 The two terms defendants and accused are used to distinguish between the different phases of the criminal proceedings – pre-trial and court proceedings, in which the individual is detained.

8 Criminal Procedure Code (2006), Art. 64.

9 General Comment No. 10 (2007), § 83.

10 CPT (2012), Report to the Bulgarian Government on the visit to Bulgaria from 18 to 29 October 2010, §10. The Committee points out the jurisprudence of the ECtHR in the case *Zvezdev v. Bulgaria* (CEDH, *Zvezdev. c. Bulgarie*, no 47719/07, Arrêt du 7 janvier 2010), § 33, in which the Court states that the lack of restriction on the accumulation of the two types of detention to a total of 96 hours is “[a deficiency of domestic law which] could lead to delays incompatible with the right to be brought promptly before a judicial authority”, guaranteed by Art. 5(3) of ECHR.

1.3. Respect for fundamental rights during detention

MoIA provides guarantees for some fundamental rights of the detainees, including juveniles: the right to an attorney (including legal counsel); immediate notification of a person named by the detainee about the detention; placement of juveniles in special premises, separated from adult detainees.¹ The detention order explicitly states the grounds for the detention and the following rights of the detainee: to appeal in court the legality of the detention; to have a lawyer from the moment of the detention; to have access to health care; to make a phone call in order to inform someone about their detention; if not a Bulgarian citizen, to contact their country's consular authorities; to use an interpreter.² In the above-mentioned judgment *Petkov and Profirov v. Bulgaria*,³ ECtHR pointed out that the case law of Bulgarian courts is controversial with regard to the obligation to have the actual grounds for the detention stated in the detention orders, and insofar as they do not contain facts and data concerning suspicion that an offence has been committed, they contradict Article 5(1) and Article 5(2) of ECHR.

1.4. Respect for fundamental rights during placement

The police authorities have the obligation to immediately release the person when the grounds for their detention have ceased to exist; however, the 24-hour detention is part of the operative independence of the police authorities.⁴ Conversations with children are carried out in the presence of a psychologist and, when the police authority deems it necessary, also in the presence of a parent or guardian.⁵ The juveniles are kept separated from adults, in specially equipped premises. The detainee is subjected to a medical examination upon their request or when their state of health requires it.⁶ Should the medical examination result in reasonable doubt of unlawful use of force, restraint or firearms against the detainee, the officer who had accompanied the person during the examination submits a written report to the head of the unit of the MoI. This measure does not provide adequate protection against the victimisation of the detainee or of police arbitrariness. The medical official is not required to take action.⁷

2. Detention on remand

*According to Bulgarian law, juvenile detention on remand is not foreseen as a measure of last resort and for the shortest duration possible. The judicial review of remand is guaranteed by CPC but the requirement for **frequent periodic ex officio review is not**.⁸ CPC does not introduce the international guarantees under which courts give the highest priority to **the quickest review of cases involving children from the very beginning**, in order to keep the detention as short as possible.⁹ CPC does not create guarantees for a **child-friendly environment during the trial** that would allow the child to participate and express themselves freely.*

1 The literal interpretation of the Ministry of Interior Act rules on detention results in the conclusion that police authorities may only detain adolescents but not minors, as the law only uses the term "adolescent". In contrast, Instruction No. I3-1711 foresees the detention of minors as well.

2 Ministry of Interior Act (2014), Art. 74(1)(2).

3 ECtHR ruled that Article 5(1)(c) of the ECHR requires the detention to be carried out on the grounds of reasonable suspicion that a crime had been committed. According to the Court, such a suspicion cannot be general and abstract. It has to be based on facts and data that would meet the requirements of any independent observer that the affected person may have committed a crime or offence. As the orders for the detention of the applicants did not contain such facts and data but just a referral to legal provision, the Court held that their detention was, inter alia, arbitrary and contradicts Article 5(1) and Article 5(2) of ECHR.

4 Ministry of Interior Act (2014), Art. 72(7).

5 Instruction No. I3-1711 (2009), Art. 22.

6 *Ibid*, Art. 20.

7 Havana Rules, Rule 52.

8 General Comment No. 10, § 83 foresees such a review every two weeks with regard to detained children.

9 Havana Rules, Rule 17, Beijing Rules, Rule 20.

Bulgarian legislation is inconsistent with the standards¹ on the establishment of **open detention institutions**. The Law on Execution of Penalties and Detention (LEPD) sets some of the more important guarantees regulated by international instruments, mostly as part of the general framework applicable to juveniles. However, the provision of a copy of the rules governing the detention facility,² the development of a psychological plan, the adaptation of the physical environment and of staff qualifications to juveniles' needs, the guaranteed **right to education**³ of children on remand, the opportunities for **work for just remuneration**, as well as the protection against degrading and inhuman disciplinary measures,⁴ are not regulated by law.

2.1. Why is detention a deprivation of liberty? Procedure

In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.⁵ This, however, is not a leading principle in the Bulgarian Criminal Code (CC) and CPC. While there is a requirement that detention on remand be applied only in exceptional cases, there is no requirement that it should be used as a last resort.⁶ CPC foresees several types of adolescent supervision but no other, less restrictive form of isolation before detention on remand (in the form of house arrest for adults). In the pre-trial proceedings, the court of first instance upon request by the prosecutor imposes detention on remand.⁷ The following supervision measures may be imposed on adolescents: 1) supervision by the parent/ guardian; 2) supervision by the administration of the reformatory in which the juvenile is placed; 3) supervision by the inspector of the Children's Pedagogical Rooms or by a member of the local commission for combatting juvenile delinquency; 4) detention on remand.⁸

Persons, including adolescents, who have been imposed detention on remand, are placed in detention facilities or reformatories.⁹ The reformatories are places for the deprivation of liberty¹⁰ and the behaviour of detainees in them is controlled.¹¹ Furthermore, detention on remand does not have a specific duration. It is restricted in time only within the pre-trial stage, on the grounds of a statutory maximum duration, which however is no different to that applied to adults.¹²

2.2. Judicial review. Periodic judicial review

Detention on remand is imposed by a court decision in a hearing. The appearance of the accused in court is secured immediately by the prosecutor who, whenever necessary, may order the accused to be detained for 72 hours in order to be brought to court.¹³ The accused can at any time during the pre-trial proceedings request that the imposed measure, detention on

1 Havana Rules, Rule 30.

2 *Ibid*, Rule 24.

3 Havana Rules, Rule 18; CRC, General Comment No. 10, § 89.

4 Havana Rules, Rule 13.

5 Convention on the Rights of the Child, Art. 3, Beijing Rules, Rule 17.1d.

6 Criminal Procedure Code (2006), Art. 386(2); Havana Rules, Rule 17; Beijing Rules, Rule 13.

7 Criminal Procedure Code (2006), Art. 64.

8 *Ibid*, Art. 386.

9 Law on Execution of Penalties and Detention (2009), Art. 42.

10 *Ibid*, Art. 41.

11 *Ibid*, Art. 44. These shall be equipped with technical and other security and control means to prevent escape, other crimes and offences, and the inmates (respectively, the detainees) shall be warned that security and technical means, including audio-visual systems, may be used to control behaviour.

12 Criminal Procedure Code, Art. 63(4).

13 *Ibid*, Art. 64.

remand, be changed.¹ The trial is scheduled within three dates of being brought to court, and the court rules by a decision in a hearing. The judicial review is at two levels of jurisdiction in both cases.

2.3. Respect for fundamental rights in the procedure

When the accused is underage, the involvement of a **defender** in the criminal proceedings is obligatory.² While the child cannot deny legal counsel,³ it is not clear whether they can refuse an *ex officio* lawyer and ask that another one be appointed. There are no guarantees for the quality of defence (special training), nor is there an option to choose from *ex officio* lawyers or to have a preliminary meeting between the *ex officio* lawyer and the adolescent.

The law does not foresee involvement of a teacher/ psychologist/ parent/ guardian/ or another person to care for the adolescent during the review of the measure. It is also not possible to have a psychologist/ teacher prepare the child for the procedures prior to and in the courtroom. The parents are informed about the detention *post factum*, at the time of detention.⁴ The right of the child to be informed about the charges against them **in a language they understand** is not guaranteed.⁵ There are also no statutory guarantees for the right of the child to be informed about possible measures, to have the opportunity to express their opinion on the measures and their alternatives, to have their specific wishes and preferences taken into account.⁶

2.4. Respect for fundamental rights during the placement

There is no alternative placement to detention at an investigation detention facility or a reformatory. Places for detention are decentralised, insofar as juveniles may be held at detention facilities (apart from reformatories); it cannot be said, however, that detention facilities are integrated in community life because the children are not allowed to leave them (for example, to go to school). There is no regulated option to suspend the detention on remand measure or to temporarily leave the detention facility.⁷ Home leave and visits outside the detention facility are not foreseen in Bulgaria, not even as a reward.⁸

The Law on Execution of Penalties and Detention stipulates that the adolescents - accused and defendants, are kept separated from the adults,⁹ foreseeing no exceptions to this rule. In practice, however, there are examples to the contrary. When detainees are placed in detention, they are immediately informed about their rights and the rules governing the premise, following which they are required to certify this procedure with a signature.¹⁰ Under Bulgarian legislation,¹¹ the development of a psychological plan for the duration of the adolescent's placement¹² is not compulsory.

1 *Ibid.*, Art. 65.

2 *Ibid.*, Art. 94(1).

3 *Ibid.*, Art. 96(1). According to this article, "the defendant may at any time during the proceedings refuse counsel, except in the cases under Art. 94(1)(1), (3) and (6) of the Criminal Procedure Code".

4 *Ibid.*, Art. 386(4).

5 CRC, General Comment No. 10, § 47.

6 *Ibid.*, § 44.

7 Havana Rules, Rules 58-59.

8 Law on Execution of Penalties and Detention (2009), Art. 257(4).

9 *Ibid.*, Art. 246(1)(2).

10 *Ibid.*, Art. 243.

11 *Ibid.*, Art. 55(3).

12 Beijing Rules, Rule 27.

Apart from the general living and sanitary requirements, the conditions of juvenile detention are not subject to regulation. The implementation of the international standards for a physical environment consistent with the need for personal space, sensory stimuli, opportunities to meet peers, participation in sports, physical and recreational activities, is left to the discretion of the respective heads of detention facilities and reformatories, or to the Execution of Penalties Directorate General (EPDG).¹ The legislation does not require a specific number of full-time specialists to work with the adolescents, nor a specific detainee-to-staff ratio, and therefore, does not meet the requirement of sufficient and qualified staff.²

The legislation does not regulate the possibility for the child to continue their education at the same school at which the child is enrolled, not even for the duration of the detention. The juveniles detained at a detention facility have no access to education. Training is provided only at the reformatories, where enrolment in literacy programmes, vocational training, acquiring and improving key competences and motivational training are encouraged.³ There is no stipulation that the education diplomas and certificates should avoid any reference to the juvenile having been institutionalised.⁴

Juveniles held at detention facilities are not allowed to work. The accused placed in reformatories are allowed to work, whenever possible and upon expressing in writing their wish to do so.⁵ Whether a juvenile may be allowed to work without permission from the labour inspectorate remains an open issue.⁶

Currently, the rules on remuneration for work performed do not comply with international standards.⁷ In Bulgaria, working detainees have a portion of their wages deducted and they receive not less than 30%.⁸ The portion of the remuneration is defined by order of the minister of justice. Detainees' health insurance is covered by the national budget and payments are made by the Ministry of Justice. Working detainees do not pay social security contributions.⁹

Under international standards, the disciplinary measures which constitute cruel, inhuman or degrading treatment and may compromise the physical or mental health of the juvenile must be prohibited.¹⁰ At the Bulgarian reformatories, when the accused severely or systematically breach the internal rules, thus endangering security at the reformatory, they are held in constantly locked premises, without the right to take part in collective events.¹¹

1 Havana Rules, Rule 32.

2 *Ibid*, Rule 81.

3 Law on Execution of Penalties and Detention (2009), Art. 257(2).

4 Havana Rules, Rule 40.

5 Law on Execution of Penalties and Detention (2009), Art. 257(1).

6 In its case law, ECtHR accepts that the failure to apply the common national standards on work in closed institutions does not lead to a violation of the ECHR. In a special survey, the Bulgarian Helsinki Committee found that in the opinion of the General Labour Inspectorate Executive Agency, the Labour Code was inapplicable to people working in prisons and correctional facilities, insofar as no labour contracts are signed with inmates/ accused. The agency, however, inspects workplace safety.

7 Havana Rules, Rule 46. The interests of juveniles and of their vocational training should not be subordinated to the purpose of making a profit for the detention facility or a third party. Part of the earnings of a juvenile should normally be set aside to constitute a savings fund to be handed over to the juvenile on release.

8 Law on Execution of Penalties and Detention (2009), Art. 78. In consistency with Article 5 of the Rules for the Structure and the Functioning of the Prison Fund State Enterprise, funding for the Prison Fund is provided including from the deducted portion of inmate wages.

9 *Ibid*, Art. 84(2)(4). The lack of social security contributions with regard to inmate labour, however, does not contradict ECtHR case law on this issue in cases against other Council of Europe member states.

10 Havana Rules, Rule 67.

11 Law on Execution of Penalties and Detention (2009), Art. 248(1)(2).

3. Deprivation of liberty by decision/ sentence of a competent court

3.1. Deprivation of liberty under the Criminal Procedure Code

The Criminal Procedure Code does not require compulsory psychological attestation to evaluate the maturity of a child aged over 14, does not provide free legal counsel, does not stipulate a deadline for the review of the case, does not require the presence of specialists who could support the child's involvement in procedural actions and their understanding, does not protect the child's identity when the sentence is handed down, and does not provide a set of possible less severe punishments.

Bulgarian legislation does not comply with international standards requiring that the child be placed in a facility that is as close as possible to the place of residence of their family, in order to allow for regular visits by relatives.¹ It is also inconsistent with European rules on harsh disciplinary measures.

3.1.1. Why is the placement a deprivation of liberty?

Deprivation of liberty is imposed by the competent criminal court by a convicting sentence under the CC and the CPC. The sentence is executed by placing the convicted in penitentiary facilities and subjecting them to reformation.² Adolescent inmates are placed in reformatories, separate ones for boys and girls and separated from the adults.³ The reformatories are equipped with technical and other security and control means to prevent escapes, other crimes and offences.⁴

3.1.2. Respect for fundamental rights during the procedure

The UN Committee on the Rights of the Child expresses concern that if the **evaluation of the maturity of the child** over the minimum age of criminal responsibility (14 years in Bulgaria) is left to the judge, without any requirement for psychological evaluation, this may lead to discriminatory practices.⁵ The CPC, however, does not include an explicit provision on this issue which results in controversial practices.⁶ **The international special rules on juveniles should be applied to all children who were under 18 at the time the offence was committed.**⁷ The Committee on the Rights of the Child notes with satisfaction that some state parties under the Convention are applying the special rules for juveniles also with regard to persons aged 18 or more, usually until they reach the age of 21. The Bulgarian regulations, however, show evidence of the contrary. If the adult is accused of a crime, which was committed when they were underage, the case is reviewed under the general law; also, where an adolescent has been accused of a crime committed in complicity with an adult, the case is also reviewed under the general law.⁸ The right of the child to be treated in line with standards established in the Convention on the Rights of the Child is, therefore, violated. The requirement that the judicial authorities must apply all juvenile justice guarantees, even in these cases, needs to be enshrined in legislation.

As mentioned in the previous section, CPC does not include **fixed deadlines** for the review of juvenile cases. On the contrary, the duration of the proceedings may be further extended

1 Convention on the Rights of the Child; CRC, General Comment No. 10, § 87.

2 Law on Execution of Penalties and Detention (2009), Art. 40(1).

3 *Ibid.*, Art. 41 and Art. 58(2).

4 *Ibid.*, Art. 44(1).

5 Convention on the Rights of the Child; CRC, General Comment No. 10, § 30.

6 Vidin Regional Court (2013), dissenting opinion to Decision No. 4 of 31 January 2013 on Second Instance Private Criminal Case No. 329/2012.

7 Convention on the Rights of the Child, Art. 10; General Comment No. 10, § 36.

8 Criminal Procedure Code (2006), Art. 394(1).

should the court decide to instruct the local commission for combatting juvenile delinquency (hereinafter: local commission) to impose a measure.

The law provides certain guarantees for child-friendly justice. The juvenile's right to legal counsel in the criminal proceedings is guaranteed (but is not free).¹

In cases concerning crimes committed by juveniles, the pre-trial proceedings are carried out by **specially trained investigative bodies** (although in reality the accused has no way of checking the quality of this training).² The legislation foresees the presence of a **psychologist or a teacher** during the questioning of juveniles.³ The parents are notified of the indictment and may choose whether to be present or not when the charges are filed, i.e. they act at their own discretion, which is not always in the best interest of the juvenile.

With regard to the other procedural investigative actions, different from the questioning, the legislation does not provide sufficient guarantees for justice in the interests of the child, such as securing the presence of experts and applying a multidisciplinary approach to ensure a comprehensive understanding of the child.⁴ There is no requirement to explain the charges and the essence of the trial to the child in a comprehensible language; the right to an interpreter is not guaranteed for minority group members who also know Bulgarian but not very well. There is no legal option to restrict the number and duration of interrogations to the necessary minimum.⁵ To the benefit of the child, the law stipulates that the jury on cases involving children be composed of "teachers and educators".⁶

The CPC is inconsistent with international standards which stipulate that the sentence in a public hearing should be handed down in a manner that does not divulge the child's identity.⁷

The Criminal Code allows that the punishments foreseen for adults be commuted with less severe punishments when the perpetrator is an adolescent.⁸

3.1.3. Respect for fundamental rights during the placement

A sentence involving the deprivation of liberty is carried out in reformatories. There are only two such reformatories, one for boys and one for girls. The child's parents have to be immediately informed about their placement in the closed institution,⁹ but under Bulgarian legislation this should happen within three days after placement.¹⁰

The disciplinary measures imposed on adolescents deprived of their liberty also contradict the Havana Rules. Adolescents in high security facilities may be placed in solitary confine-

1 *Ibid.*, Art. 189(3). The case law accepts, however, that even juvenile convicts have to transfer to the account of the National Legal Aid Bureau the remuneration of their *ex officio* defenders when the defendant was found guilty. Under certain circumstances this can contradict with Article 6(3)(c) of the ECHR which stipulates that "[e]veryone charged with a criminal offence has the following minimum rights: [...] (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require".

2 *Ibid.*, Art. 385.

3 *Ibid.*, Art. 388.

4 Guidelines on Child-Friendly Justice, § IV.16

5 *Ibid.*, § IV.67; Criminal Procedure Code (2006), Art. 280(6) (New – SG, No. 32 of 2010, in force since 28 May 2010). A juvenile witness who has been questioned during the criminal proceedings shall be questioned again only when her statements cannot be read under the terms and conditions stipulated in Article 281 or when the new questioning is of paramount importance to establish the truth.

6 Criminal Procedure Code (2006), Art. 390(2).

7 Convention on the Rights of the Child, Art. 16; CRC, General Comment No. 10 (2007), § 66.

8 Criminal Code (1968), Art. 63. The requirement of the Beijing Rules that deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response, is not observed.

9 Beijing Rules, Rule 10(1).

10 Law on Execution of Penalties and Detention (2009), Art. 187(3).

ment if they consciously exercise a negative influence on others.¹ Such a possibility is also foreseen in the European Rules but they require that the isolation of the inmates be conducted in line with a clear, statutorily defined procedure, only for a limited duration, and that such separation is subject to regular review.² In Bulgaria, adolescents may be punished by solitary confinement, with or without the possibility to leave the cell to work or attend school, for a period of up to 5 days.³ This disciplinary measure contradicts the European Rules.

3.2. Deprivation of liberty under Decree No. 904 on combatting petty hooliganism and under the Protection of Public Order During Sports Events Act

The two acts, Decree No. 904 on combatting petty hooliganism (hereinafter: Decree on combatting petty hooliganism) and the Protection of Public Order During Sports Events Act (hereinafter: Sports Hooliganism Act), do not provide child-friendly justice guarantees: there are no provisions on the establishment of an informal setting during the hearing, on the participation of teachers/ psychologists, on a special procedure for informing the juvenile about the actions initiated against them and about the essence of the proceedings. No individual work and meaningful activities are foreseen for children convicted under Decree on combatting petty hooliganism and Sports Hooliganism Act.

3.2.1. Why is the placement a deprivation of liberty? Procedure

The Decree on combatting petty hooliganism⁴ and the Sports Hooliganism Act⁵ foresee detention. In case of petty hooliganism⁶ under the Decree on combatting petty hooliganism, the court may impose detention for up to 15 days, and in case of sports hooliganism⁷ under the Sports Hooliganism Act, up to 10 days. The latter is less than the up to 25 days allowed by law when the perpetrator is a adolescent aged 16 to 18.⁸ According to the Decree on combatting petty hooliganism, the age of responsibility is 16.⁹ Sentences under the Sports Hooliganism Act may be imposed on adolescents aged 16 to 18,¹⁰ while for perpetrators aged below 16, the Sports Hooliganism Act refers to the JDA for imposing educational measures¹¹. The Constitutional Court of the Republic of Bulgaria held in Decision No. 3 of 2011 that petty hooliganism under the Decree on combatting petty hooliganism constitutes deprivation of liberty.¹²

1 *Ibid*, Art. 191(4).

2 European Rules for juvenile offenders, Rule 93.

3 Law on Execution of Penalties and Detention (2009), Art. 193(1)(5).

4 Decree No. 904 of 28 December 1963 on combatting petty hooliganism (1963) (hereinafter: Decree on combatting petty hooliganism).

5 Protection of Public Order during Sports Events Act (2004) (hereinafter: Sports Hooliganism Act).

6 Decree on combatting petty hooliganism (1963), Art. 2(2): Petty hooliganisms under this decree shall be an indecent act manifested as cursing, swearing and other indecent expressions in public before many people, in insulting attitude and behaviour towards the citizens, the law enforcement bodies or the public or in a quarrel, a fight or other similar acts which violate public order and peace, but which, due to their lower degree of danger to society, are not considered a crime under Article 325 of the Criminal Code.

7 Sports Hooliganism Act (2004), Art. 21: An antisocial act (sports hooliganism) under this act shall be an indecent act manifested in swearing, indecent expressions and gestures that are especially vulgar, instigation and participation in fights, incursion on to the sport field, causing destruction or damage to other persons' property, use of prohibited items, refusal to comply with the instructions of the officials responsible for the sports event or of the police authorities, or another similar act which violates public order, does not constitute a crime under the Criminal Code, and has been conducted intentionally in the sports facility or in the area surrounding it, before, during and immediately after the sports event, both when approaching and leaving the sports facility in relation to the sports event.

8 Sports Hooliganism Act (2004), Art. 25(4).

9 Decree on combatting petty hooliganism (1963), Art.1; Sports Hooliganism Act (2004), Art. 23(1).

10 Sports Hooliganism Act (2004), Art. 23(2).

11 Decree on combatting petty hooliganism (1963), Art. 2(4).

12 Constitutional Court (2011), Decision No. 3 of 4 May 2011 on case No. 19/ 2010.

3.2.2. Judicial review. Periodic judicial review

In case of acts of hooliganism under these laws, the competent authorities issue an act.¹ The penalties are imposed by the court upon referral by the MoI bodies submitted no later than 24 hours after the act was issued.² Should the offender be unable to appear before a judge within this deadline, the head of the district police department may order them detained for up to 24 hours.

3.2.3. Respect for fundamental rights during the procedure

The judge reviews the file in an open hearing no later than 24 hours after receiving it,³ in the presence of the offender who is entitled to legal counsel. The judge may also interrogate witnesses, should they deem this necessary.⁴ In case of proceedings against a child aged 16 to 18, their parents/ guardians are also summoned; this, however, is not explicitly stipulated by the Decree on combatting petty hooliganism.⁵ The law does not explicitly refer to the principle that the measure should only be imposed for the minimum duration necessary.⁶

Under the Decree on combatting petty hooliganism, the decision of the district judge may be appealed before the regional court, while under Sports Hooliganism Act the decision of the district court is final.⁷ Although there is no difference between the two types of deprivation of liberty and the procedures for imposing such punishment, the distinction in the appeal options stems from a decision of the Constitutional Court which ruled as unconstitutional the Decree on combatting petty hooliganism provision that the decision of the district court is final.⁸

3.2.4. Respect for fundamental rights during the placement

Persons who have committed acts of petty hooliganism and have been sanctioned with detention are issued a written order.⁹ Upon their arrival at the facility where they will serve their sentence, the detainees are immediately informed about their rights and fill in a declaration in two copies that they are aware of their rights.¹⁰ Detainees who are foreigners, illiterate, do not understand Bulgarian or are hearing impaired, fill in the declaration with the help of an employee of the respective structural unit; the statements are made by the person, with the assistance of an interpreter or translator and, when the person is illiterate, in the presence of a witness, certifying the truthfulness of their statements with their signature. The terms of

1 Decree on combatting petty hooliganism (1963), Art. 2; Sports Hooliganism Act (2004), Art. 26.

2 Decree on combatting petty hooliganism (1963), Art. 3; Sports Hooliganism Act (2004), Art. 30.

3 Decree on combatting petty hooliganism (1963), Art. 4; Sports Hooliganism Act (2004), Art. 32.

4 Decree on combatting petty hooliganism (1963), Art. 5; Sports Hooliganism Act (2004), Art. 32.

5 Sports Hooliganism Act (2004), Art. 32.

6 General Comment No. 10, § 28; Havana Rules, Preamble.

7 Sports Hooliganism Act (2004), Art. 34(1).

8 "Restricting the right of the offender to appeal before a higher instance a judicial act that imposes the penalty of "detention at MoI facilities" goes beyond the necessary in delivering justice, regardless of the fact that the act was handed down in administrative penal proceedings. The ban on appealing the decision of the district judge violates the detainee's right to two levels of jurisdiction with regard to imposing the most severe administrative punishment possible or a fine of BGN 100 [(EUR 51)] to BGN 500 [(EUR 255,6)]. The existence of accelerated proceedings in the field of criminal law by itself does not contradict Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, but the principles of speed and soundness of judicial decisions should not have precedence over the defendant's right to remedy. The above brings the conclusion that Article 7, Sentence 1 of the Decree on combatting petty hooliganism affects the detainee's fundamental right to fair trial, and therefore contradicts Article 31(4) of the Constitution, and the Constitutional Court should rule it unconstitutional".

9 Rules for the Implementation of the Decree on combatting petty hooliganism (2004), Art. 8(2).

10 *Ibid.*, Art. 13.

the Regulation on the Implementation of the Decree on combatting petty hooliganism also apply to the execution of penalties under the Sports Hooliganism Act.¹

The persons are detained in facilities separated from facilities designated for those detained for committing crimes. They are allowed to engage in community service without pay.² The legislation does not foresee options for individual work or meaningful activities (apart from eventual community service) while the sentence is being served.

4. General issues of the deprivation of liberty under the Juvenile Delinquency Act

The Juvenile Delinquency Act does not provide a clear definition of an “antisocial act”, nor does it regulate clearly the facilities in which the children who have committed such acts can be placed. Furthermore, it does not provide any guarantees that the “educational” measures imposed on minors are support measures and not penal ones, and that they are not applied for status offences against all children aged up to 18.

The JDA³ creates a framework for “preventing and combatting the antisocial acts of minors and adolescents and for providing normal development and education of their perpetrators”. Nevertheless, the legislative framework reveals many issues.

1) Lack of legal clarity on the place of (short-term/ long-term) accommodation of children who have committed antisocial acts

The law mandates the establishment of several types of institutions for combatting children’s anti-social behaviour: social-pedagogical boarding schools (SBS), correctional boarding schools (CBS), homes for temporary placement of minors and adolescents (HTPMA) and shelters for neglected children.⁴ The legislative provisions with regard to these institutions, however, do not provide clarity on which institution should be used for different antisocial acts.⁵ Furthermore, the children who have committed antisocial acts may be accommodated at other places for deprivation of liberty under the Child Protection Act, such as a specialised institution, a community-based social service (for example, a family-type placement centre) or a crisis centre.⁶

2) Lack of legal clarity with regard to the term “antisocial act”

The law provides a possibility to impose an educational measure for placement in CBS/ SBS,⁷ as well as for placement in HTPMA, when the child has committed an “antisocial act”. An antisocial act is “an act which poses danger to society and is illicit or contradicts morality and the accepted principles of morality”.⁸ This provision is quite unclear and does not set clear boundaries of its scope. It does not list the acts which may be considered anti-social, and potentially includes everything that someone might consider improper or immoral. Due to this, the deprivation of liberty under JDA is governed by an unclear law, which contradicts Article 5 of ECHR. In its Concluding Observations on Bulgaria, the Committee on the Rights of the Child finds that the definition of “antisocial act” contradicts international norms, and

1 Sports Hooliganism Act (2004), Art. 36

2 Decree on combatting petty hooliganism (1963), Art. 8; Sports Hooliganism Act (2004), Art. 36.

3 Juvenile Delinquency Act (1958).

4 *Ibid.*, Art. 2(1).

5 Council of Ministers (2013), Road Map for the Implementation of the Concept of State Policy on Juvenile Justice (2013-2014) (hereinafter: Road Map in the Field of Child Justice (2013-2014)), available on: <http://goo.gl/MIs3P9>.

6 State Agency for Child Protection (2009), Analytical Report on the Evaluation of the Social Educational Boarding Schools and the Correctional Boarding Schools, available on: <http://sacp.government.bg/programi-dokladi/dokladi/>.

7 Juvenile Delinquency Act (1958), Art.13 and Art. 35(1).

8 *Ibid.*, Art. 49a.

recommends the national legislation on child delinquency and the CPC be amended, abandoning this term.¹ In this respect, the Concept for State Policy in the Field of Child Justice was adopted on 29 August 2011.²

3) *Use of detention as punishment for status offences*

The concept of an act posing a danger to society allows children to be held responsible for so-called status offences, which can be committed by the child due to their status of a child. At the same time, they are not considered illicit if committed by adults (running away from school, running away from home, prostitution, use of alcohol, etc.). This contradicts the Riyadh Guidelines, which stipulate that in order to avoid additional stigmatisation/ victimisation/ punishment of young people legislation must be enacted to the effect that every act, which is not considered an offence or is not punished if committed by an adult, should not be considered an offence and should not be punished when committed by a child.³ The Committee on the Rights of the Child recommends that the state parties under the Convention repeal such provisions in order to establish equal legal treatment of juveniles and adults.⁴ This approach is adopted by the Concept for State Policy in the Field of Child Justice.⁵

4) *Imposing punishment on minors*

Child offenders younger than 14 should have greater guarantees for equal and just treatment than children aged 14 to 18.⁶ Should this be necessary to protect their best interests, special measures need to be taken for these children.⁷ Imposing punitive measures (the measures under the JDA are to some extent punitive), causes problems as the procedure does not provide the guarantees that are available to children who are accused, or defendants under the Criminal Procedure Code. The UN Committee on the Rights of the Child expresses concern that despite the fact that the minimum age of criminal responsibility is 14, preventive educational measures are applied to much younger children (8-year-old). It recommends that the Bulgarian authorities clearly define the statutory age of criminal responsibility, in order to guarantee that children aged less than 14 remain completely excluded from the scope of criminal law and that only social and protective measures are applied to them.⁸

4.1. Detention at a Home for Temporary Placement of Minors and Adolescents

The placement in HTPMA is based on an administrative procedure and the person placed is deprived of the right to judicial review on the legality of the procedure and of legal counsel, in violation of the ECHR. The child has no access to education after the placement. The development of a psychological and social report for care, the inclusion of the child in various programmes immediately after the placement, the hiring of sufficient staff qualified to work with children, the rules and the regularity of family contacts, the child's right to file requests and complaints with the central administration, the court (and other appropriate institutions), as well as to be informed without delay about their responses, are not regulated in Bulgarian legislation. The disciplinary measures also violate international standards.

1 CRC, Concluding observations on Bulgaria (2008).

2 Concept in the Field of Child Justice (2011).

3 Riyadh Guidelines, § 56.

4 General Comment No. 10, §§ 8 and 9.

5 Concept in the Field of Child Justice (2011).

6 General Comment No. 10, § 33.

7 *Ibid.*, § 31.

8 CRC, Concluding observations on Bulgaria (2008), § 69c.

4.1.1. Why is the placement a deprivation of liberty? Procedure

The homes for temporary placement of minors and adolescents are institutions within the Ministry of Interior.¹ They are used to accommodate children whose address cannot be established, as well as children arrested for vagrancy, begging, prostitution, alcohol abuse, distribution or use of drugs, running away from home, CBS, SBS and other closed institutions, homelessness accompanied by antisocial acts. Placement in the homes for more than 24 hours is authorised by a prosecutor.² It should be up to 15 days and, in exceptional cases, may be extended to two months on authorisation by a prosecutor. Children are placed in the homes on proposal by a police body, the central commission for combatting juvenile delinquency (hereinafter: central commission), a local commission and the Social Assistance Directorate.³ In the case *A. and Others v. Bulgaria*, the ECtHR notes that HTPMA are institutions within MoI and that they are similar to detention facilities, and therefore, holds that the placement of one of the two applicants in such a home, once for 17 days and another time for 14 days, constitutes deprivation of liberty under Article 5 of ECHR. According to the Concept for State Policy in the Field of Child Justice (2011), the functioning HTPMAs may be transformed into crisis centres for children with risky behaviour.⁴

4.1.2. Judicial review. Periodic judicial review

The placement is based on an administrative procedure and the person placed is deprived of the right to judicial review of its legality. Due to this, in the case *A. and Others v. Bulgaria*, ECtHR held that there was a violation of Article 5(4) of the ECHR with regard to the placement of the second applicant in HTPMA. The court noted that the first placement of the applicant in HTPMA was ordered by the Local Commission, while the second was ordered by a prosecutor. The court held explicitly that the authorities, the committee and the prosecution, cannot provide the remedies under Article 5(4) of the ECHR. Furthermore, the placement is not subject to periodic judicial review. This contradicts Article 5(4) of the ECHR and Article 25 of the CRC.

4.1.3. Respect for fundamental rights during the procedure

The placement in HTPMAs is carried out by the warden or an employee nominated by them, upon a conversation with the child and an evaluation of the grounds for placement.⁵ No other guarantees have been foreseen. Legal counsel is not provided, as it is only available with regard to judicial bodies.⁶

4.1.4. Respect for fundamental rights during the placement

The children placed in homes are divided between the dormitories on the basis of their sex, age and grounds for placement.⁷ When the children arrive at the home, they are first put in isolation until the necessary examinations are carried out.⁸ The isolation does not have a spe-

1 Juvenile Delinquency Act (1958), Art. 34.

2 *Ibid.*, Art. 37.

3 Rules on Organisation and Operation of the Homes for Temporary Placement of Minors and Adolescents (1998), Art. 8(2) (hereinafter: Rules on Organisation and Operation of the HTPMA). According to Art. 29(4), the windows and the doors of HTPMA are barred with metal bars or mesh wire.

4 CEDH, *A. et autres c. Bulgarie*, § 103.

5 Rules on Organisation and Operation of the HTPMA (1998), Art. 12(1).

6 The lack of accessible legal assistance results in inconsistency with Article 5 of the ECHR; with Rules 7.1 and 15 of the Beijing Rules; as well as with Article 40 of the Convention for the Rights of the Child.

7 Juvenile Delinquency Act (1958), Art. 39.

8 Ministry of Education and Science (2006), Rules for Organisation and Operation of SBS and CBS, Art. 10(2).

cific duration. Vocational training workshops, facilities for sports and cultural activities are provided at the homes.¹ Thus, during their stay at HTPMA, the children are deprived of the right to education.² All issues related to informing the child, providing meaningful activities, psychological assistance, contacts with the family and complaints are left to the discretion of the bodies carrying out the placement.

The HTPMA warden may punish children who have violated the internal rules with isolation in a single room for up to three days. This punishment cannot be appealed.³

4.2. Detention at correctional boarding schools and social-pedagogical boarding schools

The placement in CBSs and SBSs is a punitive measure. It contradicts international standards. Firstly, due to the lack of a clear definition of an antisocial act, which allows for arbitrary decisions. Secondly, because it is not clear how the placement institution is selected. And thirdly, because there are no guarantees for periodic judicial review accessible to the child. The local commission proceedings provide no guarantees with regard to the provision of information to the child in a language they understand, the provision of free legal aid, and for expedited proceedings.

The Bulgarian law does not include a requirement to have the child accommodated close to its habitual residence, nor does it restrict the duration of the stay in CBS/ SBS. Furthermore, children who have committed different offences – crimes, status offences, domestic or other forms of violence – are placed in these boarding schools, in contradiction with the principle that juveniles should be divided according to the type of care they need.⁴ Education of children in conflict with the law is not provided in the community, outside the detention facility.⁵ There is no statutory procedure with regard to the right of the child to file requests and complaints,⁶ nor with regard to the regularity of the contacts with their family, which allows for arbitrariness.

4.2.1. Why is the placement a deprivation of liberty? Procedure

The placement in the two types of schools is regulated by the Juvenile Delinquency Act and the Rules for Organisation and Operation of SBS and CBS. Every CBS/ SBS develops its own internal rules.

The law foresees a series of educational measures for children with antisocial conduct. The placement in CBS is the most severe among them and may be imposed: 1) when lesser educational measures⁷ have proved to be insufficient and the child lacks an appropriate social environment;⁸ 2) when minors who have committed crimes are exempt from criminal responsibility;⁹ 3) when minors are exempt from sentences involving deprivation of liberty.¹⁰ SBSs are used to accommodate minors aged over eight and adolescents who have committed or “are likely to commit antisocial acts”.¹¹ The law does not state explicitly that de-

1 Juvenile Delinquency Act (1958), Art. 38 and 39.

2 Violation of Article 5.1(d) of ECHR. ECtHR in the case *Blokhin v. Russia* and a violation of the Convention on the Rights of the Child; General Comment No. 10 (2007), § 89.

3 Rules on Organisation and Operation of the HTPMA (1998), Art. 25. This is a violation of the Beijing Rules, Rule 68(d).

4 Havana Rules, Rule 28.

5 *Ibid*, Rule 38.

6 *Ibid*, Rule 76; General Comment No. 10, Rule 89.

7 Admonishment, educational supervision by parents or educators, prohibition to visit certain places or persons, etc.

8 Juvenile Delinquency Act (1958), Art. 28(2).

9 Criminal Code (1968), Art. 61.

10 *Ibid*, Art. 64; Juvenile Delinquency Act (1958), Art. 28(2) in conjunction with Art. 13(1)(13).

11 Juvenile Delinquency Act (1958), Art. 28(1) in conjunction with Art. 13(1)(11).

tention in a SBS is a measure of last resort, and that it is applied only for the minimum duration necessary.¹

The educational proceedings by the local commission are carried out by a panel composed of a chair, who is a qualified lawyer, and two members.² The proceedings are initiated when children (aged eight to 18) have committed antisocial acts, and when adolescents who have committed crimes are exempt from criminal responsibility and the case is referred to the local commission. Should the local commission deem it necessary to have the child placed in SBS/CBS, it submits a proposal to this effect to court. The latter holds a closed hearing within 14 days and issues a decision within seven days after the hearing. The decision may be appealed before the district court.³ The court may also impose an educational measure.⁴ Additionally, the court can order the placement in a CBS or another educational measure when the adolescent is exempt from serving a sentence involving deprivation of liberty for less than one year and its execution is not suspended.⁵

The two types of boarding schools for children in conflict with the law are subordinated to the Ministry of Education and Science. The Regulation states that the students in the schools are under constant supervision, cannot leave the institution without prior permission, and must be accompanied by a teacher or an educator when they leave the institution. Permission for leave for official holidays and vacations are issued with the written consent of the local commission. Visits in the institution are also subject to permission from the principal.⁶

The placement constitutes a deprivation of liberty because the children are placed in SBS/CBS under a judicial procedure, against their will, due to an act of delinquency that they have committed. As to the minors (including those aged eight) who are placed in SBS at the will of their parents, the decision of the parents is sanctioned by a competent state body and therefore, constitutes a deprivation of liberty. Whether the extension of placement at CBSs with the consent of an adolescent, who has reached the age of 16, constitutes a deprivation of liberty is questionable, as it does not meet the subjective element of the requirement.

ECtHR reviewed the case *A. and Others v. Bulgaria* related to the placement of five female applicants in a CBS. In its decision, the Court stated that even the shortest of these periods (approximately seven months), during which A. was placed in a CBS, is long enough to feel the full extent of the negative effects of the restrictive measures. The court, therefore, concluded that the placement of the applicants in a CBS constitutes a deprivation of liberty under Article 5 of ECHR.⁷

4.2.2. Judicial review. Periodic judicial review

The placement is ordered only by the court. Despite the fact that the boarding school's pedagogical council prepares (together with a prosecutor and a local commission representative) an evaluation of the student's behaviour at the end of every academic year,⁸ and that in the event of a positive evaluation, the commission may propose the court to terminate the placement, these provisions do not meet the requirements of Article 5(4) of ECHR and of Article 25

1 General Comment No. 10, § 28; Havana Rules, Preamble.

2 Juvenile Delinquency Act (1958), Art. 15.

3 *Ibid.*, Art. 21(1)(2) and Art. 24(a).

4 Criminal Code (1968), Art. 61.

5 *Ibid.*, Art. 64(1).

6 Rules for Organisation and Operation of SBS and CBS (2006), Art. 34-40.

7 CEDH, *A. et autres c. Bulgarie*, § 62.

8 Juvenile Delinquency Act (1958), Art. 31(1) and (3). The stay at the boarding school may be also terminated before the end of the academic year on proposal by the Local Commission or for health reasons with a protocol by a medical advisory commission.

of the Convention on the Rights of the Child.¹ The district court rules within three days and its decision is final. The local commission is obliged to send only the cases, which were positively evaluated, for judicial review. Furthermore, the period between the evaluations is too long: at the end of every academic year. Proposals for the replacement of a measure for placement in a CBS with another educational measure after the initial sentence is handed down are left to the discretion of the prosecutor and the local commission.² A child placed in a boarding school has no direct access to court. Their right to appeal every act, which affects their interests, is also violated. Due to this, in 2008 the UN Committee on the Rights of the Child expressed concern about the large number of children placed in correctional institutions, and recommended to the Bulgarian authorities to use deprivation of liberty only as a last resort and when such a measure is imposed, to conduct regular evaluation and review with regard to the best interests of the child.³

4.2.3. Respect for fundamental rights during the procedure

The proceedings (investigation and hearing) before the local commission do not foresee sufficient procedural rights for the child (the right of the child to be informed in a language that they understand is not regulated).⁴ The presence of persons who could make the child feel more comfortable and create a child friendly environment is not compulsory but is left to the discretion of the panel.⁵ In violation of Article 5 of ECHR and Article 40 of the Convention on the Rights of the Child, no access to **free legal assistance** is provided. In an educational case reviewed by the commission or the court, the child is defended by a trusted representative or a lawyer, and in their absence - by the Social Assistance Directorate.⁶ However, legal counsel is stipulated as a possibility and not an obligation of the state. The involvement of a lawyer is left to the discretion and the capabilities of the child and their legal representative, whose consent is also needed for authorisation purposes. Many courts would provide juveniles an *ex officio* lawyer under the Legal Aid Act⁷ or CPC⁸ but this is not mandatory and depends solely on the court's goodwill. The lack of guarantees against inadequate protection is a problem.

Under Bulgarian law, when adolescents who have committed crimes are exempt from criminal responsibility and the case is referred by the court/ the prosecutor to the local commission, the commission reviews the case and may propose placement in a CBS/ SBS to the court.⁹ This results in significant delays.

The lack of detailed provisions on the implementation of educational measures by the local commissions creates prerequisites for the violation of the right to have detention imposed only as a "last resort" in "exceptional cases".¹⁰ The court is not obliged to evaluate whether more friendly measures have been applied in a manner that would correspond to the needs of the child.

1 CRC, General Comment No. 10, § 77.

2 Criminal Procedure Code (2006), Art. 395(3); Criminal Code (1968), Art. 64(2).

3 CRC, Concluding Observations on Bulgaria (2008).

4 CRC, General Comment No. 10; Convention on the Rights of the Child, Art. 47.

5 Juvenile Delinquency Act (1958), Art. 19(5).

6 *Ibid.*, Art. 19(3), 19(4), 24(a) and Art. 24(b).

7 Montana District Court (2012), Private Criminal Case No. 50238 on the grounds of Article 24a(2) of the Juvenile Delinquency Act, in conjunction with Article 15(8) of the Child Protection Act; Burgas District Court, Criminal Division (2013), Decision No. 1653 of 29 August 2013 on Private Criminal Case No. 3461, on the grounds of Article 25(1) in conjunction with Article 23(1) of the Legal Aid Act, in conjunction with Article 24a(2) in conjunction with Article 19(3) of the Juvenile Delinquency Act.

8 Criminal Procedure Code (2006), Art. 94(1).

9 Juvenile Delinquency Act (1958), Art. 12(2).

10 CRC, General Comment No. 10, § 28; Havana Rules, Preamble.

The educational measures under JDA, and most of all those entailing deprivation of liberty (placement in a SBS and CBS), are punitive in nature.¹ The punitive nature of the placement in a CBS may also be found in the nature of the offence through studying the purpose of the law, which is namely “to combat” antisocial acts committed by children, and given the concept of an antisocial act, whose nature is the deviation committed.² Furthermore, the concept of “educational measure”³ is based completely on individual prevention and not on social care measures. What is more, the case law indicates that, apart from the purpose of achieving individual prevention, the judges impose the educational measures of placement in a CBS/ SBS also for general prevention. The idea that the measures under JDA are punitive in nature is leading also in the Concept for State Policy in the Field of Child Justice.⁴

4.2.4. Respect for fundamental rights during the placement

In Bulgaria, there are no statutory guarantees that the boarding schools will be located in the community and close to the family.⁵ There are no regulatory criteria applicable to the allocation of children with educational measures to boarding schools. The duration of placement at a CBS and SBS is regulated by unclear provisions. The **maximum duration** of placement in such an institution may not exceed three years.⁶ The children remain there both for training, including vocational training, until they reach the age of 16 or upon submitting a written request to extend their stay, until the age of 18. In other words, the child cannot be held against their will once they have reached the age of 16 and have resided in the institution for three years.⁷ Children, aged 16 to 18, who are placed in CBS and do not wish to continue their education, are mandatorily enrolled in a vocational training class.⁸ What happens to those who are placed in SBS, have reached the age of 16 and wish to continue their education, remains unclear. Children placed in SBS and CBS, who have reached the age of 16 and have not attended school, are enrolled in vocational training.⁹ The Regulation contradicts the Juvenile Delinquency Act, as it stipulates that the student’s stay may be exceptionally terminated

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- 1 Kanev, K. (2011), „A. and others v. Bulgaria – promotion of dubious standards of educational supervision of minors and adolescents“, Praven svyat, 3 December 2011. This is sustained in the application of the five girls placed in CBS, in the case A. and Others v. Bulgaria reviewed by ECtHR. Although the Court held that the placement of the applicants in CBS constitutes a deprivation of liberty, it concluded that deprivation of liberty in a CBS is excluded from the scope of Article 5(1)(a) of the ECHR, as the applicants “were not subject to criminal proceedings aimed at establishing whether they have committed a crime”. As a result, the Court concludes that the deprivation of liberty could be done for the purposes of educational supervision under Article 5(1)(d) of the ECHR, since the girls are subject to educational measures. The Court therefore held that the criminal limb of Article 6 is inapplicable. By this decision ECtHR diverges from its previous case law, in which the Court points out that the starting point in deciding on the existence of a “criminal charge” under Article 6 of the ECHR is based not only on 1) the qualification of the national legislation, but also on 2) the nature of the offence and 3) the nature and the severity of the punishment imposed. If the last two criteria are applied – the nature of the offence and the severity of punishment, one ought to arrive at the conclusion that the placement in CBS and SBS, in most cases for thefts, which is in essence a deprivation of liberty in restrictive conditions for a potentially and really long period of time, is a punitive measure.
 - 2 Juvenile Delinquency Act (1958), Art. 49a (New – SG, No. 110 of 1996, amended SG, No. 66 of 2004), § 1: “Anti-social act” is an act which poses danger to society and is illicit or contradicts morals and the good manners.
 - 3 *Ibid.*, Art. 49a (New – SG, No. 110 of 1996, amended – SG, No. 66 of 2004), item 2: “An educational measure” is an alternative to the punishment educational impact measure imposed on a minor or adolescent who has committed an antisocial act, or an adolescent exonerated from criminal responsibility under Article 61 of the Criminal Code, and shall be imposed with the purpose of overcoming deviant behaviour, preventing future offences and integrating in society.
 - 4 Concept in the Field of Child Justice (2011). The Concept states that: “[t]here is no clear distinction between punishment and educational and protective measure, which makes the overall state policy strongly repressive. The system of educational measures under the Juvenile Delinquency Act and the punishments applicable to adolescents under the Criminal Code are identical in terms of content”.
 - 5 Havana Rules, Rule 30.
 - 6 Juvenile Delinquency Act (1958), Art. 30(2).
 - 7 *Ibid.*, Art. 30(3).
 - 8 *Ibid.*, Art. 32(4).
 - 9 Rules for Organisation and Operation of SBS and CBS, Art. 24.

before the end of the academic year also in other cases: when the maximum term has expired and the child has reached the age of 18. This creates the impression that the expiration of the three-year maximum term and reaching the age of 16 are not preclusive deadlines for the termination of the deprivation of liberty against the child's will.¹

Children who have committed different types of offences are placed in one and the same institution. The acts committed by some objectively constitute crimes; others are placed for so-called status offences or acts that would not be persecuted if committed by adults (truancy, running away from home, prostitution, alcohol abuse); yet others are victims of domestic or other violence, abuse or crime.

In Bulgaria, children in conflict with the law are not educated in community-based schools outside the detention facility.² Education is provided in the institutions, which are called schools, but are not in the community. The diplomas contain referrals to the name of the boarding school, thus, indicating that the child has been institutionalised.³

There is no legal provision with regard to the right of the child to file requests or complaints⁴ and the right to regular family visits,⁵ which allows for arbitrariness.

C. Placement in Institutions under the Child Protection Act

The placement of children under the Child Protection Act (CPA) is applied to children at risk and is carried out in children's institutions or in residential social services.

Despite the fact that the procedure includes certain guarantees for the rights of the child, it does not meet the international standards on: hearing the opinion of the child regardless of their age; providing the child adequate information in a friendly environment and in a language that they understand; a short deadline for the judicial review of the administrative placement; specific requirements with regard to the premises and the methods of hearing the child's opinion in court; the rules for the placement of different categories of children in different institutions; the guarantees for children's social rights and the rules on the number of staff and their qualifications.

The CPA envisions different measures for the protection of children at risk.⁶ The placement in residential social services⁷ or in specialised institutions⁸ is a protection measure for children at risk. The Ordinance on the criteria and the standards for social services provided to

1 Juvenile Delinquency Act (1958), Art. 30(3).

2 Havana Rules, Rule 38.

3 *Ibid*, Rule 40.

4 *Ibid*, Rule 76; CRC, General Comment No. 10, § 89.

5 Havana Rules (1990), Rule 61.

6 Child Protection Act (2000), Additional Provisions § 1(11) (former item 5 – SG, No. 36 of 2003, former item 6, amended – SG, No. 14 of 2009): "A child at risk" shall be a child:

- a) whose parents have passed away, are unknown, their parental rights are terminated or restricted, or the child has been left without their care;
- b) who is a victim of abuse, violence, exploitation or any other inhuman or degrading treatment or punishment inside or outside of herfamily;
- c) in danger of having her physical, mental, moral, intellectual and social development damaged;
- d) who is suffering from disability or a hard to cure disease confirmed by a specialist;
- e) who is facing the risk of dropping out of school or who has already dropped out of school.

7 Rules for Implementation of the Social Assistance Act (1998), Art. 36(2)(7): Family-type placement centre; centre for temporary placement; crisis centre; temporary housing; protected housing; shelter.

8 *Ibid*, Art. 36(3)(1): Home for children deprived of parental care; home for children with physical disabilities; home for children with mental disabilities.

children¹ (hereinafter: Ordinance) regulates the obligations of the providers of social services to children and of standard social services, including services provided at specialised institutions and residential social services. The scope of the terms “residential social service”² is regulated and includes family-type placement centre³, centre for temporary placement⁴, crisis centre⁵, temporary housing⁶, protected housing⁷, shelter⁸ and home for children deprived of parental care⁹. The definitions show that the two types of measures differ not so much by their type but mostly by the number of children they accommodate (limited to 15 or not) and eventually by the duration of the placement (statutorily fixed in months or until they reach the age of majority or a greater age). Due to this, for the purposes of the current analysis, the two types of measures are commonly referred to as “children’s institutions” where children are placed on the basis of a court decision, as a protection measure when all possibilities of providing protection in the family have been exhausted.

1. Why is the placement a deprivation of liberty? Procedure

The placement of the child in an institution is initiated by the Social Assistance Directorate (SAD), a prosecutor or a parent before the district court. The court conducts an open hearing, in the presence of the child.¹⁰ The court defines the duration of the placement.¹¹ Before the court decision, the child is placed in an institution by an administrative order,¹² which may be appealed under the Administrative Procedure Code. Within one month of the date of the

1 Council of Ministers (2003), Ordinance on the Criteria and the Standards for Social Services Provided to Children.

2 Rules for Implementation of the Social Assistance Act (1998), Additional Provisions, § 1(1)(16a): (New – SG, No. 27 of 2010, in force since 9 April 2010). “A community-based social service” shall be a social service aimed at meeting the everyday needs of a limited number of individuals – not more than 15 – by providing an opportunity for them to live in an environment similar to that in the family.

3 *Ibid.* Additional Provisions, § 1(1)(26): (New – SG, No. 40 of 2003, in force since 1 May 2003, amended – SG, No. 26 of 2009) “A family-type placement centre” shall be a set of social services provided in an environment similar to that in the family, to a limited number of individuals (not more than 15).

4 *Ibid.* Additional Provisions, § 1(1)(23): (New – SG, No. 40 of 2003, in force since 1 May 2003, supplemented – SG, No. 101 of 2007). “A centre for temporary placement” shall be a set of social services provided to homeless persons and aimed at meeting their everyday needs for a duration not exceeding 3 months per calendar year.

5 *Ibid.* Additional Provisions, § 1(1)(25): (New – SG, No. 40 of 2003, in force since 1 May 2003, amended – SG, No. 26 of 2009). “A crisis centre” shall be a set of social services for persons who have suffered from violence, traffic or another form of exploitation, provided for a duration of up to 6 months and aimed at individual support, meeting the everyday needs and delivering legal advice to the users or social and psychological assistance when immediate intervention is needed, including by means of mobile crisis intervention teams.

6 *Ibid.* Additional Provisions, § 1(1)(32): (New – SG, No. 101 of 2007). “Temporary housing” shall be a form of social service where the people are living independent lives with the support of professionals, with the purpose of preparing them for deinstitutionalisation.

7 *Ibid.* Additional Provisions, § 1(1)(27): (New – SG, No. 40 of 2003, in force since 1 May 2003) “Protected housing” shall be a form of social service where the people are living independent lives with the support of professionals.

8 *Ibid.* Additional Provisions, § 1(1)(35): (New – SG, No. 26 of 2009). “Shelter” shall be a set of social services provided temporarily for a period of up to 3 months to homeless persons in case of pressing need to meet their basic needs related to providing shelter, food, medical care, hygiene, social, psychological and legal counselling.

9 *Ibid.* Additional Provisions, § 1(1)(36): (New – SG, No. 101 of 2007, former item 35 – SG, No. 26 of 2009). “A home for children deprived of parental care” shall be a specialised institution which provides social services related to raising and educating children aged 3 to 18 or until they complete their secondary education, but not more than 20 years; *Ibid.*, Additional Provisions, § 1(1)(37): (New – SG, No. 101 of 2007, former item 36 – SG, No. 26 of 2009). “A home for children with physical disabilities” shall be a specialised institution which provides a set of social services to children with physical disabilities confirmed with an expert decision of a Territorial Expert Medical Commission/ National Expert Medical Commission; *Ibid.*, Additional Provisions, § 1(1)(38): (New – SG, No. 101 of 2007, former item 37 – SG, No. 26 of 2009). “A home for children with mental disabilities” shall be a specialised institution which provides a set of social services to children with moderate, severe or profound mental retardation confirmed with an expert decision of a Territorial Expert Medical Commission/ National Expert Medical Commission.

10 Child Protection Act (2000), Art. 28.

11 *Ibid.*, Art. 28(5).

12 *Ibid.*, Art. 27.

actual placement, the SAD sends a request to the district court to rule on the placement. All children's institutions under the CPA are of closed type and the child cannot leave them, not even incidentally.¹

2. Judicial review. Periodic judicial review

The deadline and the speed of judicial proceedings after the actual administrative placement pose a problem. The lack of judicial sanction of the detention during the placement of some children in social services leads to a violation of Article 5 of the ECHR. In violation of Article 5(4) of the ECHR and Article 35 of the Convention on the Rights of the Child,² no periodic judicial review of the placement is envisaged. The court can change the measure only upon request by SAD, the prosecutor or the parent.³

3. Respect for fundamental rights during the procedure

The period from the moment of the administrative placement of the child to the moment the court decision is handed down is a problem. The one-month deadline within which SAD sends the request to the court to rule on the placement is too long and therefore, contradicts the principle of expeditious processing of child protection cases⁴ and international standards on promptness.⁵ The law stipulates that the court reviews the request "immediately" in a court hearing;⁶ however, the case law⁷ shows that the prompt court review is not respected. In its report on the crisis centres, the BHC points out the existence of a statutory barrier to the implementation of the principle of expeditious processing when scheduling the court hearing.⁸ The parties in the case are summoned not later than one week prior to the date of the hearing. The child and the bodies or persons filing the request attend the hearing, and the court collects new evidence which takes time.

The law envisions some guarantees for **child-friendly justice**. It is compulsory to hear the child if they have reached the age of ten and, if younger, the judge issues a reasoned decision on whether to hear the child or not, "depending on the degree of their maturity". This provision is not fully consistent with the requirement in international law that every child be heard, regardless of their age, except in case this would harm them.⁹

1 According to Article 41 of the Ordinance on the Criteria and the Standards for Social Services Provided to Children, the provider develops and implements a special procedure for cases when children leave the specialised institution or the community-based service without permission. In the case *A and Others v. Bulgaria* ECtHR held that the placement in a crisis centre constitutes deprivation of liberty under Article 5.1 ECHR, as it is an institution of closed type where the children are subject to restrictions and under constant supervision and may leave only if explicitly given permission and if accompanied by a staff member. In case of absence without permission, the institution notifies the police whose job is to bring them back.

2 CRC, General Comment No. 10, § 77.

3 Child Protection Act (2000), Art. 28(7).

4 *Ibid.*, Art. 3.

5 CRC, General Comment No. 10, § 84.

6 Child Protection Act (2000), Art. 28(3).

7 The case law under the act is presented in the Bulgarian Helsinki Committee's report *The Crisis Centres for Children in Bulgaria in 2013*.

8 Civil Proceedings Code (2008), Art. 56(3).

9 Convention on the Rights of the Child, Art. 12 (2); CRC, General Comment No. 12: The right of the child to be heard, CRC/C/GC/12, 1 July 2009, §§ 20-21 (hereinafter: CRC, General Comment No. 12). Guidelines on child-friendly justice, § IV. 47; CRC, General Comment No. 12, § 20. States parties should presume that a child has the capacity to form her or his own views and recognise that she or he has the right to express them; it is not up to the child to first prove her or his capacity.

The child is heard in the presence of a social worker and the legal representative of the child; another person who is taking care of the child or another relative, someone whom the child knows (except in the cases where this is contrary to the best interests of the child) and, whenever necessary, an appropriate specialist.¹ Before the hearing, the court or the administrative body needs to provide the necessary information that would help the child form an opinion, to inform the child about the possible consequences of their wishes and those arising from their opinion, as well as about every decision of the judicial or the administrative body.² The legislation does not stipulate, however, who, when, in what setting, with what methods and in what volume and form information should be provided to the child.

The judicial and the administrative bodies provide an appropriate setting for the child's hearing, consistent with their age.³ Still, there are no specific requirements with regard to the actual environment of the premises, including the courtroom or another, more suitable place for the hearing, as well as with regard to the skills/ preparedness of the judge to work with children. The child has a right to **legal counsel** and appeal in all proceedings affecting their rights or interests.⁴

4. Respect for fundamental rights during the placement

The duration of the placement must be indicated in the court decision.⁵ But the law does not specify whether it should be counted from the moment of the judicial decision or from the moment of the administrative placement. In practice, this legislative gap results in lack of clarity and violation of the rights of the child. Since the law presumes that the court is the authority competent to place the child, the administrative orders are not required to indicate the duration of the placement. Thus, the child is not informed about the duration of their administrative placement. Another problem is that Bulgarian legislation does not meet the requirement to indicate that the placement is only for the minimum duration necessary.⁶

Bulgarian law does not require that different categories of children in the same institution be **accommodated separately**.⁷ A (non-binding) methodology for crisis centres requires crisis centres to be specialised: for child victims of domestic violence, for child victims of trafficking and for children with deviant behaviour, children engaged in begging and children in conflict with the law. Nevertheless, there are no legal provisions obligating the placing authority to observe the profile of the respective centres.

In Bulgaria, the location of the children's institutions in the community is not statutorily regulated.⁸ The law states only that the social service provider has the obligation to provide appropriate locations and facilities consistent with the purposes of the placement.⁹

There are no real guarantees that the children can exercise their **social rights**.¹⁰ The regulations leave it to the discretion of the provider to ensure and implement the exercising of

1 Child Protection Act (2000), Art. 15.

2 *Ibid.*, Art. 15.

3 *Ibid.*, Art. 15(4).

4 *Ibid.*, Art. 15(8); Legal Aid Act (2006), Art. 21(1)(5).

5 Child Protection Act (2000), Art. 28(5).

6 CRC, General Comment No. 10, § 28; Havana Rules, Preamble.

7 Havana Rules, Rule 28.

8 *Ibid.*, Rule 30.

9 Ordinance on the Criteria and the Standards for Social Services Provided to Children (2005), Art. 40.

10 *Ibid.*, Art. 38 and 39. Under the legislation, the provider ensures the child's participation in the educational process and assists her/ his preparation. She/ he also supports and encourages the children to take part in appropriate activities in their personal time, and to develop their skills and talents.

children's social, cultural and other rights.¹ Access to education is not guaranteed, especially regarding short-term services. The community-based services are subject to licensing while the institutions are not. This creates a double standard, including for the respect of these children's rights.

The **number, experience and qualifications of institution staff** should be adequate for the provision of quality childcare.² In Bulgaria, these issues are regulated by a methodology on determining the positions at specialised institutions (a non-binding document), which is also used to define state funding. If the methodology does not foresee sufficient staff, it will be financially impossible for the provider to respect the Ordinance on the criteria and standards of social services provided to children and Rule 81 of the Havana Rules.

The provider develops and implements special educational and disciplinary procedures but the lack of sufficiently detailed regulation creates a substantial risk of arbitrariness.³ The same risk exists with regard to the right of the child to file complaints, which is guaranteed in Article 6 and Article 40 of the Ordinance because a statutory procedure does not exist.

D. Placement in a psychiatric institution

Bulgarian legislation on the treatment of children in psychiatric institutions does not contain sufficient guarantees against unlawful detention for the purpose of treatment, provision of information to the child, respecting the child's will and wishes and providing legal assistance to the child. This is especially true for voluntary treatment and for the emergency treatment of children younger than 14.

1. Why is the placement a deprivation of liberty? Procedure

Under the Health Act, the placement for treatment in a psychiatric institution may occur in several ways. Firstly, in case of emergency. Secondly, voluntarily with the informed consent of the patient. Thirdly, as a consequence of a court decision for compulsory placement and treatment under the law. There are no special procedures for the placement of children; instead, the general rules of the Health Act are applied, in consistency with the civil law provisions on the legal capacity of the children. There is another, fourth, hypothesis, the so-called involuntary treatment which is carried out under the CC and the CPC with regard to a person who has committed an act that creates a danger to society in a state of insanity, or who has fallen into such a state before the sentence was handed down or while it was being executed.

The **first case** is related to the provision of **urgent psychiatric assistance**⁴ to people showing obvious signs of mental health problems, when their behaviour or condition pose a direct and immediate danger to their own health or life or to the life of others.⁵ When the patient's condition requires the treatment to be extended, the head of the medical institution makes a decision for the temporary placement of the person for a period no longer than 24 hours and immediately informs the patient's relatives.⁶ In exceptional cases, this period may be extended once, by no more than 48 hours, with the permission of a district judge. These rules make it obvious that this type of placement constitutes deprivation of liberty under Article 5 of the ECHR, as the will of the person is not taken into consideration.

1 Havana Rules, Rules 12 and 13.

2 Ordinance on the Criteria and the Standards for Social Services Provided to Children (2003), Art. 46(3).

3 *Ibid.*, Art. 44.

4 Emergency psychiatric assistance is provided by the mental health centres, the medical institutions for inpatient psychiatric care, the psychiatric wards or clinic of the multi-profile hospitals and the emergency medical care centres.

5 Health Act (2004), Art. 153.

6 *Ibid.*, Art. 154.

In the case of voluntary treatment, the medical interventions are carried out **with the consent of the patient**.¹ Where the patient is a minor, the informed consent is expressed by a parent or guardian. Where the patient is an adolescent, it is necessary to obtain both their informed consent and that of a parent or guardian. Should it be impossible to obtain informed consent from a parent or guardian with regard to a child placed outside the family with a court decision, informed consent is obtained from the person who is raising the child, upon a positive opinion from SAD. If the child was temporarily placed under an administrative procedure, informed consent is provided directly by SAD.

In the case *Nielsen v. Denmark*, ECtHR held that there is no deprivation of liberty and that Article 5 of the ECHR is inapplicable because the applicant (a 12-year-old child in good mental health) was admitted and placed in the psychiatric ward of a hospital for almost six months on request by his mother who exercised her parental rights, and the restrictions to which the applicant was subjected were no more than the normal requirements for the care of a 12-year-old child receiving treatment in a hospital.²

A minor can face the same circumstances as the applicant in the *Nielsen* case in the implementation of the Bulgarian legislation. The Bulgarian law accepts *de jure* that the “voluntary” placement and treatment of a minor under the Health Act only on the request of their parents does not lead to a deprivation of liberty under Article 5 of the ECHR. The legislation draws a fixed boundary – the child reaching the age of 14 – below which its *de facto* deprivation of liberty in a psychiatric institution on behest of a parent falls within the scope of the exercising of the parental rights and the parental care obligations. The placement of the child in a psychiatric institution is carried out after obtaining a positive opinion by a psychiatrist, as a guarantee against arbitrary actions or over concern on behalf of the parent/ guardian. The regime of child placement in psychiatric wards may be restrictive or not but this is irrelevant to the evaluation of whether the actual placement in a psychiatric institution under the Bulgarian law would lead to deprivation of liberty.

The **third case**, that of **compulsory placement and treatment**, foresees compulsory treatment for individuals with mental disorders,³ who due to their illness may commit a crime that would endanger their relatives, other people or society, or would pose a serious threat to their health. Minors would be subject to compulsory placement and treatment imposed in a judicial procedure in the rare cases where no legal representative is available to express will on

1 *Ibid.*, Art. 87.

2 ECtHR. *Nielsen v. Denmark*. The Court held that with the exception of the first few days, the applicant’s freedom was not restricted, he was able to leave the medical institution and his freedom was comparable to that of a patient who had voluntarily sought treatment. He was able to visit the library, to attend social events with the other children in the clinic, to visit his mother and his father. Towards the end of his stay in hospital, he started going to school again, unaccompanied. Furthermore, the Court held that the child did not suffer from a mental disorder and that the psychiatric ward was not used for the treatment of mental disorders of a psychotic nature which were subject to the Danish law on compulsory treatment. Despite the fact that it was found that the decision of the head of the admitting hospital was of crucial importance to the hospitalisation of a child patient, as a guarantee against abuse on behalf of the parent, the Court held that the case does not fall within the scope of Article 5 of the Convention, as the hospitalisation decision (made in consistency with the commission of medical experts) was in the end vested in the parent exercising parental authority (see § 72 of the Judgement). The Court thus completely neglects the will of the child and his dissent with the placement (the subjective element of the deprivation of liberty), satisfying itself instead with the wish of the child’s mother to have him placed in a psychiatric clinic. The Court held that even from an objective point of view, given the non-restrictive regime, the placement did not constitute a deprivation of liberty under the provisions of art. 5 of the Convention (see § 72 of the Judgement).

3 Health Act (2004), Art. 146. (1) Individuals with mental disorders who need special medical care are: 1) mentally ill diagnosed with a severe disorder of the psychic functions (psychosis or a severe personality disorder) or with lasting mental damages as a result of mental illness; 2) individuals diagnosed with moderate, severe or profound mental retardation or with vascular and senile dementia; 3) individuals suffering from other disorders of mental functions, educational difficulties and difficulties of adaptation who require medical assistance, care and support to live fully in the family and in the social environment.

their behalf or where the person representing them by law opposes the voluntary treatment ordered by the court. Adolescents can be subject to compulsory placement and treatment if the child and their legal representative are not in agreement on voluntary treatment.

Proceedings for the compulsory placement and treatment of a person suffering from a mental disorder are initiated either on request by the district prosecutor or by the head of the medical institution when a decision is made for compulsory treatment of an emergency patient. In the first case, the court reviews the request in an open hearing, in the presence of the affected person, within 14 days of the date on which the prosecutor's request was received.¹ In the second case, when the district judge has given permission, the court immediately reviews the case.² The judicial proceedings involve the hearing of the affected person, a psychiatrist and witnesses. Legal representation is compulsory. The forensic psychiatric assessment for the purposes of compulsory placement and treatment of minors and adolescents is carried out in the presence of a psychologist.³ The decision may be appealed before the regional court whose ruling is final.

The compulsory treatment is carried out in institutions defined by law.⁴ A court decision for compulsory placement and treatment that has entered into force, as well as the court's decision to order forensic psychiatric assessment, are carried out by the respective medical institutions, with the support of the MoI bodies, if necessary.⁵ Such support is sought also if the patient leaves the medical institution without permission. The compulsory detention of an individual in a psychiatric clinic against their will falls within the scope of the deprivation of liberty under Article 5 of the ECHR. In its case law, the ECtHR has ruled in this regard under the Convention, in cases against Bulgaria (see, for example, *Varbanov v. Bulgaria*).

Under the fourth case, so-called coercive measures can be imposed on a person who has committed an illicit act in a state of non-compos or who has fallen into such a state before the handing down of the sentence or during the execution of the punishment. The court may order the measures on the proposal of the prosecutor.⁶ The coercive treatment is carried out by: a) handing the person over to their relatives if they assume the obligation to have the person treated under the supervision of an ordinary psychiatric and neurology dispensary; b) involuntary treatment in an ordinary psychiatric and neurology institution; c) involuntary treatment at a special psychiatric hospital or in a special ward in an ordinary psychiatric and neurology institution.⁷ Deprivation of liberty exists in the cases under items a) and b), insofar as there is no explicit rule whether item a) restricts the freedom of movement of a person in a state of non-compos.

2. Judicial review. Periodic judicial review

The emergency placement with its administrative nature is subject to judicial review. Such a review is impossible with regard to the voluntary placement of a minor at the behest of a parent. Under the third and the fourth scenarios, compulsory and coercive placement and treatment are mandated directly by the court.

1 *Ibid.*, Art. 158(2).

2 *Ibid.*, Art. 158(3).

3 Ministry of Healthcare and Ministry of Justice (2005), Ordinance No. 16 of 13 May 2005 on the forensic psychiatric assessments for compulsory placement and treatment of persons with mental disorders, Art. 6.

4 Health Act (2004), Art. 156(2). Institutions for inpatient psychiatric assistance and mental health centres, in psychiatric wards or clinics of multi-profile hospitals, and in medical institutions for specialised psychiatric outpatient care.

5 *Ibid.*, Art. 165(2).

6 Criminal Code (1968), Art. 89-91; Criminal Procedure Code (2006), Art. 427-432.

7 Criminal Code (1968), Art. 89.

Every three months the court makes a decision to terminate or extend the compulsory placement and treatment.¹ A forensic medical assessment is carried out for this purpose.² A periodic review of the coercive treatment is carried out by the court every six months.³

3. Respect for fundamental rights during the procedure

The placement of persons admitted for emergency psychiatric assistance may be extended with a decision of the head of the medical institution by (up to) 24 hours after the resolution of the emergency situation. This means that detention without judicial sanction may exceed 24 hours starting from the time the person was detained for the delivery of emergency assistance. This contradicts Article 30(3) of the Constitution. The law does not indicate what should be included in the request for the extension of the placement by another 48 hours sent by the medical institution to the court and, respectively, what data should be used as the basis of the judicial review of the legality of the detention.

For voluntary and emergency treatment, there is no procedure allowing the child and their parent access to legal assistance. The medical assessment at the time of the placement is the only guarantee against arbitrariness available to the child. There are no guarantees that the child will be informed about the reasons behind their placement and about their right to meet a lawyer or to file a complaint. Civil law generally accepts that the minors are incapable of expressing their valid legal will, including informed consent about their treatment. This puts them at a particular disadvantage in comparison with patients who have reached the age of 14. On one hand, this constitutes statutory age discrimination. On the other hand, the international standards on care and child justice, which require that the child be heard and their wishes taken into consideration as much as possible with regard to their maturity, are not respected.⁴ The child protection guarantees in the CPA turn out to be inapplicable to children who have mental disorders. They are, thus, subjected discrimination based on their mental health problems. Furthermore, there are no guarantees that the children aged over 14, who according to the Health Act must provide informed consent together with their parents, will be informed in a language that they understand so as to form an opinion on the treatment and the hospitalisation.

With regard to the compulsory treatment, the law guarantees many of the fundamental rights of the person whose compulsory treatment is under review (compulsory legal assistance, compulsory hearing, interrogation of witnesses, medical assessment). The law stipulates short deadlines for the procedural actions but exercising the right to compulsory legal counsel might result in delaying the hearing of the case for the next session of the court, so that the court could appoint an *ex officio* lawyer if the affected person has not hired one. The law is exhaustive in terms of the prerequisites for imposing compulsory placement and treatment⁵ but does not contain a referral to the principle that the measure is imposed only for the minimum duration necessary.⁶ The creation of a friendly environment for the child is not foreseen, neither are special procedures for informing the child about the measures taken and the essence of the process. These conclusions are also valid for the identification of coercive medical measures under criminal law procedures. Defining such measures is not bound by a deadline but under the CC they may be terminated or amended by the court when this is

1 Health Act (2004), Art. 164(2).

2 Ordinance No. 16 on the forensic medical assessments for the compulsory placement and treatment on the forensic psychiatric assessments for compulsory placement and treatment of persons with mental disorders (2005), Art. 8.

3 Criminal Code (1968), Art. 91(2); Criminal Procedure Code (2006), Art. 432.

4 Convention on the Rights of the Child (1989), Art. 12(2); CRC General Comment No. 12.

5 Health Act (2004), Art. 153.

6 Havana Rules, Preamble.

necessary due to a change in the patient's condition or in the needs of their treatment, and are automatically reviewed by the court every six months.

4. Respect for fundamental rights during the placement

The problem concerning the will of minors not heeded also exists when the court accepts in its decision that the patient is incapable of expressing informed consent (presumed for the minors and assumed for the adolescents).¹ In such cases, the court appoints a close relative of the patient to give informed consent about the treatment.²

The Health Act does not contain an explicit referral to the Labour Code with regard to the rules on hiring adolescents. The organisation of the production, the working conditions and the way the wages are paid are regulated in an ordinance of the Minister of Health in coordination with the

Minister of Labour and Social Policy and the Minister of Finance.³ The possibility to leave the institution depends on the individual case and on the placement regime under the psychiatry standard.

E. Placement in Migration Detention Centres

The placement of children in migration detention centres is plagued by a series of substantial deficiencies. It is not clearly regulated by law. Accompanied migrant children may be detained "exceptionally" with a coercive placement order for a period of up to three months if there are legal grounds for this. The detention of unaccompanied migrant children is prohibited.⁴ The migrant children cannot exercise their right to be informed in a language that they understand about the detention, the essence of the process and the possibility to participate in it. Neither are they provided a friendly setting during the trial. During their stay in the special homes, the children have no access to education or work and their right to file a complaint is not respected. No psychological work with the children is carried out in the homes, and there are no guarantees that the number and the qualifications of the staff are sufficient.

1. Why is the placement a deprivation of liberty? Procedure

Objectively, the placement in migration detention centres is carried out at the so-called special homes for temporary placement of foreigners (SHTPF) of the MoI's Border Police Directorate General. Currently, there are two such centres, in the Busmantsi neighbourhood in Sofia and in the town of Lyubimets. The procedure for the temporary placement of foreigners, including children, in these special homes, as well as their operation, is defined in an ordinance of the minister of interior.⁵ However, the ordinance does not completely regulate the "placement procedure" as it states that the internal rules governing the SHTPF shall be defined in a regulation of the director of MoI's Migration Directorate. The regulation cannot be treated as secondary legislation because it is not published; such publication is required for

1 Health Act (2004), Art. 162(3).

2 In case of conflict of interest or in the absence of relatives, the court appoints a representative of the municipal health-care service or a person nominated by the mayor of the municipality at the seat of the medical institution to give informed consent for the treatment of the person.

3 Health Act (2004), Art. 151(3).

4 Asylum and Foreigners Law (2002), Additional provisions, § 1(4) (Amended – SG, No. 52 of 2007): "unaccompanied" shall be a minor or an adolescent foreigner who is residing in the Republic of Bulgaria and is not accompanied by a parent or another adult responsible for him by law or custom.

5 Law on Foreigners in the Republic of Bulgaria (1999), Art. 44; Ministry of Interior (2010), Ordinance No. I3-1201 of 1 June 2010 on the procedure for temporary placement, the structure and the operation of the special homes for temporary placement of foreigners (hereinafter: Ordinance No. I3-1201 on the procedure for temporary placement of foreigners).

all legislative acts.¹ Furthermore, it does not meet the ECHR requirement on the accessibility of the applicable law.

The regulation on the internal rules governing the SHTPF, adopted by the director of the Migration Directorate on 9 March 2013, foresees scheduled activities (eating schedule, personal time, time in the open air, time for religious activities, social activities, time to watch TV, sports and recreation). The roll call is scheduled for 22.00 and the premises are locked at 22.30. The lights are switched off at 23.00. Residents are not allowed to leave the special homes without permission; if they do, they are regarded as fugitives.

The grounds for administrative detention are regulated by law. Detention in a SHTPF is applied to migrants who have been imposed a coercive administrative measure for deportation or expulsion.² Deportation is imposed on migrants with irregular status, while expulsion is imposed on foreigners with regular or irregular residence status in the country, who are deemed a risk to national security or public order. The actual detention at SHTPF is carried out on the basis of a written order for coercive placement at SHTPF. When the identity of the foreigner who has been imposed such a measure cannot be established, they are hindering the execution of the order or there is a risk that they might abscond, the issuing body can order their coercive placement in SHTPF in order to secure their involuntary transfer to the border of the Republic of Bulgaria or their expulsion.³ In this respect, the administrative detention in SHTPF serves as a security measure and cannot be applied independently, without the existence of a preceding deportation or expulsion order. The coercive administrative measures (CAM) are imposed by an order of the chairperson of the State Agency for National Security, the directors of the Border Police and Security Police Directorates General, the directors of the Sofia and regional directorates and the directors of MoI's Border Police Regional Directorates, or by officials authorised by them. The competent authorities, together with the director of the Border Police Directorate General, conduct monthly inspections to verify the existence of grounds for coercive placement in a special home.

Accompanied migrant children may be detained “exceptionally” by a coercive placement order for up to three months on the basis of legal grounds. The law stipulates that the order is issued to them but this provision is not always respected in practice. Instead of issuing the order in the name of the child, their name is included in the placement order of the person who is accompanying them and who has been detained in SHTPF. Each individual case should be reviewed for contradiction with the Law on Asylum and Refugees (LAR),⁴ which stipulates that the revocation or termination of the protection, or the termination of the proceedings with regard to a foreigner does not terminate or change the status of the other members of their family.

The detention of unaccompanied migrant children,⁵ regardless of whether they have regular or irregular status, is prohibited.⁶ The body which has issued the CAM order notifies SAD which takes protection measures under the CPA.

1 Constitution of the Republic of Bulgaria (1991), Art. 5(5).

2 Law on Foreigners in the Republic of Bulgaria (1999), Art. 44.

3 *Ibid.*, Art. 44(6).

4 Asylum and Foreigners Act (2002), Art. 19.

5 Asylum and Foreigners Law (2002), Additional provisions, § 1(4) (Amended – SG, No. 52 of 2007): “unaccompanied” shall be a minor or an adolescent foreigner who is residing in the Republic of Bulgaria and is not accompanied by a parent or another adult responsible for him by law or custom.

6 Law on Foreigners in the Republic of Bulgaria (1999), Art. 44(9). The ban was introduced in March 2013. In its annual report on human rights in Bulgaria, BHC noted that by the end of 2013 there was no change in the practice of detention in HTPF, and that both unaccompanied and accompanied children were detained in violation of statutory prerequisites and deadlines. For more information, see: Bulgarian Helsinki Committee (2014), *Annual Report on the State of Human Rights in Bulgaria in 2013*, available on http://www.bghelsinki.org/media/uploads/annual_reports/annual_bhc_report_2013.pdf.

Another group of children, whose detention is prohibited, similarly to the adults in this group, includes persons who are in the process of being granted protection status under LAR and those who have been granted such status. The CAM for the coercive transfer to the border (deportation) and expulsion are not implemented before the completion of the refugee status determination proceedings with an effective decision, and are repealed when the status is awarded. An exception to this rule is “when there are reasons to believe that the foreigner who is seeking or who has been awarded protection poses a threat to national security, or who, once convicted of a serious crime with a final verdict, poses a threat to society”.¹ The ordinance stipulates that when a foreigner placed in SHTPF applies for asylum under LAR, their application is immediately referred to the State Agency for Refugees.² Under the ordinance, the foreigner is released from the SHTPF when their asylum application under LAR is deemed admissible by the State Agency for Refugees.³

2. Judicial review. Periodic judicial review

The placement in SHTPF is **administrative**. The coercive placement order may be appealed within 14 days under the procedures of APC.⁴ The appeal does not suspend the execution of the order. The court reviews the appeal in an open hearing and rules within a month of the date the case was filed. The decision of the court of first instance may be appealed before the Supreme Administrative Court which rules within up to two months.

The deadline for the court’s decision is inconsistent with the requirement for speedy judicial review of the administrative detention measure, as stipulated by Article 5(4) of the ECHR.⁵ In the review of a group of cases *Al-Nashif v. Bulgaria*, the Committee of Ministers also noted that the three-month summary deadline for the final judgment of the two judicial levels under the Law on Foreigners in the Republic of Bulgaria is problematic, given the case law of the ECtHR with regard to Article 5(4) of the ECHR.⁶

For adult detainees, periodic judicial review is foreseen every six months. In such cases, the head of the SHTPF sends a list of the foreigners to the administrative court who have spent more than six months in the home because their extradition was hindered. In theory, the accompanied children placed in the homes must be automatically released after the expiration of three months. No review is envisioned during the three months.

1 Law on Foreigners in the Republic of Bulgaria (1999), Art. 67(3).

2 Ordinance No. 13-1201 on the procedure for temporary placement of foreigners (2010), Art. 19.

3 *Ibid.*, Art. 20. In contradiction with the statutory detention procedure, there are cases (quite a few in 2013 due to the refugee wave from Syria) when foreigners seeking asylum, including children, were detained in HTPF (for more information, see: Bulgarian Helsinki Committee (2014), *Annual Report on the State of Human Rights in Bulgaria in 2013*). The report also refers with concern to the Bill Amending and Supplementing the Asylum and Refugees Act (ref. 302-01-42), submitted to the National Assembly on 19 November 2013. According to this bill, all asylum-seekers will be, as a rule, comprehensively and unconditionally detained in facilities of a closed type, and placement in facilities of an open type will be done in exceptional cases (argumentation of Article 45(c)(2) of the bill). The provision of Article 45(e) of the bill is also a cause of profound concern. It stipulates that minors and adolescents seeking asylum can also be detained in facilities of a closed type, as a last resort and when it is established that less severe measures cannot be applied effectively. The proposed amendments also allow detention and placement in facilities of a closed type of unaccompanied children seeking asylum (Art. 45(e)(3)). For More information, see: Council of Ministers (2013), Bill Amending and Supplementing the Asylum and Refugees Act (ref. 302-01-42), submitted to the National Assembly on 19 November 2013, available on <http://parliament.bg/bg/bills/ID/14681/>.

4 Law on Foreigners in the Republic of Bulgaria (1999), Art. 46(a).

5 ECtHR, *Shcherbina v. Russia*, No. 41970/11, Judgment of 26 June 2014. In cases similar to this one, when the initial detention decision under Article 5 of the ECHR was not made by a court, ECtHR holds that a judicial decision within 16 days of the date on which the request was filed is a deadline that contradicts the requirements of Article 5(4) of the ECHR on prompt judicial review of the detention.

6 Council of Europe, Committee of Ministers (2012), Document CM/Inf/DH(2012)3rev of 24 February 2012 on the group of cases *Al-Nashif v. Bulgaria*, § 41, available on: <https://wcd.coe.int/ViewDoc.jsp?id=1904419&Site=CM>.

When the administrative detention is imposed by an order for expulsion due to a threat to national security or public order, the judicial review and oversight of the detention is also allowed, albeit at a single level of jurisdiction.¹ In this respect, ECtHR noted with regard to several cases that despite the amendment of the Law on Foreigners in the Republic of Bulgaria, according to which the **expulsion orders** are subject to judicial review since 2007, in reality the judicial review of such cases was formalistic and could not ensure adequate protection against arbitrariness.²

The ECtHR then concluded that the lack of evaluation by the Bulgarian court of whether the infringement of the applicants' rights to private and family life meets a pressing public need and whether it is proportional to the pursued legal purpose constitutes a violation of Article 13 in conjunction with Article 8 of the Convention.³

According to the ECtHR case law, in the case of expulsion, foreigners, residing in a state which has ratified Protocol No. 7, are entitled to the specific guarantees envisioned in Article 1 of the Protocol, in addition to the protection provided under Articles 3, 8 and 13 of the Convention.⁴

The appeal of an expulsion order does not suspend the execution of the order,⁵ which, in the ECtHR's opinion, constitutes a violation of Article 1 of Protocol No. 7 to the ECHR⁶ in the cases when no adequate procedural guarantees arising from this article have been provided.⁷

Furthermore, the ECtHR explicitly requires that when the foreigner claims that there is a significant risk that their life may be endangered and they may be subject to inhuman treat-

1 Law on Foreigners in the Republic of Bulgaria (1999), art. 46(2)(3).

2 In the cases *C.G. and others v. Bulgaria* (No. 1365/07, Judgment of 24 April 2008), *Raza v. Bulgaria* (No. 31465/08, Judgment of 11 February 2010), *Kaushal and others v. Bulgaria* (No. 1537/08, Judgment of 2 September 2010), *M. and others v. Bulgaria* (No. 41416/08, decision of 26 July 2011), *Madah and others v. Bulgaria* (No. 45237/08, Judgment of 10 May 2012) involving applications under Article 8 of the ECHR and/ or under Article 13 in conjunction with Article 8 of the ECHR, ECtHR held that the procedures for judicial review of expulsion orders based on national security considerations are flawed. Holding a violation of Article 8 of the Convention in the case *Madah and others v. Bulgaria*, the Court summarises its case law in similar cases and points out: "In particular, in *C.G. and Others v. Bulgaria* (No. 1365/07, Judgment of 24 April 2008, §§ 42-47) the Court found that, first, the domestic courts had allowed the executive to stretch the notion of national security beyond its natural meaning, and, secondly, those courts had not examined whether the executive was able to demonstrate the existence of specific facts serving as a basis for its assessment that the applicant presented a national security risk. In the recent judgment of *M. and Others*, cited above, (No. 41416/08, Judgment of 26 July 2011) the Court found that the domestic court applied a formalistic approach and left a governmental agency full and uncontrolled discretion to certify blankly, with reference to little more than its own general statements, that an alien was a threat to national security and must be deported. As such "certifications" were based on undisclosed internal information and were considered to be beyond any meaningful judicial scrutiny, there was no safeguard against arbitrariness." (see: *Madah and others v. Bulgaria*, No. 45237/08, decision of 10 May 2012, § 28).

3 Document CM/Inf/DH(2012)3rev of 24 February 2012 on the group of cases *Al-Nashif v. Bulgaria*, para 26, e.g. *C.G. and Others v. Bulgaria*, application No. 1365/07, decision of 24 April 2008, para 62: "[a]ccording to the Court's established case-law, the effective remedy required by Article 13 is one where the domestic authority examining the case has to consider the substance of the Convention complaint. In cases involving Article 8 of the Convention, this means that this authority has to carry out a balancing exercise and examine whether the interference with the applicants' rights answered a pressing social need and was proportionate to the legitimate aims pursued, that is, whether it amounted to a justifiable limitation of their rights".

4 ECHR, *Lupsa v. Romania*, No. 10337/04, Judgement 8 June 2006, §§ 51 and 52; *Kaya c. Roumanie*, No. 33970/05, 12 October 2006, §§ 51 and 52.

5 Law on Foreigners in the Republic of Bulgaria (1999), Art. 46(4).

6 ECHR, Protocol No. 7, Art. 1: Procedural safeguards relating to expulsion of aliens.

7 An alien lawfully resident in the territory of a State shall not be expelled therefrom except in pursuance of a decision reached in accordance with law and shall be allowed:

- a) to submit reasons against his expulsion;
- b) to have his case reviewed;
- c) to be represented for these purposes before the competent authority or a person or persons designated by that authority.

ment in the country where they are to be expelled, the appeal of the expulsion order must automatically suspend the expulsion until the complaint is reviewed by court.¹ The ECtHR held that the lack of such an option in Bulgarian legislation constitutes a violation of Article 13 in conjunction with Article 3 of the ECHR in the case of *Auad v Bulgaria* and should the applicant be deported, it would constitute a violation of Article 13 in conjunction with Article 3 as in the case of *M. and Others v. Bulgaria* (see Article 46(4) of the Law on Foreigners in the Republic of Bulgaria which stipulates that the appeal of an expulsion order does not suspend the execution of the order and does not foresee other options, nor are such options envisioned in the 2013 amendments to Article 44(a) of the Law on Foreigners in the Republic of Bulgaria²).

The ECtHR identified yet another deficiency of the Bulgarian legislation in the case of *Auad v. Bulgaria*. The ECtHR found a violation of Article 5(1)(f) on grounds that the country where the foreigner was to be deported was not explicitly indicated in the expulsion orders or another legal act that could be subject to judicial review.³

The above-mentioned issues were summarised by the ECtHR in the case of *M. and Others v. Bulgaria*. In this case, the court formulated general measures that Bulgaria is expected to take in order to implement the ruling.⁴

The court required general measures also in the case of *Auad v. Bulgaria*. These are mostly related to the guarantees for effective remedy with regard to allegations of possible violations of Article 3 of the Convention in case of expulsion to a country where there is a risk to the foreigner's life or a danger of inhuman treatment against them.

1 ECHR, *M. and others v. Bulgaria*, No. 41416/08, Judgement of 26 July 2011, § 138; ECHR, *Auad v. Bulgaria*, No. 46390/10, Judgement of 11 October 2011, § 139.

2 Law on Foreigners in the Republic of Bulgaria (1999), Art. 44(a):

(1) (New – SG, No. 42 of 2001, former art. 44(a) – SG, No. 23 of 2013) A foreigner who has been imposed the coercive measure of expulsion shall not be expelled to a country where his/ her life and freedom are threatened and he/ she is in danger of persecution, torture or inhuman or degrading treatment.

(2) (New – SG, No. 23 of 2013) When the circumstances under § 1 are established with a final judicial act, the body that has issued the expulsion order issues and hand to the foreigner an order that indicates the prohibition of expulsion and the country to which the foreigner should not be expelled. The order may not be appealed.

(3) (New – SG, No. 23 of 2013) The foreigner has the obligation to present himself/ herself once a week at the territorial unit of the Ministry of Interior in the community where he/ she resides.

(4) (New – SG, No. 23 of 2013, in force since 1 May 2013) If , within one year of the date of issue of the order under § 2 the expulsion to a third safe country has not been effected, the foreigner is allowed temporary access to the labour market under the terms and conditions of the ordinance under Article 74(1) of the Employment Promotion Act, until the expulsion is affected.

3 ECtHR, *Auad v. Bulgaria*, § 133. “Where deprivation of liberty is concerned, legal certainty must be strictly complied with in respect of each and every element relevant to the justification of the detention under domestic and Convention law. In cases of aliens detained with a view to deportation, lack of clarity as to the destination country could hamper effective control of the authorities’ diligence in handling the deportation”.

4 ECtHR, *M. and others v. Bulgaria*, § 138. The general measures on *M. and others v. Bulgaria* “[...] should include such amendments to the Aliens Act (1998) or other Bulgarian legislation, and such change of administrative and judicial practice in Bulgaria so as to ensure that: (a) there exists a mechanism requiring the competent authorities to consider rigorously, whenever there is an arguable claim in that regard, the risks likely to be faced by an alien as a result of his or her expulsion on national security grounds, by reason of the general situation in the destination country and his or her particular circumstances; (b) the destination country should always be indicated in a legally binding act and a change of destination should be amenable to legal challenge; (c) the above-mentioned mechanism should allow for consideration of the question whether, if sent to a third country, the person concerned may face a risk of being sent from that country to the country of origin without due consideration of the risk of ill-treatment; (d) where an arguable claim about a substantial risk of death or ill-treatment in the destination country is made in a legal challenge against expulsion, that legal challenge should have automatic suspensive effect pending the outcome of the examination of the claim; and (e) claims about serious risk of death or ill-treatment in the destination country should be examined rigorously by the courts”.

3. Respect for fundamental rights during the procedure

Legal assistance in the form of advice or preparation of documents for a lawsuit is provided mandatorily and free of charge to foreigners with imposed CAM and to foreigners placed in SHTPF “who have no money and wish to use legal counsel”.¹ In 2013, however, the legal assistance was not accessible in practice.² In administrative cases, legal assistance is provided when the court, based on evidence submitted by the respective competent bodies, decides that the party has no means to pay a lawyer.³ The right to legal assistance is guaranteed in filing a lawsuit. In terms of procedural representation, however, only the right to apply for legal assistance is regulated, as the decision is left to the discretion of the court.⁴

There is no requirement that the orders be translated to a language that the foreigner knows, still less to be explained in an understandable manner in the case of a child. The right to an interpreter, and the right to get acquainted with the available remedies of the order in a language known by the foreigner, is not guaranteed. The law does not require an official to inform the child in understandable language about the measure imposed, the court proceedings and about the possibility to participate personally in the court proceedings, if the child wishes.⁵ In the case, they wish to use legal assistance and be exonerated from the costs and expenses associated with the case, and the court allows it, only then will they be exempt from paying the interpretation fee. Otherwise, the cost of interpretation is borne by the foreigner who does not speak Bulgarian if the administrative proceedings were initiated on their request, except when otherwise stipulated in a law or an international treaty.⁶

There is no requirement that the hearings be held in a child-friendly setting. Unaccompanied children have a guardian appointed to them under the Family Code.⁷ However, this provision is not applied. As a result, even from a legal point of view, no one is appointed to protect the interests of the child. This favours other violations of the rights of the child (including detention of unaccompanied children in SHTPF) and results in a theoretical impossibility to protect the fundamental rights of the child, the exercising of which requires a legal representative.

4. Respect for fundamental rights during the placement

The stay at the SHTPF continues until the identity of the foreigner subject to deportation or expulsion is established, they do not hinder the execution of the order and there is no risk that they may escape, within the deadlines set by law.⁸ In its case law, the ECtHR introduces also a requirement for due diligence in the course of carrying out the deportation or the expulsion. According to the ECtHR, any deprivation of liberty under the second part of Article 5(1)(f) of the Convention is justified only in the course of the expulsion or extradition proceedings. If the proceedings are not conducted with due diligence, the detention is no longer admissible under this provision.⁹ The duration of the detention should not exceed a period

1 Legal Aid Act (2005), Art. 22(1)(9).

2 Bulgarian Helsinki Committee (2014), *Annual Report on the State of Human Rights in Bulgaria in 2013*. According to the report “[d]espite the positive amendments of the national legislation, in reality the legal assistance was not accessible and was not provided to the individuals detained at SHTPF, including asylum seekers”.

3 Legal Aid Act (2005), Art. 23(3).

4 Similarly, Article 40 of the Convention on the Rights of the Child and the Beijing Rules envision the right to apply for unpaid legal assistance.

5 Beijing Rules, Rule 7.1; CRC, General Comment № 10, § 47; Guidelines on child-friendly justice, § IV.56.

6 Administrative Proceedings Code (2006), Art. 14(4).

7 Asylum and Foreigners Law (2002), Art. 25.

8 Law on Foreigners in the Republic of Bulgaria (1999), Art. 44(8).

9 ECtHR, *Chahal v. the United Kingdom*, No. 22414/93, Judgement of 15 November 1996, § 113; ECtHR, *A. and others v. the United Kingdom*, No. 3455/05, Judgement of 19 February 2009, § 164; ECtHR, *Mikolenko v. Estonia*, No. 10664/05, Judgement of 8 October 2009, § 63; ECtHR, *Raza v. Bulgaria*, No. 31465/08, Judgement of 11 May 2010, § 72.

reasonably necessary for the purposes of the pursued objective.¹ In this direction is the decision on a referral by the Bulgarian court for a preliminary ruling on the case C-357/09 PPU of Said Kadzoev in relation to Article 15 of Directive 2008/115/EC.² Although the applicant in the case *Auad v. Bulgaria* was detained for exactly eighteen months, the maximum period allowed by law, the ECtHR held that “compliance with that time limit, which is in any event exceptional, cannot automatically be regarded as bringing the applicant’s detention into line with Article 5(1)(f) of the Convention. As noted above, the relevant test under that provision is rather whether the deportation proceedings have been prosecuted with due diligence, which can only be established on the basis of the particular facts of the case.”³

Upon detention, the children are deprived of basic social rights such as the right to access to education, the right to work and to care and activities appropriate for their age and individuality.⁴ No individual plans for psychological and social care in the homes exist. Separate accommodation for minor and adolescent foreigners consistent with their age and needs⁵ is foreseen but the criteria for the accommodation are not statutorily regulated. According to the ordinance on SHTPF, foreigners have the right to take part in social programmes and activities provided, to walk and/ or to engage in sports activities in the areas designated for such purposes or to use the library. However, there are no legal guarantees for the effectiveness, adequacy and quality of the opportunities provided. The legislation does not envision the hiring of a “sufficient number” of “qualified” personnel;⁶ only one full-time post for a psychologist is available for the SHTPF. The ordinance foresees the provision of social assistance by interviewers and assistant interviewers but contains no requirements on their education. Separate dormitories are used to accommodate: 1) foreigners of different sexes; 2) families; 3) adolescents unaccompanied by an adult.⁷ The ordinance does not specify whether the families are separated in different premises. The families comprised of parents and children are accommodated together, but other adult family members (brothers or sisters of the child) are separated from the family.⁸ The practice of assigning unaccompanied children to unknown adults at the border, in order to have them placed in SHTPF, leads to a violation of the rule on the separation of children and adults during the placement, as the child is accommodated in the same room with an unknown adult who is not a member of their family.

Two disciplinary measures are used in the SHTPF: warning and isolation for a period not exceeding 15 days, including for children. The isolation, as well as the lack of procedure to appeal it, contradicts the Havana Rules. The ordinance provides an opportunity to file complaints and requests but does not describe the procedure that should be used.⁹

1 ECtHR, *Saadi v. the United Kingdom*, Nos. 13229/03, 13229/03, Grand Chamber Judgment of 29 January 2008, § 74.

2 Court of Justice of the European Union, C-357/09 PPU, Reference for a preliminary ruling from Sofia City Administrative Court made by decision of 10 August 2009, received at the Court on 7 September 2009, in the proceedings concerning Said Shamilovich Kadzoev (Huchbarov).

3 ECtHR, *Auad v. Bulgaria*, § 131.

4 Havana Rules, Rules 12, 13 and 32.

5 Law on Foreigners in the Republic of Bulgaria (1999), Art. 44(9).

6 Havana Rules, Rule 81.

7 Ordinance No. Iz-1201 on the procedure for temporary placement of foreigners (2010), Art. 14(2).

8 Asylum and Foreigners Law (2002), Additional provisions, §1(3): (Amended – SG, No. 52 of 2007): “family members” are: a) the husband, the wife or the person with whom he or she has a proven stable and lasting relationship, and their underage, unmarried children; b) adult, unmarried children who are incapable of providing their own sustenance due to serious health reasons; c) the parents of the husband and the wife who are incapable of taking care of themselves due to old age or a severe illness and have to live in the same household with their children.

9 Havana Rules, Rule 76.

2. Monitoring results

A. Institutions belonging to
the criminal justice system

1. REFORMATORIES

Adolescents deprived of liberty in reformatories in Bulgaria fall victim to many flagrant human rights violations. The facilities in reformatories are old and do not provide the conditions necessary for dignified living. In the reformatory in Sliven, the rule requiring that adolescents should be separated from adults is violated. Due to the remoteness of the institutions for deprivation of liberty, visits are extremely rare. Children in the Boychinovtsi Reformatory are forbidden to use a language other than Bulgarian, not even their mother tongue, during phone calls, visits, and in correspondence. The penitentiary administration taps all telephone conversations automatically, a practice that goes unchecked. In 2013, boys, deprived of liberty, were not provided with vocational education. The proportion of adolescents employed is decreasing constantly, and was just 5% in 2013. Specialised programmes for working with offenders are insufficient and cover only a small part of those deprived of liberty. Adolescents in reformatories do not have access to independent health care services, and medical personnel is not made available at all times. There is an increase in the use of the most severe disciplinary measure – disciplinary isolation, imposed without providing the necessary procedural safeguards. Disciplinary isolation takes the form of solitary confinement, which, according to international standards, is an unacceptable measure for children. There are no effective, accessible and confidential mechanisms for submitting complaints, which explains their extremely low number. Just one complaint was registered in the reformatory in Boychinovtsi in 2013. During the visits to the Boychinovtsi Reformatory, the Bulgarian Helsinki Committee (BHC) received many complaints of physical abuse, inflicted by the guards on adolescents. Such abuse remains unreported and unpunished. Another serious problem is the hostile and discriminatory environment for boys with homosexual behaviour. In addition, staff training does not emphasise the protection of children's rights and international and national standards for the treatment of children deprived of liberty. Internal government inspections fail to reflect the real situation of the children in these institutions.

1.1. General information

Sentences, involving deprivation of liberty, imposed with regard to adolescents (i.e. children between 14 and 18), are served in a reformatory - the term, used in Bulgarian legislation, to denote a prison for adolescents. There are two reformatories in Bulgaria – the reformatory for adolescent boys in Boychinovtsi (Boychinovtsi Reformatory), and the reformatory for adolescent girls in Sliven (Sliven Reformatory), part of the women's prison in Sliven. The Boychinovtsi Reformatory has capacity for 260 adolescents and the Sliven Reformatory – 35 adolescents. The reformatories admit adolescents, serving their sentence, involving depriva-

tion of liberty, adolescents who are defendants or accused¹ in court proceedings, and adults, deprived of liberty (ADL) – employed as service personnel in the reformatory. After turning 18, inmates may remain in the reformatory until they turn 20,² and, if “inmates at the reformatory who have reached adulthood demonstrate positive development”, they may stay until they turn 25.³

The number of boys placed in the reformatory has dropped in the last three years. A summary of the number of people, placed in the Boychinovtsi Reformatory in 2011, 2012, and 2013–sentenced, defendants or accused – is presented in Table 2.⁴

Table 2: Newcomers at the Boychinovtsi Reformatory (2011 – 2013)

Newcomers at Boychinovtsi Reformatory by year	Sentenced	Defendants	Accused	Total
2011	54 (6 of whom ADL)	22	48	124
2012	32 (4 of whom ADL)	24	29	85
2013	44 (4 of whom ADL)	16	30	90

Source: *Boychinovtsi Reformatory*

As a rule, the number of adolescent girls in the Sliven Reformatory is very low. Only two adolescent girls were incarcerated between 2011 and 2013.⁵ In practice, no independently organised and functioning girls’ reformatory exists because the adolescents are, in all cases, placed together with adult women.⁶

At the time of the first visit of BHC’s research team (3-4 April 2014), 71 people were incarcerated in the Boychinovtsi Reformatory. 67 of them were adolescent boys – 49 sentenced, 16 defendants, and two accused.⁷ A total of 96% of the boys that were sentenced (all but two), had been sentenced for property crimes (theft, robbery, destruction and damage).⁸ According to the written report, provided by the reformatory’s administration, on April 3, 2014, 62% of reformatory inmates were from the Roma ethnic group, 12% from the Turkish ethnic group, and 26% from the Bulgarian ethnic group. There were no foreign citizens. During the first visit of BHC to the Sliven Reformatory, one adolescent girl was serving her sentence there.

During the second visit, one adolescent girl of Iranian nationality, accused of attempting to cross the country’s border illegally, was placed in the reformatory.

After BHC published and sent a draft version of this study to all institutions responsible and concerned with closed institutions for children, the director of the Boychinovtsi Reformatory

1 The two terms defendants and accused are used to distinguish between the different phases of the criminal proceedings – pre-trial and court proceedings, in which the individual is detained.

2 Law on Execution of Penalties and Detention (2009), Art. 195.

3 Ministry of Justice, Execution of Penalties Directorate General (2010), Ordinance No. 10-04-522 from 12 April 2010, pt. 2.

4 Boychinovtsi Reformatory (2011, 2012, 2013), *Analyses of the Activity of the Management and Staff of Boychinovtsi Reformatory in 2011, 2012, and 2013*.

5 Information received from the Ministry of Justice, Execution of Penalties Directorate General under APIA with Decision No. 1 1-4991 from 12 May 2014.

6 This is why the BHC’s monitoring visits were mostly carried out in relation to the activity in the Boychinovtsi Reformatory for boys.

7 Boychinovtsi Reformatory (2014), *Information on the adolescents and adults, deprived of liberty in Boychinovtsi Reformatory on 3 April 2014*, received from the head of the Reformatory.

8 *Ibid.* At the same time, in accordance with the Beijing Rules, Rule 20.1, c) Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response.

prepared an opinion on the report's findings. Where BHC's findings are in contradiction, the director's comments are included in the footnotes of this subchapter.

1.2. Placement

A leading principle is that prisoners should be allocated, as far as possible, to prisons close to their families, thus providing them with the opportunity to maintain regular and adequate contact.¹ The existence of only one reformatory for boys and one for girls renders this principle inapplicable to adolescents. This puts them at a significant disadvantage, for example in comparison to adult male prisoners.

During the initial admission, as well as every subsequent entry, the adolescents go through a so-called "sanitary treatment,"² which includes a shower and steaming of clothes. In the Boychinovtsi Reformatory, this takes place in a steam and boiler facility outside the main residential building. **The conditions, under which this "sanitary treatment" takes place, are extremely humiliating** – the shower is installed on one of the walls and not separated from the boiler room. Showering takes place in front of the guards, and a single small towel is used by everyone undergoing the "sanitary treatment". Another humiliating practice in the Boychinovtsi Reformatory is that of cutting new arrivals' hair very short, ignoring their preferences.

At the beginning, inmates are accommodated in special **admission units**. According to the law, they should remain there for 14 days to one month. Those who enter the reformatory for a second or subsequent time, or who are transferred from a detention facility, should remain in the unit from 10 to 14 days.³ In reality, regardless of the length of the sentence, most boys remain in the admissions unit for almost the maximum period allowed – on average for 25 days.⁴ In the admission unit first-time entrants to the reformatory are placed separately.⁵ During this time, the adolescents undergo a medical and psychological examination, "get acquainted with the environment and order in the reformatory, and their personal qualities, extent of criminal infestedness, education, pedagogical dereliction, family status, and reasons for committing the crime are assessed."⁶ Risk and needs assessments for those entering the reformatory are prepared based on these evaluations. Then the Placement Committee determines the appropriate group for the respective adolescent. Every year, the administration of the Boychinovtsi Reformatory reports problems with the admission of new persons, arising from incomplete documentation.⁷ Documents, certifying completed levels of education, up-to-date certificate for criminal record, and documents, reflecting the criminal past of the persons, are regularly missing. A serious problem, described by the management of the Boychinovtsi Reformatory, is that adolescents are very often sentenced to an initial "strict" regime that contravenes Article 191(2) of the Law on Execution of Penalties and Detention (LEPD), which states that the initial regime for adolescents must be general regime.⁸ This shows that magistrates are not sufficiently well acquainted with special regulations governing the execution of the deprivation of liberty penalty for adolescents.

1 European Rules for juvenile offenders, § 55.

2 Law on Execution of Penalties and Detention (2009), Art. 139(1).

3 Rules for the Implementation of the Law on Execution of Penalties and Detention (2010), Art. 196(1), sentence 1 and 2.

4 Boychinovtsi Reformatory (2011, 2012, 2013), *Analyses of the Activity of the Management and Staff of Boychinovtsi Reformatory in 2011, 2012, and 2013*, p. 6, p. 7 and p. 7 respectively.

5 Law on Execution of Penalties and Detention (2009), Art. 187(2).

6 Rules for the Implementation of the Law on Execution of Penalties (2010), Art. 196(1), sentence 3.

7 Boychinovtsi Reformatory (2011, 2012, 2013), *Analyses of the Activity of the Management and Staff of Boychinovtsi Reformatory in 2011, 2012 and 2013*.

8 Boychinovtsi Reformatory (2011), *Analysis of the Activity of the Management and Staff of Boychinovtsi Reformatory in 2011*, p. 3.

During their stay in the admission unit, new inmates participate in an adaptation programme, led by an inspector pedagogue. The programme involves providing information to those deprived of liberty about rights and responsibilities, and opportunities for work, education, vocational training, and participation in specialised programmes. Help with urgent personal problems is provided etc.¹ BHC's observation leads to the conclusion that, rather than helping in "overcoming initial stress and frustration,"² time spent in the admission unit increases fear and anxiety among new inmates. **During the adaptation period, adolescents do not have the right to participate in any educational, cultural or sports activities.** In the admission unit in the Boychinovtsi Reformatory, for example, adolescents spend their days watching television, which they are obliged to do so outside their bedrooms, without being allowed to lie down. New arrivals get additional cleaning tasks, involving wiping the floor with a rag while kneeling – a cleaning technique not used in the reformatory in other circumstances.

Within three days of the admission of an adolescent, the administration of the reformatory must inform their parents or guardians.³ This, however, is not approached as a responsibility of the administrative personnel, but as an opportunity for newly admitted inmates to call their families.⁴

Adolescents do not receive a copy of the internal rules of the reformatory. They are not provided with the contact details of state institutions and non-governmental organisations, which they can contact for legal or other assistance in case of need. A board with information about some rights and obligations is placed in the admissions unit in the Boychinovtsi Reformatory. This information is only available in Bulgarian, which may be a significant problem for foreigners. When asked about which of their rights and responsibilities they are acquainted with, all adolescents from the admission unit of the Boychinovtsi Reformatory have the same answer: "To do anything, even to go to the bathroom, we must ask the chief guard for permission. If we don't ask for permission, this will be treated as an escape attempt, and we will be sentenced to five years in prison".⁵ A brochure with information about the placement and stay in the admissions unit, some rights and limitations of those deprived of liberty, as well as educational programmes organised in the prison, has been prepared in the Sliven Prison. There is no information specifically dealing with the status and rights of adolescents.

1.3. Judicial review and legal aid

During the criminal proceedings almost all adolescents are represented by ex officio lawyers, whose responsibilities end with the entry of the sentence into force. During the execution of the deprivation of liberty penalty, the adolescents "may consult a lawyer of their choice,"⁶ but the lack of financial resources makes this impossible. Lawyers' visits to the reformatories are an exception. In an interview, an inspector pedagogue from the Boychinovtsi Reformatory mentioned that the last visit of a lawyer to the reformatory took place one to two years ago. In Boychinovtsi Reformatory, there is no room, adapted for such visits, which can guarantee the confidentiality of the meetings between defender and client.

1 Boychinovtsi Reformatory (2014), *Programme for the Initial Adaptation of Juvenile Offenders, Newly Admitted to Boychinovtsi Reformatory, Group work, first module: My rights and responsibilities*, provided by the course leader, inspector pedagogue during BHC's visit in Boychinovtsi Reformatory on 3 April 2014.

2 *Ibid.*

3 Law on Execution of Penalties and Detention (2009), Art. 189(3).

4 For example, in order to inform his father about his transfer from a detention facility in Sofia to the Boychinovtsi Reformatory, an adolescent boy had to write a letter to the director of the home for children, deprived of parental care, where he had been temporarily placed, asking him to contact his father.

5 An interview with a child from the admission unit at the Boychinovtsi Reformatory.

6 Law on Execution of Penalties and Detention (2009), Art. 76(2).

Despite their high level of vulnerability, the adolescents, deprived of liberty, are **not expressly covered by the scope of the Legal Aid Act**, which guarantees access to ex officio appointed lawyers for other vulnerable groups of adolescents, like those placed in social care institutions or qualifying as “children at risk”. The newly created national hotline for primary legal aid, managed by the National Legal Aid Bureau¹ is not popularised in the juvenile reformatories and remains unknown and inapplicable for adolescents.² Inspectors from the “Social Activities and Educational Work” sector are relied on for judicial consultation, but they lack the necessary education and preparation, and such consultations are not their responsibility.

The law provides an opportunity for early unconditional release of adolescents, if they are reformed, and if they have served a minimum of one third of their sentence.³ This legal mechanism allows for a more flexible approach, more favourable to juvenile offenders. However, early release is not viewed as a right of inmates, but rather as an option, which remains at the discretion of third parties. The Execution of Penalties Committees in reformatories, as well as Prosecutor’s Offices, are the only ones competent to propose adolescents for early release to regional courts. **In recent years, the early release mechanism was not applied because no adolescents were proposed.** Between 2011 and 2013, the Execution of Penalties Committee in the Boychinovtsi Reformatory has made only one such proposal. At the same time, the Inspectorate at the Ministry of Justice treats the low number of proposals for early release as a “good practice”.⁴ During an inspection, carried out in the Boychinovtsi Reformatory, the Execution of Penalties Directorate General (EPDG) identified problems in the Committee’s work and explicitly recommended that motivated rejections be prepared for those who have attained the formal right to early release.⁵

In addition, the Execution of Penalties Committee has the power to change the penalty’s regime to a less restrictive one, but this also happens very rarely (see Table 3).

Table 3: Number of transfers to a lighter regime in the Boychinovtsi Reformatory (2011 – 2013)

Year	Number of transfers
2011	4
2012	5
2013	5

Source: EPDG

Another option for complete or partial remission of the deprivation of liberty sentence is the presidential pardon. This is an important mechanism for mitigating the criminal responsibility of adolescents. **Only 15 applications for presidential pardon were submitted by adolescents (14-18 years of age),⁶ between 2002 and 2013, and there were no applications in 2013.⁷** According to the Pardons Committee, adolescents are not motivated to apply for a pardon because “the closed institution, most often a reformatory, acts in many respects as a

1 Information on the project, setting up the national hotline for legal aid, is available at: <http://www.nbpp.government.bg/en/projects/norwegian-financial-mechanism-2009-2014>.

2 What is more, it is completely impossible to carry out a private telephone conversation in the Boychinovtsi Reformatory. For more information see 1.7. Contacts with the outside world in the current subchapter.

3 Criminal Code (1968), Art. 71(1).

4 Ministry of Justice (2014), *Report of the Inspectorate under Article 46 of the Administration Act, regarding an inspection, carried out in the Sliven Prison covering the period from 20 November 2008 to 12 March 2014*, p. 27.

5 Information provided by the management of the Boychinovtsi Reformatory.

6 2 Ioyanova, Diliiana, “Specifics of Pardoning of Adolescents”, *Society and Law*, 7th ed., 2013, p. 56.

7 Pardons Committee, President of the Republic of Bulgaria (2013), *Annual Report of the Pardons Committee for 2013*, p. 8, available at: <http://www.president.bg/cat96/Godishni-dokladi-pomilvane/>.

social-protection entity, and offers conditions that inmates view as better than life outside.”¹ The BHC disagrees with this conclusion and views the limited relevant information available to the adolescents and the lack of support in exercising this right as a major problem.

In three consecutive reports on the activity of the Boychinovtsi Reformatory, covering 2011, 2012 and 2013, cases of **adolescents “serving overtime”** are documented. The reason, given in the reports, is delayed receipt of the accumulation of sentences. The documented cases of overserving a sentence range from 18 days to a month and 25 days. These are all cases of unlawful deprivation of liberty, for which the State is liable for damages.

1.4. Material conditions

According to international standards, separation of adolescents from adults is of primary importance in closed institutions, due to the high risk of domination over and exploitation of younger persons deprived of liberty.² Exceptions are allowed only for extraordinary reasons, and only in terms of the best interest of the child. In violation of this rule, in the Sliven Reformatory, **adolescent girls are placed together with adult women** “with the aim of positively influencing the social habits and skills of adolescents.”³ Due to the small number of adolescents in this institution, some of the adults deprived of liberty are placed in the dormitory, intended for the reformatory.⁴ It was found that the principle of separate placement is not respected even when those deprived of liberty number two or more, and there is no risk of social isolation regarding separately placed adolescents. In reformatories, there also is an **inefficient separation by age**, which in some cases causes conflicts.

In the Boychinovtsi Reformatory, children are placed in group cells – from two to four in one room, and in most cases, they cannot choose their roommates.⁵ Reformatories, unlike prisons, **are not overpopulated**. However, buildings are old and dilapidated. **Material conditions** in the Boychinovtsi Reformatory are highly unsatisfactory. The windows, doors and flooring are very old and need to be replaced. The cells are equipped with toilets and washbasins, which are also old and extremely dilapidated. Many bathroom/ toilet doors are broken and cannot be closed. There is no hot water, the toilet cisterns are rusted, and there is a strong and unpleasant smell. Bathrooms are shared on each floor and insufficient for the number of inmates. The children take showers cell by cell, and are given very little time. There are no separation walls between showers and no privacy during showers. Hot water is available only during the time allocated for showering. Despite recommendations, made by the European Committee for the Prevention of Torture (CPT) to the Sliven Reformatory in 2006, regarding the construction of a bathroom for each bedroom, such bathrooms are not available, and there are no plans for their construction.⁶

In reformatories, **heating system is switched on only at certain times** of the day during cold months, and there is no **ventilation and cooling installation** in the summer. The radiators in the children’s rooms are very old and, according to the children, do not heat up their rooms

1 *Ibid.*

2 CPT (1999), *9th General Report on the CPT’s activities covering the period 1 January to 31 December 1998*, § 25, available on: <http://www.cpt.coe.int/en/annual/rep-09.htm>.

3 Ministry of Justice (2014), *Report of the Inspectorate under Article 46 of the Administration Act, regarding an inspection, carried out in the Sliven Prison covering the period from 20 November 2008 to 12 March 2014*, p. 7.

4 One of the interviewed children shared that she is often in conflict with her cellmate. She does not feel comfortable, living among “grown-up women, half of whom are killers.” According to the inspector of social activities in the reformatory, the girl is placed with a “more mature woman in order to help her with the correction process.”

5 BHC identified cases of children, who, due to conflicts with their cellmates, have asked to be moved to another cell and whose requests have been respected.

6 CPT (2008), *Report to the Bulgarian Government on the visit to Bulgaria carried out from 10 to 21 September 2006*, § 85, available on: <http://www.cpt.coe.int/documents/bgr/2008-11-inf-eng.htm>.

effectively, or are entirely out of order. All rooms have high ceilings and are spacious, which further complicates heating them. Children admit that they feel very cold in the winter, and that heating is switched on rarely and for short periods. This applies not only to bedrooms, but also to other common rooms – corridors, the television room, libraries etc. In the Boychinovtsi Reformatory, bedrooms are ventilated by open windows, even in winter, to remove the smell from the bathrooms.

The personal hygiene of many of the children, placed in the reformatories, is neglected. All inmates wash their own clothes and underwear. The boys in the Boychinovtsi Reformatory confide that the facilities are inadequate for washing clothes. They soak their clothes in the small sinks of the bathrooms part of their cells, or in plastic buckets, if available, and wash them in cold water. Many of the children admit that they have no interest in maintaining their personal hygiene.

The bedroom furniture in reformatories is insufficient and very old. There are no night-stands and no separate wardrobes for each child. In the Boychinovtsi Reformatory, there is only one table-desk and one chair for three/ four boys. The beds in the bedrooms are old and made of metal. Mattresses and bed sheets are very worn. Disciplinary cells in the Boychinovtsi Reformatory have a wooden cot, a metal chair, and a small metal table, attached to the floor of the room. According to the reformatory staff, children in solitary confinement cells get mattresses and bed sheets during their stay in the cell. The boys interviewed revealed that they do not get mattresses, and that solitary confinement cells are very cold in winter. During the day, regardless of whether it is cold or not, they are not allowed a blanket and lie on wooden planks with their clothes on. An adolescent girl from the Sliven Reformatory confided that during placement in a disciplinary cell she has to resort to a bucket to satisfy their physiological needs.

Food for the children is prepared in the reformatories. The children in the Boychinovtsi Reformatory say that the food is insufficient and that it tastes bad. The boys confide that they often find “worms, hairs and stones” and “they cook dirty”. There are many complaints from new inmates placed in the admission unit. They do not go to the canteen with the rest of the inmates, but eat in the unit, and, according to their own words, are frequently hungry. The boys have access to a kiosk where they can use a card (with their own money) to buy items, but they complain that it is too “expensive.”¹ The food in the Sliven Reformatory, according to those living there, is “bad” – dull and awful tasting. There also is a kiosk, and inmates have access to food and drinks, outside dining hours, if they have their own money.²

Most of the time, during their stay at the reformatories, the adolescents are not allowed to wear their own clothes but prison uniforms. The school facilities in the reformatories are old. Classroom furniture is old and does not correspond to current educational methods.³ The classroom walls in the Boychinovtsi Reformatory are decorated with children’s paintings, and the atmosphere is reminiscent of an elementary school classroom. In the WC of the boys’ reformatory school, there are several toilets, separated by low barriers, which do not provide sufficient privacy, and allow for abuse.

1 The BHC’s observation on the costs of products, sold in the kiosk for inmates, confirms this statement. At the same time, the prices of products in the kiosk for reformatory personnel are much lower.

2 The girl deprived of liberty, who was interviewed by the BHC, confided that she has never had pocket money during her stay in the reformatory.

3 At the same time, according to the management of the Boychinovtsi Reformatory, “the school has new tables, chairs, desks and white boards, bought during 2011, which meet the contemporary requirements for a material-technical base (MTB). Tsocheva, Mimi, Statement regarding the findings in the report of the BHC from the director of the Boychinovtsi Reformatory.

Stay in the open lasts at least two hours and is timetabled. All inmates are obliged to comply with the timetable, whether they want to be outside or not. Children residing in the Boychinovtsi Reformatory reveal they are forced to go outside even if they feel unwell.

1.5. Health care

Basic health care in both reformatories is provided in on-site medical centres. Different specialists work there. Their number, however, is insufficient, considering that **there are no medical personnel in the evening and on weekends and holidays**. A pediatrician, psychiatrist and feldsher are employed in the Boychinovtsi Reformatory. There is a vacancy for a dentist. In the Sliven Prison, there is a general practitioner, gynecologist, psychiatrist, and paramedic, and a vacancy for a dentist. Medical services for adolescent girls are not differentiated from the care that is given to women adult prisoners.

There are in-patient rooms at the medical centres. However, even when children are placed in these rooms in the Boychinovtsi Reformatory, there are no medical personnel at night and on non-working days. Instead, a reformatory officer checks the adolescents, and in case of emergency, calls the team of the Centre for Emergency Medical Assistance in Montana. In this way, access to medical services is at the sole discretion of the guards. When there is no emergency, access to medical personnel takes place at the request of the adolescents, which is written down in a special book, kept with the guard on shift. In accordance with the law, medical assistance should be provided within 24 hours after a request is made, which, however, does not happen. According to the medical personnel in Sliven, when a request for an appointment is made, the appointment takes place within “two to three days”. In the Boychinovtsi Reformatory, there are no medical personnel on weekends, and adolescents must wait for the next working day.

Access to external medical services in the reformatories is allowed in exceptional cases, which are comprehensively covered in existing regulations.¹ These provisions contravene international standards, according to which the basic care for adolescents should be accessible within the community.² The law also provides for appointments with external specialists if inmates disagree with their diagnosis. In such cases, however, expenses are covered by the inmates themselves, which, taking into account the socio-economic status of most of the adolescents, is often very troubled. Even if an external opinion is received, it is only considered “advisory.”³

From the moment of placement, all adolescents acquire full public health insurance coverage. In addition, all adolescents undergo an obligatory initial medical check-up. However, interviewed adolescent boys confide that this check is perfunctory. At the same time, according to the medical personnel in the Boychinovtsi Reformatory, many children enter the reformatory without medical documentation.

Dental care in both reformatories is provided by dentists, who are not permanently employed, but visit the institutions in accordance with a schedule. Access to dental care is very complicated and limited, especially when foreign nationals are concerned. During a monitoring visit to the Boychinovtsi Reformatory, the BHC talked to an adolescent boy, a foreign national, who confided that he had a severe toothache, but no access to dental care, because he does not speak Bulgarian. Even though international standards require access to an ophthalmologist,⁴

1 Law on Execution of Penalties and Detention (2009), Art. 135(1): Those deprived of liberty are sent to hospitals outside of institutions when: 1. the medical facilities in the institutions for deprivation of liberty are not adequate for the necessary medical treatment; 2. an infectious disease has to be treated; 3. consultations or specialised medical checks are necessary.

2 Havana Rules, Rule 49; European Rules for juvenile offenders, Rule 69 (2).

3 Law on Execution of Penalties and Detention (2009), Art. 137(3).

4 Havana Rules, Rule 49.

such access is not stipulated in legislation, and, according to the reformatory reports, is not available.¹

Informed consent on medical interventions and procedures regarding adolescents in reformatories is a serious problem. A medical staff member from the Boychinovtsi Reformatory revealed that, in an emergency, such consent is often given by an employee of the reformatory. In addition, in the reformatory, drugs prescribed to adolescents are kept and given by a guard. This violates international standards, according to which medicines should be distributed only by qualified medical personnel.² Regarding psychological and psychiatric care for the adolescents, psychiatrists and inspector pedagogues are employed in reformatories. Many of the children placed in reformatories suffer from mental disorders or addiction.³ For example, in 2013, there were 49 registered children with mental disorders, 29 children using psychoactive substances, and 13 inmates with alcohol abuse problems in the Boychinovtsi Reformatory.

Even though there are numerous appointments with the psychiatrist,⁴ the BHC observed that many of the interviewed children in the Boychinovtsi Reformatory are anxious and nervous. This was also confirmed by the in-house psychiatrist. At least *two* children in the Boychinovtsi Reformatory shared that they take sedatives, and a third child shared that sedatives are given often, under the premise that inmates “cannot sleep”.⁵ Between 2011 and 2013, there were no registered deaths of adolescents deprived of liberty.

A major and very serious problem regarding medical services provided to adolescents in the Boychinovtsi Reformatory is lack of access to independent medical care. Taking into account the cases of physical abuse by the security guards, combined with the effective deprivation of adolescents of any option for complaint submittal, or for sharing information about abuse with their relatives, access to medical personnel in the community is vital for the prevention of ill-treatment and for guaranteeing the protection of children from inhuman or degrading treatment. Despite the numerous stories, shared by children, regarding beating, and at least two cases in the Boychinovtsi Reformatory, in which clear physical marks of beatings were evident to the BHC team,⁶ the head of the medical sector said that there were no identified cases of physical abuse of inmates.

1.6. Activities and education

In reformatories, there are **schools**, in which inmates may continue their education. Education in the Boychinovtsi Reformatory takes two forms – daily and individual. At the time of BHC’s visit (3-4 April 2014), there were 49 students from a total of 71 male inmates. By law, all children under 16 are obliged to participate in the educational process.⁷ However, those who have entered the reformatory after February, who have not attended school during the first semester, or who have had an interruption in their education, lasting two or more

1 Boychinovtsi Reformatory (2011, 2012, 2013), *Analyses of the Activity of the Management and Staff of the Boychinovtsi Reformatory in 2011, 2012, and 2013*.

2 CPT (2012), *Report to the Bulgarian Government on the visit to Bulgaria carried out from 4 to 10 May 2012*, § 44, available on: <http://www.cpt.coe.int/documents/bgr/2012-52-inf-eng.pdf>.

3 Boychinovtsi Reformatory (2013), *Analysis of the Activity of the Management and Team of the Boychinovtsi Reformatory in 2013*, p. 20.

4 *Ibid.* A total of 1,098 consultations with a psychiatrist took place in 2013.

5 The BHC identified at least three cases of children who stated that they have taken, or are taking, sedatives, which was not confirmed by the medical documentation.

6 The BHC’s monitoring team spoke to a child, which said had been hit on the ear by a security guard because he had refused to take medicine. In another case, the BHC talked to a child who had a puffy face, following a beating by a reformatory officer, which had taken place the same morning.

7 Law on Execution of Penalties and Detention (2009), Art. 162(2).

months, may only take part in educational activities as “listeners”.^{1,2} One of the boys, who is on an individual educational track in a high-school class, confided that textbooks are not provided by the school, but bought by students or their parents. The school does not offer professional specialisation. Boys share that there is no **real educational process**, even though everyone attends school, because this shortens their stay in the reformatory.

Many share that they have difficulties reading or writing. They do not understand what is taught, do not do homework, and simply attend classes because they are obligatory. Their textbooks stay in the classrooms. Textbooks are insufficient in number and even if some children want to prepare for class outside school, they do not have this opportunity. One of the interviewed boys reveals: “There is no studying, just digging and cleaning.” Another boy describes the educational process as a “lost cause”. Children, placed in the admissions unit, **do not go to school** for about a month. During the BHC’s visit, there was only one child with special educational needs (SEN), placed in the reformatory, who was provided by the state with a psychologist and a resource teacher. Reformatory officers are not present in the rooms during classes. In accordance with international standard requirements, diplomas and certificates from the school in the reformatory do not indicate that the school is part of a prison facility.

Two **vocational tracks** are offered in the school of the Sliven Reformatory: seamstress for those completing their primary education, and operator in clothes production for those completing their secondary education.³

Outside the main educational programme, vocational training courses, educational programmes, religious and sports activities, as well as other forms of group work, are organised in the Boychinovtsi Reformatory. Vocational training is an important part of social reintegration and the preparation of adolescent offenders for life outside. While there used to be a cooking course in 2011 and 2012, there are **no vocational courses offered in 2013**. The variety of educational programmes has also decreased over the years, from 11 in 2007 to just five in 2013.⁴

The educational programmes in 2013 are: “Preparation of a Computer Presentation”, “Literacy Course”, “Landscaping”, “Izonit-Embroidery on Cardboard” and “Art Education”. There are no programmes about sexual and reproductive health. There are specialised programmes, focusing on adaptation to life in a closed institution and to preparation for life outside. However, these programmes do not focus sufficiently on activities aimed at overcoming the reasons that led to incarceration in the first place. Only one such course took place in the Boychinovtsi Reformatory in 2013 – Correctional-Therapeutic Group For Specialised Team Work “Equip” including up to eight inmates.

Traditionally, religious education and activities are mostly directed at orthodox Christians, without heeding the needs of adherents to other religions. There is an orthodox priest, employed part-time, who teaches two religious courses – “Basics of Interpreting the New Testament” and “Day Alfa Course”, and delivers sermons in the chapel on the reformatory’s prem-

1 Boychinovtsi Reformatory (2014), *Information on the activities regarding adolescents, deprived of liberty, from the inspector pedagogues at the Boychinovtsi Reformatory*, received on 2 April 2014.

2 In this connection, the management of the Boychinovtsi Reformatory reveals: “These [adolescents deprived of liberty] who were not regular students at another school can start school during the next year. This does not mean that they do not do anything. These students are included in the school process; they visit the school.” Tsocheva, Mimi, *Statement regarding the findings in the report of the BHC from the director of the Boychinovtsi Reformatory*.

3 A girl at the Sliven Reformatory shared that she does not attend school and if she does, she chooses which classes to attend. She said that she attends class only with one teacher because all the others have a very negative attitude towards her. The girl has repeated seventh grade twice in the prison’s school.

4 Boychinovtsi Reformatory (2014), *Information on social reintegration activities, carried out with those deprived of liberty in the Boychinovtsi Reformatory between 1 June 2007 and 30 September 2014*.

ises. The management of the Boychinovtsi Reformatory explains: “During recent years, the Boychinovtsi Reformatory has been visited by the representatives of different religions, but boys deprived of liberty are not interested in such activities.”¹

Sports activities are also highly encouraged in the Boychinovtsi Reformatory, with an equipped fitness room available to the conditioning and bodybuilding group. Participation in educational activities, qualification and literacy courses, and specialised programmes counts towards a reduction of the sentence, with 16 hours of group activities leading to a reduction of three days of the deprivation of liberty sentence.²

The programmes, available for individual and group work, according to the children, do not correspond to their interests, and are, in most cases, **boring**.³ Participants in group activities often have personal conflicts or different interests. Inmates say that they start the programmes willingly, but this soon turns to dissatisfaction. In fact, nobody prepares or motivates the children before the organised activities take place, so children enrol without knowing what the respective activity involves. Most activities are one-off or short-term, and there is no continuity. Children from the Boychinovtsi Reformatory maintain that organised activities like celebrations, anniversaries and festivities do not correspond to their age. Hardly any boys use the library. Most of the children just skim through books or stay there, as they say, “for a change”. They only enjoy film screenings, which, according to them, take place too rarely. In contrast, the interviewed inspector pedagogues, responsible for the organised programmes, confide that the children do very well and participate with enthusiasm.

During their free time, children mostly **watch television**. The boys from the Boychinovtsi Reformatory confided that they are often forced to sit in front of the television, as this is part of the programme. The girl placed in the Sliven Reformatory shared that her only pastime throughout her stay in the reformatory – about three years – has been watching television.

Each reformatory inmate has an **individual plan on serving their sentence**, which includes activities and correctional programmes. The children share that they are not informed about such plans, do not know whom to turn to when a problem arises, have no idea that they can seek assistance from external organisations, and are not informed about their length of stay and the goals of the activities in which they are obliged to participate. Flaws in planning and re-planning of sentences have been found, mainly representing a **lack of “concrete, attainable, realistic and quantifiable” objectives of the work with adolescents during their stay in the institution for deprivation of liberty**.⁴

A small number of reformatory inmates are employed. Through the years, the number of approved service employee positions, open in the Boychinovtsi Reformatory for adolescents deprived of their liberty, has been cut, while positions for adults, serving their sentence in the reformatory, are increasing. Table 4 summarises the dynamics of employees in the Boychinovtsi reformatory in the period 2011-2014. The reduction by half of the number of incarcerated adolescents who are in employment, between 2011 and 2014⁵, is worrying.

1 Tsocheva, Mimi, *Statement regarding the findings in the report of the BHC from the director of the Boychinovtsi Reformatory*.

2 Law on Execution of Penalties and Detention (2009), Art. 174(4); Rules for the Implementation of the Law on Execution of Penalties and Detention (2010), Art. 134(2).

3 The director of the Boychinovtsi Reformatory states that “all these programmes are not boring and correspond to the interests of the adolescents. They change over the years and correspond to the requests and the moods of the boys.” Tsocheva, Mimi, *Statement regarding the findings in the report of the BHC from the director of the Boychinovtsi Reformatory*.

4 Ministry of Justice, Execution of Penalties Directorate General (2014), *Report from an Inspection of the Social and Educational Activities in Boychinovtsi Reformatory*.

5 The management of the Boychinovtsi Reformatory shares that according to them: “[...] the reduction of the number of adolescents employed at the reformatory and the increase of the work positions for adults deprived of liberty is not worrying. [...] For the adolescents at the reformatory, it is more natural and common, as it is for all young people at

Table 4: Employment of adolescents and adults deprived of liberty in the Boychinovtsi Reformatory (2011-2014)

	2011		2012		2013		2014	
	Absolute number of employed persons	Employed persons, expressed as a proportion of persons deprived of liberty	Absolute number of employed persons	Employed persons, expressed as a proportion of persons deprived of liberty	Absolute number of employed persons	Employed persons, expressed as a proportion of persons deprived of liberty	Absolute number of employed persons	Employed persons, expressed as a proportion of persons deprived of liberty ¹
Adolescents deprived of liberty	9	12%	6	5,79%	4	5%	4	5,9%
Adults deprived of liberty	6	100%	4	100%	4	100%	6	100%

Source: EPDG

Work positions, which are allocated to adolescents in the Boychinovtsi Reformatory in 2014 are: assistants in the kitchen, dog-carer, and barber. All are part of the daily service activities in the Boychinovtsi Reformatory, and there are no adolescents working in the Government Enterprise “Prison Production”.

There are children, who **volunteer**, mainly in cleaning duties. The adolescents, placed in the reformatory, clean the common areas in the buildings and are responsible for the yard’s upkeep.

There are no sufficient and effective aftercare services and social support for those leaving the reformatories. As an employee of the Sliven Reformatory says: “People find nothing when they leave.”² Employees of the Boychinovtsi Reformatory confide that many of the children who leave are not prepared for life outside, and are deprived of any assistance.³

1.7. Contacts with the outside world

The Bulgarian law requires that “all activities, related to the social reintegration of adolescents, deprived of liberty, to be carried out under conditions allowing for the maximum possible increase in options for contact between inmates and the outside world, their family, people, who have a positive influence on them, volunteers and NGO representatives.”⁴ The BHC monitoring research established that the isolation and disrupted contacts are one of the most serious problems for those deprived of liberty. Lack of contacts with the outside world **leads to at least three serious problems: disregard for the right to family life, difficult social reintegration and the inability to report cases of abuse and other offences.**

The existence of only two reformatories in Bulgaria, which accommodate children from all parts of the country, renders visits from family complicated and expensive. In fact, **visits**

their age, to study. If they are educated and have particular abilities, only then can they develop in a productive and life-enhancing way.” Tsocheva, Mimi, Statement regarding the findings in the report of the BHC from the director of the Boychinovtsi Reformatory.

- 1 Data on the proportion of adolescents, who were employed in 2014, is calculated, based on the number of inmates on 3 April 2014.
- 2 Interview with an employee at the Sliven Reformatory, conducted on 20 February 2014.
- 3 Interview with an employee at the Boychinovtsi Reformatory, conducted on 3 April 2014.
- 4 Law on Execution of Penalties and Detention (2009), Art. 190(1).

are a rarity.¹ The administration of the reformatory also does not encourage contacts with the family, even though it does have at its disposal the legal tools. There is no practice with regard to incentives like: extended visits, meetings with family outside the reformatory and home leave.² During visits to the Boychinovtsi Reformatory, a member of personnel, who observes the meetings and listens to the conversation, is always present. Speaking a language other than Bulgarian is forbidden during visits, so staff in the room can understand the conversation. According to the social activities inspector in the Boychinovtsi Reformatory, children who have no contact with their parents show “increased anxiety levels”.³

Foreign nationals detained in reformatories are absolutely isolated. An adolescent girl, who is a foreign national, is placed in the admissions unit of the Sliven Reformatory, together with her mother, in a permanently locked cell. The detained women share that they do not have any opportunities to contact the father/ husband, who is being held in a detention facility in Sofia. Incoming calls in detention facilities are forbidden. They do not have any money and are, in reality, a very difficult situation. According to the social activities inspector, a translator has not been provided, and communication is based on assumptions.

All telephone conversation of those incarcerated in the Boychinovtsi Reformatory are monitored automatically, violating legal stipulations. This fact has been described by several independent sources,⁴ including the annual reports of the reformatory.⁵ Phone calls take place over a special telephone system, which can be used with a card that includes ten phone numbers entered beforehand. The card is charged with the personal resources of inmates. The telephone apparatus, used by the boys in the Boychinovtsi Reformatory, is placed right next to a security guards’ station. Another part of the telephone system is installed in one of the offices of the custodial staff and allows tapping of every telephone conversation. Inmates know that their phone conversations are being tapped, which deters them. Conversations in a language, different from Bulgarian, are not allowed. In relation to this, the BHC received complaints from children whose calls were interrupted because they began to speak their mother tongue – Turkish or Roma. On the other hand, the research team found that a boy, who is a foreign national, placed in the reformatory, had not carried out a single telephone conversation with a friend or relative for a month because he could not speak Bulgarian or another language understood by the custodial staff.⁶

The BHC also found that the **incoming and outgoing mail correspondence of inmates is monitored and censored** in the Boychinovtsi Reformatory. This practice refers both to personal correspondence, and to complaints submitted by adolescents to external institutions. This is a very serious violation of children’s rights in reformatories.⁷

Interviewed inspectors from the Children’s Pedagogical Rooms of the Ministry of Interior, who talk to reformatory inmates over the phone, share that the children do not complain about anything, and just ask to be sent money, cigarettes or clothes, or ask whether it is pos-

1 For example, a girl at the Sliven Reformatory has had only two visits in almost three years – the first time her father came to ask that she be released because her mother was very sick, and the second time when he brought his wife’s death certificate.

2 For additional information, see 1.8. Disciplinary practices, use of force and complaints.

3 Interview with an inspector pedagogue at the Boychinovtsi Reformatory, conducted on 3 April 2014.

4 Interviews with persons deprived of liberty, with an inspector pedagogue, and with the director of the Boychinovtsi Reformatory, conducted on 3 April 2014.

5 Boychinovtsi Reformatory (2011, 2012, 2013), *Analyses of the activity of the management and staff of Boychinovtsi Reformatory in 2011, 2012 and 2013*; Sliven Prison (2013), *Report on the activities related to the treatment of those deprived of their liberty in the Sliven Prison in 2013*.

6 What is more, the employees at the Boychinovtsi Reformatory did not know what language the adolescent spoke, and according to their information, he spoke Arabic. The BHC established the boy spoke Kurdish.

7 For more information, see 1.11. Discrimination and violations of other fundamental rights.

sible to be released earlier.¹ In contrast, interviews with children at the reformatories reveal a different reality. They are afraid to complain, no matter how pressing the need. Adolescents in reformatories have practically **no meaningful contact with the outside world**. Children have no options for complaining to their family, or sharing with them, information about abuse or ill-treatment. In this way, children in the reformatory are left with no options and are completely dependent on the reformatory's staff.

1.8. Disciplinary practices, use of force and complaints

Punishments

According to the European Rules for Juvenile Offenders, punishments shall be a mechanism of last resort for maintaining order and discipline in institutions for deprivation of liberty.² Alternative methods for conflict resolution and educational interaction should be given priority instead. In reformatories in Bulgaria, alternative methods are not applied, and only the disciplinary procedures, laid out in Article 193 of the LEPD, are followed. Table 5 summarises the disciplinary practices in the two reformatories between 2011 and 2013.³

Table 5: Disciplinary sanctions, imposed in the reformatories (2011-2013)

	2011		2012		2013	
	Boychinovtsi Reformatory	Sliven Reformatory	Boychinovtsi Reformatory	Sliven Reformatory	Boychinovtsi Reformatory	Sliven Reformatory
Written warning	12	0	5	0	3	0
Additional cleaning shift	89	0	55	3	52	3
Revocation of a prize	0	0	0	0	1	0
Ban on participation in sports	1	0	1	1	4	1
Confinement in disciplinary cell for up to 5 days	31	0	34	3	49	5
Total number	133	0	95	7	109	9

Source: EPDG

The most severe disciplinary sanction, **isolation in a disciplinary cell**, must only be imposed in exceptional cases, when other sanctions would not be effective, and for the shortest possible period. This sanction is imposed on adolescents in the form of solitary confinement, which can damage their physical and mental health. Against the backdrop of a decrease in the number of adolescents deprived of liberty, **a drastic increase in the use of this type of disciplinary sanction is observed – its use has almost doubled during the observed period, in comparison to 2011.**⁴ Reasons for imposing the most severe sanctions are fights, cursing, breaking windows and self-harm with a broken razor. Some of these actions do not even fall into the category of disciplinary offences, and even less so into the category of offences pun-

1 Interviews with inspectors from the Children's Pedagogical Room to Fourth and Sixth District Police Departments in Plovdiv, which took place on 16 May 2014.

2 European Rules for Juvenile Offenders, Rule 94.1.

3 Information received from the Ministry of Justice, Execution of Penalties Directorate General under APIA with Decision No. 1-4991 from 12 May 2014.

4 Compared to 2011, the ratio of imposed disciplinary sanctions to adolescents under Art. 193(5) at the Boychinovtsi Reformatory has almost doubled in 2013 – from 0.65 to 1.23.

ishable through solitary confinement.¹

Reformatories have not adopted guarantees, ensuring fair disciplinary proceedings, suited to the young age, social immaturity and lower literacy of inmates. Adolescents are not offered the necessary assistance for preparing complaints against imposed sanctions, access to legal assistance has not been regulated, and there is no obligation to notify parents or legal guardians about the initiation of a disciplinary procedure. The interviewees during the monitoring visits were not acquainted with procedures for complaint submittal regarding imposed sanctions. What is more, they believed that it is better to avoid confrontation with the administration of the reformatory for fear of further repression. The complete absence of appeals, regarding all 353 sanctions imposed on adolescents for the period 2011-2013, clearly indicates the inefficiency of the appellate procedures regarding disciplinary sanctions. The conclusion of the Inspectorate of the Ministry of Justice regarding Article 46 of the Administration Act, stating that the lack of appeals is an “indicator of competence and a job well done,” cannot be accepted.²

Rewards

The most common form of rewards is “written recognition”, which constitutes 96% of all rewards in the Boychinovtsi Reformatory in 2013. Regardless of the legally provided opportunity for this incarcerated adolescents have not received rewards in the form of extended visits, meetings with the family outside the reformatory, or home leave.³

Complaints

The situation regarding filing complaints is identical to the disciplinary sanction appellate procedures – these are only formally available options, which, in reality, are not implemented. There are three boxes in the Boychinovtsi Reformatory where inmates may leave letters and complaints, addressed to different recipients – the head of the prison, the psychologist, and external institutions – Court, Prosecutor’s Office, National Assembly, President. Adolescents do not have free access to the boxes – the letters are submitted through the Social Activities Inspector or through an officer from the custodial staff, which eliminates the possibility for submitting a complaint anonymously. An additional hindrance is the requirement that inmates cover their own postal expenses, including those for stationery. The number of submitted complaints, summarised in Table 6, which decreases through the years,⁴ clearly indicates the lack of accessibility and effectiveness of complaint procedures.

Table 6: Complaints, submitted in the Boychinovtsi Reformatory (2011 - 2013)

Year	2011	2012	2013
Number	8	4	1
Founded	1	2	No data
Unfounded	7	2	No data

Source: EPDG

1 Information obtained through reviewing the disciplinary practices of the Boychinovtsi Reformatory for the period from January to April 2014.

2 Ministry of Justice (2014), *Report of the Inspectorate under Article 46 of the Administration Act regarding an inspection at the Boychinovtsi Reformatory, covering the period 1 June 2011 – 30 September 2013*, p. 13.

3 Law on Execution of Penalties and Detention (2009), Art. 98(1), pt. 5-8.

4 Boychinovtsi Reformatory (2011, 2012, 2013), *Analyses of the Activity of the Management and Staff of the Boychinovtsi Reformatory in 2011, 2012 and 2013*.

There are no documented cases of the use of force, physical restraint or weapons with regards to adolescents between 2011 and 2013 in the Sliven Reformatory; there are three cases, registered for the same period at the Boychinovtsi Reformatory. All three cases were registered during 2013.¹

1.9. Personnel

Adolescents deprived of liberty interact with social workers, custodial staff and medical personnel. According to the information, provided by EPDG, all security guards in the Boychinovtsi Reformatory undergo different training, part of which is aimed at developing specific skills related to the work with adolescents.² Training for the period 2012-2014, however, does not cover topics like children's rights or international standards, relating to children deprived of liberty.³

The custodial staff supervise and exercise control over adolescents around the clock and are in constant contact with them. Even though they spend the longest period with the children in the reformatory, they are not externally supervised. External supervision is an essential precondition for the reduction in violence in reformatories. Violence occurs daily in the Boychinovtsi Reformatory. The security sector has a clear hierarchy, and employees have the obligation to "respect ranks and military discipline".⁴ The hierarchical structure of the Supervision and Security Team additionally hinders the registration of cases of physical ill-treatment and aggression towards the children.

Social workers are of fundamental importance to the objective of the deprivation of liberty in reformatories, and in their position are those most approachable by those deprived of liberty, in case of need, or in relation to a complaint about ill-treatment.⁵ On 31 December 2013, the personnel in the Social Activities and Educational Work sector in the Boychinovtsi Reformatory included inspector pedagogues (13 people), two inspector psychologists, one social activities and educational work inspector, three senior inspectors – the director of the reformatory, the senior probation inspector, and the senior inspector pedagogue and the head of the sector. The personnel also include a priest. The children in the Boychinovtsi Reformatory do not perceive psychologists and pedagogues as people to whom they can confide about incidents of violence and ill-treatment. This has been confirmed through conversations with the employees themselves, who did not report cases of violence.

Employees from the Social Activities and Educational Work sector participate in internal and external trainings. Once again, specialised training, regarding children's rights and international standards for the treatment of children deprived of liberty, has not been organised in either of the two reformatories between 2012 and 2014.⁶ External supervision is also lacking in this sector.⁷

1 Information received from the Ministry of Justice, Execution of Penalties Directorate General under APIA with Decision No. 1-4991 from 12 May 2014.

2 Information received from the Ministry of Justice, Execution of Penalties Directorate General under APIA with Decision No. L-8111 from 15 August 2014.

3 *Ibid.*

4 Boychinovtsi Reformatory (2011), *Analysis of the Activity of the Management and Staff of the Boychinovtsi Reformatory in 2011*, p. 4.

5 Boychinovtsi Reformatory (2013), *Analysis of the Activity of the Management and Team of the Boychinovtsi Reformatory in 2013*, p. 14. On 31 December 2013, only 8.5 of the available positions in the Social Activities and Educational Work sector are filled. Three employee positions are not filled. Sliven Prison (2013), *Report on the Activities Related to the Treatment of Those Deprived of their Liberty in the Sliven Prison in 2013*, p. 13.

6 Information received from the Ministry of Justice, Execution of Penalties Directorate General under APIA with Decision No. L-8111 from 15 August 2014.

7 In 2011, employees at the Boychinovtsi Reformatory have participated in the supervision of the prison in Sliven and the correctional boarding school in Podem. The effectiveness of this practice, which, in reality constitutes "internal

1.10. Violence

The BHC's research found that many adolescent inmates in the Boychinovtsi Reformatory, have been subjected to **physical ill-treatment and psychological harassment from reformatory officers**, with cases usually remaining unregistered. At the same time, no programmes for the prevention and reporting of violence, or for the prevention of sexual violence, have been introduced in the reformatories.

There are numerous complaints regarding **violence and harassment in the admission unit**, where the stay of adolescents is characterised by higher levels of isolation. During one of the visits of the BHC team to the Boychinovtsi Reformatory, a boy, placed in the admissions unit, had a bruised left ear. He explained that a reformatory officer had slapped him after he had refused to take his prescribed medicine. Another boy from the admissions unit was slapped and kicked by a reformatory officer as punishment for an inaccurately presented daily report. An adolescent also reported to have been assaulted by being kicked while he was "pressed in between two sets of bars" in the admission unit.

Children report violence inflicted on them by guards for "the smallest thing", for "the tiniest thing".¹ Most often, physical abuse takes place in the sanitary rooms because there is no video surveillance there. The victims in the Boychinovtsi Reformatory share that they have been kicked, hit with fists, slapped, beaten with belts on the feet, with sticks and truncheons on the palms, and with pipes to the body. One of the boys had his "eyebrow fractured", another one – his nose. A third boy was unable to hold cutlery because his hands were too swollen and bruised by the truncheon. During the first visit of the BHC, one boy had a swollen cheek. He revealed that this was the result of a beating he took in the cell by the security officer on duty. According to some children, there have also been cases of violence during classes.

The interviewed children talk about the same security officer, who is particularly aggressive towards them. They share that "cameras do not stop him," that "he only stops when his phone rings", "the commander beats for 10 minutes, smokes a cigarette, and then continues, and he can do this the whole day". The adolescents confide that "even the social workers and teachers know" about the violence, inflicted by the reformatory officers, but that they "remain silent" and do not take measures to stop it. A 16-year-old boy commented in front of the BHC that he cannot complain to anyone, because "all are the same", "they do not pay attention", and "it is better not to bother with complaints because then you may become a target". The BHC learned of only two cases in which complaints about violence have led to the undertaking of measures – in the first case, the officer was transferred to another position, and in the second, the guard was dismissed on disciplinary grounds. Even with so many described instances of violence inflicted on inmates, there is only one officially registered case of unlawful use of force and physical restraint by a security officer of the Boychinovtsi Reformatory.²

In 2012, a security officer beat several persons, deprived of liberty, with a truncheon, fists, and kicking "without any evidence of insubordination on the part of the adolescents with regard to orders from the employee."³ The incident took place in a bedroom and was recorded by surveillance cameras. Despite the evidence, the Regional Prosecutor's Office found that "there are no grounds for initiating and conducting pre-trial criminal proceedings, as the established behaviour of the reformatory officer does not constitute an offence under

supervision," is questionable. Boychinovtsi Reformatory (2011), *Analysis of the Activity of the Management and Team of the Boychinovtsi Reformatory in 2011*, p. 11.

1 All quotes are taken from interviews with inmates at the Boychinovtsi Reformatory, conducted on 3-4 April and 10 July 2014.

2 Ministry of Justice (2013), *Report of the Inspectorate under Article 46 of the Administration Act Regarding an Inspection in the Boychinovtsi Reformatory, covering the period 1 June 2011 – 30 September 2013*, pp. 9-10.

3 *Ibid.* p. 9.

the Criminal Code and should therefore be classified as an internal disciplinary offence.”¹ A little later, the employee was dismissed on the grounds of eligibility for pension. Such cases strongly discourage inmates from highlighting future cases of abuse, and instil a sense of impunity in the security officers, leading to an environment tolerating abuse.

Inmates are insulted on a daily basis with expressions like “gypsy”, “mangal” (*derogatory words for Roma*), “scum”, “worm”, “stinky”, “piece of shit”.² In this regard, one of the boys described some of the reformatory officers as “Nazis”, as they keep insulting him because of his Roma ethnicity. The children confide that they are constantly humiliated: “Everyone insults us in any way they want.” “They use insults, referring to our mothers.” The inmates cannot express their opinions freely. They are required to be completely obedient and to passively endure humiliation in the form of verbal aggression and physical violence. The children interviewed confide that some inmates are given preferential treatment, and are considered by others to be “close to the employees” and “informants”.

The children placed in the Boychinovtsi Reformatory reported daily **physical and psychological harassment**, also among inmates. Some are victims, other are witnesses, or both. A girl from the Sliven Reformatory also revealed that there is violence among the women in the prison. Character incompatibility and competition for leadership, dominance, and control are often reasons for conflict. Another common reason for conflict among adolescents is the unregulated exchange of possessions among them. The boys actively hide their conflicts because they do not want to “get in trouble” with the employees. This pertains to abusers and abused alike. Abusers attack in places where “it will not be seen” and threaten with violence at every opportunity – in the rooms, in the yard, or at school. Punches and beatings take place in victims’ rooms. Insults, psychological harassment and physical violence among children take place out of the security officers’ sight. Nobody dares to complain. Employees learn about cases of violence from the “informants”. According to the BHC, in most cases, everyone is a victim, regardless of whether they are abusers or abused. A boy, a victim of systematic abuse from another adolescent, confided that he would rather endure the abuse, as “the other option is worse”. The stronger children, physically and psychologically, steal possessions, including clothes and shoes, and “look for any opportunity” to abuse weaker ones, or those who stand up to them.

Conflicts among the Sliven Prison inmates are common. They are not hidden from employees. On the contrary, they often start in front of them. In many cases, the women use verbal threats and insults, but sometimes these can escalate and result in fights in the cells, yard, or even in bathrooms during showering. There are women, victims of abuse, who are systematically ill-treated by other inmates.

1.11. Discrimination and violations of other fundamental rights

Foreign nationals deprived of liberty

Adolescent foreign nationals, who are offenders, are an especially vulnerable group. The BHC identified a case in which a judge approved a plea bargain in a criminal case between a Kurdish boy and the Prosecutor’s Office for effective deprivation of liberty in a court hearing, in which translation from Arabic, a language not understood by the boy, was provided.³ The lack of translation into a language, understood by the defendant, constitutes a violation of

1 *Ibid.* p. 9-10.

2 The quotes are taken from interviews with inmates from the Boychinovtsi Reformatory, conducted on April 3-4, 2014.

3 General Toshevo District Court (2014), Agreement No. 36 from 31 May 2014 regarding Criminal Case No. 134/2014.

law, which guarantees the right to a fair trial, in accordance with Article 6 of the European Convention on Human Rights.¹

This vulnerability is also evident after the placement of foreign nationals in institutions for deprivation of liberty. Foreign nationals are a new phenomenon in reformatories. While there were no foreign nationals in 2011 and 2012, five were placed in the Boychinovtsi Reformatory in 2013.² All of them have been sentenced for attempts to leave the country without being duly authorised by the respective authorities.

The most flagrant problems of this group of persons deprived of liberty derive from the lack of information or opportunities to communicate in a language, other than Bulgarian.³ The prison administration has no, or insufficient, foreign language skills. Neither of the two reformatories has literature in foreign languages. In the Boychinovtsi Reformatory, foreign nationals do not have access to formal education, but attend literacy courses where they can learn elementary Bulgarian. They are forbidden to make or receive phone calls in a language other than Bulgarian, which means that foreign nationals have no means to contact their families. This deepens their isolation and leads to serious emotional pain and suffering.

Homophobic attitudes

Adolescent boys who engage in sexual relations with the same sex in the reformatory are another highly vulnerable group, bearing in mind they are at a significantly higher risk of sexual abuse⁴ and the lack of access to condoms.⁵ The staff of the Boychinovtsi Reformatory, however, does not recognise this vulnerability and instead views homosexuality as something that increases the risk of “intrigues”⁶ and “fights”, and so they implement conflicting “prevention” measures. For example, in April 2014, the BHC found unofficial rules placed in a prominent spot called “Adolescents are forbidden to”, which forbids inmates from “engaging in homosexual activities”. According to an inspector pedagogue in the reformatory, disciplinary sanctions are only imposed on those maintaining sexual contact with “multiple partners”.

As evident from the activity reports from the Boychinovtsi Reformatory, there is a list of adolescents, with whom inspector psychologists must work with and prepare regular reports. Along with persons with mental disorders and substance abuse, the list includes adolescents with “a tendency towards homosexual behaviour.”⁷ Reports from the Boychinovtsi Reformatory do not include clarifications as to what constitutes “a tendency towards homosexual behaviour”. The very mention of the sexual orientation of adolescents, without it having any

1 ECHR, Art. 6(3).

2 Boychinovtsi Reformatory (2011, 2012, 2013), *Analyses of the Activity of the Management and Staff of Boychinovtsi Reformatory in 2011, 2012, 2013*.

3 In this regard, the management of the Boychinovtsi Reformatory gives the following clarification: “The foreigners receive a written copy of their rights and obligations when they enter the institution. During their stay, their English teachers explain them to the boys. We had one boy who only spoke Farsi and we spoke with him through another adolescent.” Tsocheva, Mimi, Statement regarding the findings in the report of the BHC from the director of the Boychinovtsi Reformatory.

4 According to a study, carried out by the Department of Justice of the USA on lesbian, gay, bisexual and transsexual (LGBT) people deprived of liberty, they are at a 10-fold increased risk of falling victim to sexual abuse than heterosexuals deprived of liberty. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics (2013), *Sexual Victimization in Prisons and Jails Reported by Inmates: National Inmate Survey 2011-12*, p. 18, available in English at: http://www.bjs.gov/content/pub/pdf/svpjri1112.pdf?utm_source=JDI+Enews&utm_campaign=8a7153a8ab-BJS+Report_5_15_13&utm_medium=email&utm_term=0_e46e1c4094-8a7153a8ab-27989797. See also United Nations Office on Drugs and Crimes (2009), *Handbook on Prisoners with Special Needs*, pp. 103-122, available on: http://www.unodc.org/pdf/criminal_justice/Handbook_on_Prisoners_with_Special_Needs.pdf.

5 Information provided by the medical personnel at the Boychinovtsi Reformatory.

6 Information provided by an inspector pedagogue at the Boychinovtsi Reformatory.

7 Boychinovtsi Reformatory (2013), *Analysis of the Activity of the Management and Staff of Boychinovtsi Reformatory in 2013*, p. 8.

relevance to their deprivation of liberty, constitutes an act of direct discrimination under the Protection Against Discrimination Act,¹ when considering that the tendency of children towards “heterosexual behaviour” is not discussed in any way.²

Privacy of correspondence

During its visit to the Boychinovtsi Reformatory, the BHC found that all incoming and outgoing correspondence of adolescents, irrespective of their status – defendants, accused or sentenced – is subject to automatic monitoring and censorship from prison authorities. Complaints, submitted by the adolescents to institutions outside the reformatory, are treated likewise. The BHC witnessed how an adolescent submits a letter in an open envelope to a Social Activities inspector, which then remained with the inspector pedagogue for a review of the text before sending. Actions like these by the administration of the reformatory are unlawful³ and make adolescents extremely vulnerable. This is because the conditions in a closed regime, combined with the lack of privacy of letters and complaints, make it impossible to effectively communicate problems and violations in the institution, and render existing mechanisms for contact with the outside world worthless.

Regarding these findings, the BHC alerted the Ministry of Justice about unlawful practices. As a result of this signal, the Ministry of Justice conducted an inspection, which identified “[one] violation [...], constituting the unlawful monitoring of the contents of the incoming correspondence of a person, deprived of liberty, in their absence.”⁴ The inspector pedagogue who had violated the right to privacy was held disciplinarily responsible, and the reformatory administration received guidelines for maintaining constant control and optimising the procedure for sending and receiving correspondence.⁵ Despite the findings and subsequent actions on part of the reformatory, however, the indications regarding violations are numerous and are not investigated. Furthermore, the administration is not held responsible for allowing such unlawful practices.

1.12. Inspections

According to the law, the control over the execution of penalties shall be exercised by state authorities, organisations and non-governmental organisations.⁶ The widest powers in this respect are given to the Execution of Penalties Directorate General, which leads, controls and inspects almost all functional aspects of institutions for deprivation of liberty, including reformatories – protection, security, disciplinary practices, health care services, social activities and educational programmes. However, as inspections are internal, they often do not reflect the real situation in the institutions for deprivation of liberty. Another inspecting institution is the Inspectorate of the Ministry of Justice. The inspections, carried out by them, cover a broad range of topics, lengthy time periods (six-seven years back in time), and are based on information provided by reformatory employees.⁷ As a result, inspections are not sufficiently objective, thorough and effective in terms of preventing violations in reformatories.

1 Law on Protection Against Discrimination (2003), Art. 4(2).

2 In the same way, see Sofia City Court, Decision No. 210 from 8 December 2008, regarding Second Instance Civil Case No. 613/2008. In this court proceeding, the Sofia City Court ruled that the refusal of the Prosecutor’s Office to propose a female inmate for early release, motivated by her sexual orientation, constitutes an act of direct discrimination.

3 Constitution of the Republic of Bulgaria (1991), Art. 34; Criminal Code (1968), Art. 171; Rules on the Implementation of the Law on Execution of Penalties and Detention (2010), Art. 75 and Art. 278(1) and (2).

4 Ministry of Justice (2014), Letter to BHC, outgoing No. 66-00-70 from 15 May 2014.

5 *Ibid.*

6 Law on Execution of Penalties and Detention (2009), Art. 4(2).

7 Ministry of Justice (2014), *Report from the Inspectorate under Article 46 of the Administration Act from an inspection carried out in the Sliven Prison, covering the period from 20 November 2008 to 12 March 2014*; Ministry of Justice (2013), *Report from the Inspectorate under Article 46 of the Administration Act from an inspection, carried out at the Boychinovtsi Reformatory, covering the period 1 June 2011 to 30 September 2013*.

With regard to hygiene, healthy and safe working conditions, the quantity and quality of food, and other aspects of living conditions, reformatories are excluded from the scope of control exercised by the specialised state health inspectors.¹ Instead, these functions are performed by in-house medical specialists in the penitentiaries, whose employer is the director of the reformatory/ prison. This dependence leads to inspections, which are less critical and objective.

According to the law, public control over the operation of the penitentiaries shall be carried out by monitoring committees.² The Committee of the Municipal Council at Boychinovtsi consists of seven members. One member is a representative of the Boychinovtsi Reformatory, and no members are from civil society or a religious organisation.³ One of the members of this Committee are obliged to participate in the meetings of the Execution of Penalties Committee of the Boychinovtsi Reformatory, but the other legally provided powers, related to the exercise of public control, are not exercised.⁴ Independent monitoring is carried out, albeit rarely, by the Ombudsman, acting as a National Preventive Mechanism, and by the European Committee for the Prevention of Torture.⁵

Regardless of the existence of inspecting authorities at several levels, the BHC found numerous violations of international standards and the children's rights in reformatories. These violations have not been addressed until now. Some cases of serious violations, like the automatic monitoring of telephone conversations in the Boychinovtsi Reformatory, are not hidden by the reformatory management, and are even reported in the annual reports of the institutions.

With their failure to penalise such practices, the Execution of Penalties Directorate General and the Ministry of Justice demonstrate their weakness and inefficient control over these institutions. Even when there are findings and recommendations, they are not made public, which violates the legal stipulation that "findings from inspections, regarding the conditions and problems in the penalty execution system, are made publicly available."⁶ Prisons and reformatories prepare annual activity reports, which also remain unpublished and only for internal use.

At the same time, reformatories do not fall under the scope of activities, performed by the State Agency for Child Protection. This discriminatory practice, arising from flaws in the Child Protection Act,⁷ deprives children in reformatories from access to the child protection system and from effective control with regard to respecting their rights. The Minister of Justice is the authority responsible for the protection of children in the reformatories but its function is limited "to providing [only] the security of the children who are deprived of their liberty", but not their rights.⁸

1 Law on Execution of Penalties and Detention (2009), Art. 150(1).

2 *Ibid.*, Art. 171.

3 Information provided by the chair of the Municipal Council of the Boychinovtsi Municipality.

4 Law on the Execution of Penalties and Detention (2009), Art. 171(2): Members of Monitoring Committees can visit the institutions for deprivation of liberty, meet the persons deprived of liberty, get acquainted with the documents they need, request and receive information by the administration of institutions for deprivation of liberty.

5 The first visit of the European Committee for the Prevention of Torture to the Boychinovtsi Reformatory took place in March 2014.

6 Law on Execution of Penalties and Detention (2009), Art. 4(3).

7 Child Protection Act (2000), Art. 17a.

8 *Ibid.*, Art. 6a(4)(4)(b).

2. DETENTION FACILITIES

The regime in detention facilities, where detention on remand in pre-trial criminal proceedings and criminal trials is served, is the most restrictive regime of long-term detention to which adolescents in Bulgaria may be subject by law. Detention facilities are in no way adapted to the specific needs and particular vulnerability of adolescents and have a considerable traumatising effect on them. As part of a pre-trial proceeding, a child's detention under arrest may last for the same amount of time as the detention of an adult – up to a year and a half depending on the type of the offence. During that period, adolescents are not allowed to leave the detention facility. Adults and adolescents are held in the same detention premises; the principle of separate placement is frequently ignored. Detention cells are very small and not suitable for children, often with no access to natural light. The access to sanitary premises is considerably limited and detainees are forced to use buckets and bottles for their physiological needs. Most detention facilities provide no opportunities for outdoor exercise, while others lack even indoor recreational premises. Hence, for months the children may be forced to spend time only lying or sitting on a bed which seriously affects their health. Children have no access to education or any other meaningful activities throughout their detention. Visits from family and friends are allowed only twice a month and at most facilities physical contact between the adolescent and their visitors is not possible. BHC received information concerning numerous cases of violence inflicted on detained children by guards. At the same time, no efficient complaints and appeals mechanism has been put in place in accordance with the needs of the detainees who have not reached majority age. Moreover, no state body is responsible for ensuring that the rights of the children detained on remand are not violated. The system for the execution of punishments fails to recognise and address the issues faced by adolescents at the detention facilities of the Ministry of Justice.

2.1. General information

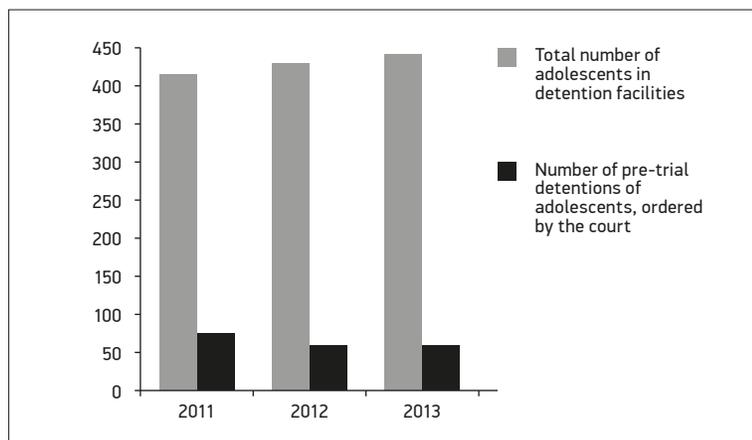
Detention facilities are places for forced detention of persons, including those under legal age – between 14 and 18, who are put on remand in pre-trial proceedings and during trial with a prosecutor's order for detention of up to 72 hours or based on other legal grounds associated with the requirements of the criminal procedure.¹ There are 42 such operating detention facilities in Bulgaria, furnished with 603 cells with a total capacity to hold 1,856 detainees.²

¹ Law on Execution of Penalties and Detention (2009), Art. 241.

² Ministry of Justice, Execution of Penalties Directorate General (2014), Information available in Bulgarian on: www.gdin.bg/Pages/Arrests/Default.aspx.

As part of this research, the BHC visited 10 detention facilities in the cities of Burgas, Pazardzhik, Pleven, Plovdiv, Ruse, Sliven, Slivnitsa,¹ Varna, Vidin and the Detention Facility located at 42 G.M. Dimitrov Boulevard in Sofia (hereinafter: the Sofia Detention Facility).

Figure 1. Number of adolescents in detention facilities and number of pre-trial detentions of adolescents, ordered by the court (2011-2013)



Source: EPDG, SPOC

Over the last few years, there has been a slight upward progression in the overall number of adolescents at detention facilities, as can be seen in Figure 1.² At the same time, the Prosecutor's Office reports a decrease in the number of pre-trial detention measures of adolescents, ordered by the court.³

Remand in detention facilities suggests a very restrictive regime. With some minor exceptions, the legal procedure for sending adolescents to custody on remand and the conditions of placement at the detention facilities are identical to those applied to persons of legal age. The law does not envision a distinctive approach that acknowledges the differences in age, maturity, emotional and educational needs between children and adults. This unavoidably results in negligence regarding the specific rights and interests of the more vulnerable group.

2.2. Placement

Table 7: Number of adolescents at detention facilities in 2013 distributed according to the duration of their stay

Adolescents with duration of detention up to 72 hours	Adolescents with duration of detention up to 2 months	Adolescents with duration of detention between 2 and 6 months	Adolescents with duration of detention between 6 and 12 months	Adolescents with duration of detention over 1 year	Total number in detention
125	87	212	20	0	444

Source: EPDG

- 1 According to the information received from Ministry of Justice, Execution of Penalties Directorate General the Detention Facility in Slivnitsa is closed and no longer functions.
- 2 Information received from the Ministry of Justice, Execution of Penalties Directorate General under APIA with Ref. No. 12953 from 4 November 2014.
- 3 Information received from the Supreme Prosecutor's Office of Cassation under APIA with Ref. No. 7367 from 29 September 2014.

Table 7 presents the number of adolescents at detention facilities in 2013 distributed according to the duration of their stay. Particularly striking is the large number of adolescents remanded for between two and six months – nearly 50% of all adolescents at detention facilities in 2013 and twice the number of those on remand for up to two months. Such prolonged isolation experienced by adolescents in detention facilities constitutes a serious problem which has been fully neglected by institutions and society. The reason behind it may be the absence of standards set up to limit the length of remand such as, for example: priority hearing of criminal trials in which the defendant or accused is an adolescent, limitations concerning the maximum length of remand for adolescents and efficient access to legal aid for the benefit of applying to the court for revision of the measure.

The overwhelming majority of adolescents in detention facilities in 2013 are boys, with the number of girls being fewer than 2%.¹ The most frequent types of offences related to detention include theft and robbery.² On the other hand, research conducted by the BHC has found that adolescents remanded in detention facilities in areas at the state border (Slivnitsa, Vidin, Ruse) are without exception foreign citizens accused of attempting an illegal border crossing.

Placement with the measure for detention on remand

Pre-trial detention is the most severe measure for procedural coercion adopted in order to achieve one of the following purposes: “preventing the accused party from absconding, from committing a crime or from obstructing the execution of a sentence that has entered into force”.³ According to court practice, however, there are cases in which these objectives are substituted by others for which the law does not provide and are instead associated with punitive aims. For example, the District Court in Gotse Delchev imposed a remand measure on an adolescent based on the argument that “the only possible way to correct the behaviour of the accused is to physically deprive him of the possibility to continue his random thefts and to make him rethink his future actions”.⁴ The provision that the remand measure shall be taken in exceptional cases⁵ is not always observed either. It is important to note that the legislation provides for restrictive measures other than the deprivation of liberty. The Bulgarian Criminal Procedure Code envisions such measures⁶ but their application cannot be studied because the Prosecutor’s Office does not collect statistical information and is unable to provide data about imposed restrictive measures other than remand measures.⁷

The law provides for the maximum period of remand only in general terms and without differentiation with respect to adolescents. At least one case has been identified where the adolescent is released several days after exhausting the maximum period of remand for a particular crime as set by law. The length of remand depends on the length of the pre-trial proceeding or that of the trial because an obligation for priority, or expeditious processing of criminal cases for offences committed by adolescents, is not legally defined. The longest remand period of an adolescent at a detention facility established by the BHC is served by an accused remanded in Plovdiv for more than 10 months.

1 Information received from Ministry of Justice, Execution of Penalties Directorate General under APIA with Ref. No. L-9287/2 from 1 October 2014.

2 For example, about 75% of all people who were placed in a facility of the Detention Facility – Sofia at some point in 2013 were put on remand due to property crimes. The information is provided by the director of the Sofia Detention Facility.

3 Criminal Procedure Code (2006), Art. 57.

4 Gotse Delchev District Court, Protocol No. 2180 from 22 June 2012 on Public Criminal Case No. 505/ 2012

5 Criminal Procedure Code (2006), Art. 386(2).

6 *Ibid.*, Art. 386(1).

7 Information received from Supreme Prosecutor's Office of Cassation under APIA with Ref. No. 7367 from 29 September 2014.

A risk assessment should be conducted with respect to each newly remanded individual. A good practice is the inclusion in assessment forms of a study of possible racist and homophobic attitudes of the detainees (in Vidin and Burgas). However, no special guidelines exist to facilitate risk assessment of all newly remanded adolescents in view of their higher vulnerability. The problems and difficulties encountered during the assessment which seriously affect adolescents include: too few guards who are often ill-trained to perform the assessment, a shortage of premises where the assessment discussion may take place, failure to provide language interpreting for remanded foreign citizens and a lack of preliminary information about the remanded individuals and formality during assessment.¹ In the course of research, the team discovered that risk assessment is not conducted for most adolescents remanded for 72 hours.

Remanded individuals sign a declaration confirming that they are familiar with their rights, the rules of internal order at the detention facility, the procedures for filing complaints and applications, etc. but they do not receive a copy of the rules. Instead, they are introduced to rules verbally by the guard on duty, which creates conditions for inaccurate communication of information. The position expressed by the Bulgarian Ombudsman confirms this observation by concluding that “[i]t is evident that the verbal method of communication by employees responsible for ensuring respect for these rights creates a conflict of interest and it is only formally conducted.”² Rules of internal order were put on display on the cell walls or at the outdoor recreation space in some detention facilities but they either contained obsolete information (Vidin, Pazardzhik) or were partially destroyed and impossible to read (Plovdiv). The rules of internal order at all detention facilities are only in Bulgarian.

2.3. Judicial review and legal aid

Participation of the defence counsel in proceedings concerning the remand measure is mandatory.³ Immediately upon remand, the prosecutor should inform the detainee about his/ her right to defence and provide against signature a form containing information about the right to legal assistance of his/ her own choosing or to legal aid.⁴ Most adolescents on remand cannot afford legal aid, so their representation is provided by public defenders under the Legal Aid Act.

Usually the first meeting between the defender and the accused is in the courtroom during the hearing on the remand measure without the possibility for a preliminary conversation. Most children explain that they distrust their lawyers and think of them as “people of the police”. Only those adolescents, who choose their own legal assistance, are visited by their lawyer during remand. Moreover, not all detention facilities have special premises for visits by the lawyer, which guarantees the confidentiality of the exchange between lawyer and client (Slivnitsa, Sliven, Pleven). Normally, meetings with lawyers at these facilities take place in the corridors in the presence of guards.

1 Ministry of Justice (2014), Execution of Penalties, Directorate General, *Activity report of the Unit for security and safety in detention facilities at the Execution of Penalties Directorate General – 2013*, p. 5.

2 Ombudsman of the Republic of Bulgaria (2013), *Annual Report of the Ombudsman of the Republic of Bulgaria for their activities in 2012 as National Prevention Mechanism*, pp. 23-24, available on: www.ombudsman.bg/documents/Report%20NPM%202012.pdf.

3 Criminal Procedure Code (2005), Art. 94(1)(6).

4 Legal Aid Act (2006), Art. 30(2).

The case of Peter

At the end of October 2013, Peter, an adolescent boy was put on remand in a detention facility.¹ He was charged with a serious offence in a pre-trial proceeding, for which the maximum length of remand is a year and a half.

At the time when the remand measure was first imposed by the court, Peter was placed in a hospital with serious injuries. Up to that point, he had a clean criminal record, no registered delinquent acts, and had been a good student who lived with his parents. The court ignored these circumstances and imposed the severest measure. Later, the measure was confirmed three more times, although the court admits there was no indication that the accused might abscond or obstruct the investigation. The arguments of the defence regarding Peter's right to education and access to adequate medical help were not taken into consideration. As the detention facility provided no sensible activities or mental stimuli, limited his contacts with the outside world and deprived him of the possibility for physical activity, the boy's health and mental state deteriorate. Only after the completion of his 10-month detention there, Peter was transferred to the Boychinovtsi Reformatory, still without an indictment.

2.4. Material conditions

In 2013, some detention facilities were overcrowded, in particular those in Svilengrad and Ruse.² Many detention facilities do not have cells specially adapted for adolescents (with the exception of the detention facility in Plovdiv built in 2007). During the BHC's monitoring visit in the Slivnitsa Detention Facility, adolescents were accommodated separately, but the conditions of the cell were completely inadequate: a very small cell furnished with only two bunk beds and a narrow space between them just enough for detainees to be able to walk out of the cell or around their living space. **Adolescents also often have to share cells with adults.** At the Plovdiv Detention Facility, a child was placed in a cell with another adolescent and an adult. The child claimed that he had signed a declaration of consent to share the cell with an adult. He preferred to be placed together with adults, as it was difficult for him to get along with peers of his own age. According to a staff member at the detention facility, in such cases the adult is specifically chosen to control the conduct of the adolescents. A psychologist was not consulted at the time the decision was made to place an adolescent with a detainee of legal age. At the Pleven Detention Facility, adolescents on remand are placed with adults. According to the guards, children are placed with an adult for safety reasons. Due to their precarious age and their vulnerability, detention staff explain, adolescents are more prone to attempt suicide. An employee at the Plovdiv Detention Facility sees the occurrence of such attempts and their frequency as a result of the conditions in the facility and the limited number of visits.

The conditions in the cells are intolerable: rusty iron beds; worn-out beddings – iron and/or plastic furniture which in many cases needs repair and does not meet inmates' needs;³ thin and filthy mattresses, worn-out and filthy linen which the detainees use to hang their washing by tearing them down, pillows often without pillowcases. The blankets are very worn down. At the Burgas Detention Facility, there is not even any linen. During most of its visits to detention facilities, the BHC's team saw empty cells where no one resided because there

1 The name of the person has been changed.

2 Information received from Ministry of Justice, Execution of Penalties Directorate General under APIA with Ref. No. L-8111 from 15 August 2014.

3 A child placed in the Plovdiv Detention Facility complains of pain in the back and waist which, according to the child, are triggered by the uncomfortably hard beds and thin mattresses.

were no adolescents on remand at the time. Only the Plovdiv Detention Facility provides much better conditions than the rest of the facilities visited by researchers.¹

The hygiene in the cells is very poor. Detainees are responsible for maintaining hygiene but they do not receive adequate conditions and materials to do so. The flooring is old and worn down. The cell walls are very unclean, damp and covered in mould. The windows are also unclean and this further obstructs the access of sunlight into the cell. **No efficient ventilation or cooling system is in place.** The premises smell of stale air. At all detention facilities, detainees smoke in their cells and the lack of ventilation additionally complicates the situation; the walls have become dark as a result of the cigarette smoke.

The heating in winter is inefficient. A child at the Plovdiv Detention Facility explains that he has resided in two different cells on two different floors. In the first cell, the radiator was out of order, so it was very cold even when sleeping covered with two blankets at night. Then he was moved to another floor where it was too hot and in the end he spent the entire winter in the cell with the window open while he slept. Some detention facilities occupy the semi-underground floor where **access to direct sunlight is limited.** An example of this is the Pazardzhik Detention Facility where in some of the cells daylight streams in only through glass bricks. At the Slivnitsa Detention Facility, cells have no windows and daylight enters from the windows across the corridor. The detention facilities in Sliven, Pleven, Burgas and Ruse provide no direct access to sunlight although they are located on floors above the ground level. During the night, special lighting is turned on.

Most detention facilities have **shared sanitary premises² in a poor condition.** Cells have no toilet or sink and detainees' access to such facilities is limited.³ Each floor has a **common bathroom**, which is insufficient for the large number of detainees that share it, and at some detention facilities, the bathrooms are in a poor condition, for example, the detention facilities in Slivnitsa, Pazardzhik, Pleven, Burgas, and Vidin. The shower in the detention facility in Pazardzhik is disassembled when the bathroom is not in use for safety reasons – so as not to be used by detainees to harm themselves or others. Only detainees who are in charge of maintaining the hygiene have access to the bathroom outside bathing hours. In Vidin there is only one toilet with a single shower for the entire detention facility; the shower is controlled from the outside. There is a window on the bathroom door which deprives detainees of privacy while taking a shower. Detainees use bathing hours to wash their clothes. There are no conditions provided for drying the clothes. According to a child placed in the Pleven Detention Facility, he hangs his clothes in front of the cell which is considered a privilege compared to most other detainees who have to do so in the toilet. A child remanded in the Plovdiv Detention Facility explains that they stretch linen in the cell to hang their clothes to dry because there is no other way to do it. At the Pazardzhik Detention Facility, detainees leave their clothes to dry at a short distance away from their cells.

According to the rules, adolescents bathe separately from the adults but violations have been identified. At the Plovdiv Detention Facility, a child recalls situations in which, with his spoken agreement, he bathed with detainees of legal age. Once, staff members informed him that he would bathe with a detainee of legal age without consulting him and the child refused. He bathed on his own in the cell by pouring water on his body. According to the child, he often

1 The only visible problem is condensation on the pipes of the air-conditioning which are located on the ceiling of the corridor on the first floor. Around the door frames there are black smears formed due to smoking inside the cells.

2 The sole exception is the Plovdiv Detention Facility where the building has been fully renovated and provides good material conditions.

3 The sole exception is the Plovdiv Detention Facility where there is a toilet and a sink. There is hot water for about half an hour early in the morning and in the afternoon. Sanitary equipment is also available in the detention facility in Varna but there is only cold running water and the cells need to be repaired.

resorts to this type of bathing because the cell is very dusty, the air is not clean and the child may otherwise bathe only twice a week. According to staff members at Detention Facility – Sofia, some adolescents often refuse to use the bathroom, especially during winter.

The outdoor recreation space, or the so-called *kare*, does not exist at some detention facilities (Pleven, Sliven). Elsewhere, it is not outdoors (Pazardzhik¹, Vidin) or it is simply a space with an open ceiling (Sofia, Slivnitsa, Varna). Indoor recreation premises are not large enough for one to be able to move around in with comfort. The indoor walking area at the Slivnitsa Detention Facility is as small as 1.5 m² by 2.5 m², just enough to provide space for a person to stand. An inspection by the Regional Health Inspectorate – Vidin concludes that the available area of 23 m² at the detention facility in Vidin is sufficient for an indoor walking area, that it allows enough space for exercise of the musculoskeletal system and that the three windows with an overall area of 4.5 m². provide enough sunlight. No more than five people are allowed to be present simultaneously during walks in this area. According to staff members at the Pleven Detention Facility, detainees are allowed to spend more time in the corridors or in the bathroom to compensate for the lack of a *kare*. According to staff members at Detention Facility – Sofia, adolescents frequently refuse to walk in the *kare* during their recreation time, especially during winter.

Adolescents put on remand in the detention facilities in Plovdiv, Pleven and Slivnitsa complain about the **bad quality and insufficient quantity of the food**. They express serious dissatisfaction with the taste of the food. The children confirm that at times they have gone hungry for several days because they find the food looks and tastes “disgusting”.² Furthermore, the children also complain about the conditions in which they have to eat. Usually they put newspapers on the table before they eat because it is “very rusty”. The tables are too small and they often have to hold their plates in their hands while they eat, as the surface is too small for everyone’s plates. Access to food outside meal times is possible by purchasing food individually from the so-called indoor lavka, or snack shop, with the help of a guard. The lavka may be accessed twice a month on average. The children state that **the conditions for storing food in the cells are unacceptable**. They have to store on newspapers on the floor any products they buy at the lavka or products brought by relatives and friends during their visits. They have no access to a fridge. Adolescent foreign citizens on remand at the Slivnitsa Detention Facility explain that they have no access to food outside meal times because they have no financial means available.

The visiting premises are inadequate. They lack the necessary privacy for visits of the family and friends, or a lawyer. Some detention centres lack such premises altogether. The space designated for visits at the Slivnitsa Detention Facility has a small booth where the detainee is seated in a space sufficient only to accommodate one chair while the visitor stands up in front of the booth, that is, not in a separate room, but rather in the lobby of the detention facility. No conditions for securing privacy are provided and the conversation can be easily overheard. At the Pleven Detention Facility the premise for visits consists of a cell where the detainee is placed while the visitor is in front of the cell which is also positioned in the lobby of the facility, thus providing no conditions for privacy.

2.5. Health care

The medical services provided to adolescents on remand in detention facilities are no different from those available to remanded adult women and men. The main medical services in deten-

1 The indoor space for walks at the Pazardzhik Detention Facility has been there for five years. Before that the detention facility had no such space.

2 A boy placed in the Plovdiv Detention Facility complains about the insufficient quantity of food at breakfast. The child explains that at lunch they are served rice in “condensed form” together with tripe which is not well cooked and lard”.

tion facilities are provided by a physician assistant or a medical doctor at the facility. Very few of the detention facilities visited during the research (the detention facilities in Pleven, Sofia and Plovdiv) employ a doctor as staff member, while, in most other cases, the employed medical specialist is a physician assistant. The Slivnitsa Detention Facility does not employ a medical specialist as part of the staff and, if the need arises, one from Sofia is requested.¹ None of the detention facilities visited by the team has medical staff available overnight. Hence, during the larger part of the day, as well as on weekends, access to a medical specialist is at the discretion of the guards. In case of emergency, access to a medical specialist may be requested by the detainee and medical care should be provided within 24 hours or on the first working day if the request is made during weekends or holidays.² Access to external medical care in detention facilities is possible only in exceptional cases the hypotheses of which are exhaustively outlined in the corresponding legislative framework.³

Upon placement, all persons remanded in detention facilities receive public health insurance coverage which, to a large extent, contributes to providing medical care in the facility. According to medical staff, the health status of detainees varies, which includes also persons with serious medical conditions who need daily medical care. The fact that most such facilities only have one physician assistant poses a big challenge to the provision of medical services to detainees who need particular medication prescribed only on special prescription forms (yellow and green prescriptions) which can only be issued by medical doctors.⁴

Upon placement, all detainees undergo an obligatory medical examination. Apart from being important for the life and health of the detainee in the detention facility, these examinations also help identify cases of ill-treatment by the police at the time of the arrest or during custody. The law prescribes that this examination should be performed “immediately”.⁵ In reality, however, this is not always the case, especially regarding detainees arriving outside working hours or during weekends and holidays. At the Slivnitsa Detention Facility all entry examinations are performed by the centre for emergency medical intervention in the town.

In detention facilities where there are medical specialists there are also medical offices. In the Pleven Detention Facility, the room used as a medical office is extremely narrow. In most other detention facilities (mainly with the exception of the Plovdiv Detention Facility), the furniture is obsolete and dysfunctional and medical equipment needed to provide quality medical care is not available.⁶ Medication prescribed by the medical specialist is administered by the guards, which contravenes international good practices.⁷

The material conditions in the detention facilities (for example in the Detention Facilities in Sliven and Slivnitsa) are extremely poor. Most places provide no conditions for spending time outdoors or finding another way to exercise or access direct sunlight and fresh air.⁸ Many of

1 The Slivnitsa Detention Facility is part of the Sofia Detention Facility Unit.

2 Ministry of Justice, Execution of Penalties Directorate General (2010), Order No. 1-6399 from 26 July 2010 regarding internal order at detention facilities, § 8.7.

3 Law on Execution of Penalties and Detention Penalties (2009), Art. 135(1): Persons deprived of freedom shall be sent to medical facilities outside the places for deprivation of liberty where: 1) the medical facilities at the places for deprivation of freedom do not provide conditions for the necessary treatment; 2) treatment of infectious diseases is needed; 3) specialised tests and consultation examinations are required.

4 Narcotic Substances and Precursors Control Act (1999), Art. 60(4).

5 Ministry of Justice (2010), Ordinance No. 2 from 22 March 2010 on the Terms and Procedure for Medical Services at Places for Deprivation of Liberty, Art. 10(1).

6 For example, the physician assistant at the Vidin Detention Facility received a glucometer only two months before the visit of the BHC, which took place on 10 July 2014 although persons with diabetes receive placement in the facility. Despite the fact that in view of material conditions, the medical office at the Plovdiv Detention Facility is new, according to staff ECG medical equipment is still lacking as well as an oxygen bottle.

7 For more information, see subchapter A.1. Reformatories.

8 For more information, see 2.4. Material conditions of the current subchapter.

the children spend months in these conditions, which puts their health and life at risk. Moreover, smoking is allowed in detention facilities. Considering the absence of efficient ventilation, indoor smoking also creates a serious risk for the health of remanded adolescents.

A major problem in detention facilities, also acknowledged by the Execution of Penalties Directorate General¹, is the lack of psychological care for detainees. Each newly placed individual undergoes risk assessment. However, it is performed by guards who have no psychological education; a probation inspector is contacted to provide their services if necessary. This applies for most detention facilities, which were visited, including the detention facilities in Burgas, Varna, Sliven, Ruse and Vidin. Adolescent detainees in detention facilities are more vulnerable in view of the risk of suicide or self-harm while the lack of a psychologist on staff puts the children's life and health at risk.

The case of Boyan

Boyan was placed in a detention facility with serious injuries to his hands. Before being put on remand, he was hospitalised with deep cuts on his palms, which healed gradually during his time at the detention facility. Medical staff at the facility changed his bandages but the child needed further hospital treatment, which was denied. In consequence of the lack of adequate medical care, the fingers of the remanded boy cannot function properly.

Boyan complained numerous times about pain in his lower back and his back. The doctor at the facility assigned therapy but the problems persisted and became stronger and even unbearable. Despite his numerous complaints, the boy did not receive the necessary care and no further examinations had been re-assigned or performed at a hospital with the necessary medical equipment, in order to determine the nature of his condition. To numb the pain, the child decided, without consultation, to take larger doses of the prescribed analgesics.

According to the child his back pain, in addition to his very long stay in the facility, had contributed to his unstable psychological condition. In the course of his detention, Boyan had not been seen by a psychologist. He felt unstable more frequently, and, as he puts it, "[he] could not take it anymore". He had lost track of the time passed since he was put on remand and was even unsure about the current day of the week. Boyan admitted that there were moments when he found it difficult to identify his location – where he was – especially in the morning. He was sceptical and distrustful of staff members at the detention facility and described this as the reason he had not spoken about his psychological problems. The boy was thinking they would not understand as "[t]hey are indifferent to the pain I experience, so why would I share my feelings with them?!"

Adolescents on remand at detention facilities have no real access to independent medical services. Such access, however, is essential to confirming instances of ill-treatment by staff at the detention facility. Although children deprived of liberty and residing at the Boychinovtsi Reformatory mention instances of violence at detention facilities, the researchers have been unable to find examples of medical staff identifying incidents associated with ill-treatment or violence by staff at the facility.

¹ Ministry of Justice, Execution of Penalties Directorate General (2013), *Activity report by the unit for security and safety in detention facilities - 2013*.

2.6. Activities and education

Detention facilities provide **no organised activities or educational services** to detained adolescents.¹ Few activities are available during placement in detention facilities. One of them is **to participate in maintaining hygiene**, which includes cleaning common premises such as corridors, bathrooms, toilets, laundries, food distribution and eating premises and dishwashing etc. Many detainees volunteer for such cleaning duties because they see it as a way to do something different and, last but not least, an opportunity for exercise. Those who participate in this type of activity are people of good behaviour who receive this opportunity, in a way, as a reward. Apart from being used as a reward, participation in cleaning at the detention facility is used to reduce the risk of suicide attempts due to lack of other preventive measures. An adolescent put on remand in the Pleven Detention Facility is placed in a cell with detainees of legal age who also participate in cleaning duties. The boy does likewise. According to staff members at the detention facility, this is done to prevent suicidal impulses.

Another possible activity is **reading printed publications** – books, newspapers, magazines, textbooks and literature in Bulgarian or a foreign language, which are not provided by the detention facility but are allowed as personal belongings in the cells.² Very few of the detention facilities have libraries, as they do in the Plovdiv Detention Facility, though an interviewee detained there explained that during his stay he has never been able to borrow a book from that library. According to an adolescent on remand, throughout the months of his placement in the detention facility “the librarian was always on a sick leave”. According to staff members at the Plovdiv Detention Facility, library books come from donations; the detainees are not allowed in the library but there is a list of titles from which they can choose. Detainees receive printed publications from their relatives and friends during their visits. Staff members at the Pazardzhik Detention Facility explain that detainees may have daily access to the press if their relatives or friends provide it to them.

Adolescents are allowed to **watch television** in their cells.³ If they bring their own television set, they are allowed to use it according to the daily schedule in the detention facility⁴ and thus, they can choose the channel. Watching television is **often the main activity of detainees**. The problem with it is that in most detention facilities, apart from the one in Plovdiv, detainees have to watch television using batteries to power the television sets because the electrical installations of the buildings are not compatible with 12V power supply. Another problem is that not all detainees can afford their own TV set.

Detainees also have the right to bring in **a radio and electronic games**.⁵ Everyone who has such may use them in their cell, provided that they meet the requirements.

1 The conclusion of the Ombudsman is similar. In his capacity as a National Preventive Mechanism, in 2012 the Ombudsman observed that, “[p]aying attention to the specific needs of young people is difficult to achieve due to the lack of living space and meaningful activities for the detainees. The law provides for such possibility but the Internal Order at detention facilities has failed to define the type and order of their implementation in view of existing opportunities”. Ombudsman of the Republic of Bulgaria (2013), *Annual Report of the Ombudsman of the Republic of Bulgaria for their activities in 2012 as National Prevention Mechanism*, p. 23.

2 List of personal belongings, objects and food products which may be received, used and kept by detainees in their cells or placed at designated for this purpose places within the detention facility. The document was received during monitoring activities at the Plovdiv Detention Facility. The list was updated in 2014.

3 “§ 1.16. A television set up to 17” which maintains no internet connection with a removable antenna and charger up to 12V” according to the List of personal belongings, objects and food products which may be received, used and kept by detainees in their cells or placed at designated for this purpose places within the detention facility. The document was received during monitoring activities at the Plovdiv Detention Facility. The list was updated in 2014.

4 For example, a child at the Plovdiv Detention Facility explained that they are allowed to watch television between 18:30 and 22:30.

5 §§ 1.17. and 1.18. of the List of personal belongings, objects and food products which may be received, used and kept by detainees in their cells or placed at designated for this purpose places within the detention facility. The document was received during monitoring activities at the Plovdiv Detention Facility. The list was updated in 2014.

Walks are the last type of activity available to adolescents in the detention facility. This is their chance to do something different and “stretch their legs”. However, due to the lack of outdoor space or some other walking area, in some detention facilities the only chance to take a walk is to stroll to the toilet. Moreover, the children explain, the so-called kare is the place where most conflicts with fellow detainees occur. According to the law, the possibility for stay in the open should be available to adolescents for two hours every day but the children are frequently limited during those hours by the type of space available for walks – indoor space, no direct sunlight and no area where they can actually walk. At the Sofia Detention Facility, staff members state that adolescents often refuse to use the kare because they are sleeping most of the time.

The education of detained adolescents is interrupted during their stay in detention facilities. None of the interviewed adolescents has joined, at any point, any type of educational programme. The BHC established that only some of the detention facilities¹ visited have offered education programmes, such as literacy classes and drug prevention training sessions, attended by five to six detainees, selected by staff members. Although there is a literacy education programme in place, no information is available about the number of illiterate detainees at detention facilities.²

2.7. Contacts with the outside world

Contacts with the outside world are limited for the adolescents on remand in detention facilities. The ways to maintain such contacts include visits, telephone conversations and written correspondence.³ The space provided for visits often violates their rights. The confidentiality of conversations with lawyers is not guaranteed because they take place in premises inadequately adapted for this purpose.⁴ During visits, children can receive money, personal belongings and food from their families, while foreign citizens have the right to receive parcels.⁵ These visits are the only chance for the children to get money to buy a phone card.

Telephone conversations are paid for by the detainees by means of a phone card with prepaid credit to the telephone operator contracted to service the telephone system at the detention facility.⁶ Free access to a telephone for administrative use at the facility is provided to detainees under exceptional conditions but has never been provided to the interviewed adolescent detainees. A minor who is a foreign citizen is placed in the Slivnitsa Detention Facility. The child has no money to buy a phone card and cannot contact relatives. The child is not provided access to the administrative telephone and for months is unable to contact family members.

Telephones are usually located in the walking space or the corridor and so the confidentiality of the conversation is not guaranteed – everyone passing by can overhear it. As a child on remand in the Plovdiv Detention Facility explains, none of the detainees “speak about personal things on the phone” or “dare to complain because everyone knows that the phones are being

1 Detention Facilities in Plovdiv and Varna.

2 At the Plovdiv Detention Facility, the detainees have individual training plans and initial risk assessment. The administration has no data about the number of illiterate detainees or of those who need further literacy training.

3 Ministry of Justice, Execution of Penalties Directorate General (2010), Order N. L-6399 from 26 July 2010 for internal order at detention facilities.

4 An example of this is the space where visits take place at the detention facilities in Slivnitsa and Pleven. See above.

5 In the case of the child placed in the Slivnitsa Detention Facility. As a foreign citizen, the child has the right to receive parcels, unlike Bulgarian detainees. However, the child has been unable to contact relatives or friends. No one in the family knows where the child is; the child has no money or contacts with the outside world. The child has met their lawyer only once and not even an interpreter is provided to them.

6 Ministry of Justice, Execution of Penalties Directorate General (2010), Order for internal order at detention facilities from 26 July 2010.

tapped". The possibility to access the phone varies among detention facilities.¹ The amount of phone numbers a detainee can call also varies but nowhere does it exceed ten. For example, in the Plovdiv Detention Facility there are ten. In the Pazardzhik Detention Facility, on the other hand, there are limited to five.

Expenses for stationery, needed to maintain written correspondence, are covered by the detainee. This becomes another obstacle, especially for those who cannot afford it.² Supply of stationery and low levels of literacy are two further factors hindering letter writing.

2.8. Disciplinary practices, use of force and complaints

In 2014, the Regulations for the Implementation of the Law on Execution of Penalties and Detention introduced a provision which raises for the first time the possibility to impose disciplinary punishments on individuals on remand in detention facilities.³ Up to that point, at least formally, disciplinary punishments were inadmissible and none had been registered.⁴ The new provision specifically refers to the imposition of disciplinary sanctions to be executed with respect to individuals of legal age who are deprived of their freedom, without including an additional provision to differentiate between adults and adolescents.

According to official data, no disciplinary punishments have been imposed on adolescents on remand.⁵ The directors at the facilities visited by the BHC also unanimously confirmed that adolescents do not cause problems with respect to order and discipline and so no such sanctions are imposed upon them. The adolescents interviewed, on the other hand, explained that the practice of disciplinary punishments exists and it includes punishments such as withdrawing access to books, newspapers or food. Guards sometimes resort to unlawful use of force and instruments of restraint which is discussed below in 2.10. Violence. At the same time, the Chief Directorate for the Execution of Penalties reports that, between 2012 and 2014, there were no registered instances of the application of physical force or instruments of restraint against adolescents in detention facilities.⁶ Rewards for detainees are not identified either.

Most detention facilities have special books for requests and complaints but most of them contain solely detainees' requests to make telephone calls, buy food from the snack shop or exchange currency. No complaints by adolescents have been registered against staff of the Security and Regime Unit or about poor conditions in remand. An issue of fundamental importance in relation to this is the absence of a mechanism for the filing of complaints that is adapted to the needs and abilities of adolescents.

2.9. Personnel

Detention facilities lack specialised staff to care for and meet the specific needs of detained adolescents. According to reports by the Execution of Penalties Directorate General for 2012 and 2013, staff members at detention facilities undergo no special training related to children on remand. At some detention facilities (the detention facilities in Plevna, Sliven, Burgas and

1 Individuals on remand at the Detention Facility in Burgas are allowed to use the phone only twice a week in accordance with the Rules of internal order at the Burgas Detention Facility, a document provided to the BHC during their visit of the Burgas Detention Facility on 21 May 2014.

2 The case of an adolescent on remand in the Slivnitsa Detention Facility. For more information see above.

3 Regulations for the Implementation of the Law on Execution of Penalties and Detention (2010), Art. 289a.

4 For more information, see Bulgarian Helsinki Committee (2005), *On Detention Facilities Again*, pp. 47-48, available on: http://www.bghelsinki.org/media/uploads/special/investigation_detention-2005.pdf.

5 Information received from Ministry of Justice, Execution of Penalties Directorate General under APIA with Ref. No. L-8111 from 15 August 2014.

6 *Ibid.*

Slivnitsa), the conditions in which employees have to work are unsatisfactory, with dysfunctional small and narrow working premises.

There is no psychological supervision for employees, working at detention facilities. This, together with bad working conditions, psychological overload and lack of adequate training, creates emotional strain among staff and can lead to misconduct on their part.

Some detention facilities (the detention facilities in Vidin, Pleven and Ruse) have only one female staff member while others employ no women at all. The lack of female staff at detention facilities hampers operations when they receive girls and women. Moreover, it questions the provision of an adequate setting and conditions for the personal safety of female detainees. Finally, the lack of gender equality in the system further confirms sexist attitudes and stereotypes about the roles of women and men in society. In particular, it reinforces the view that it is men who wield power.

2.10. Violence

The severely restrictive remand regime at detention facilities in itself determines the presence of a very high risk of misconduct and violence. During interviews with children placed at various institutions, the BHC has managed to collect information about numerous instances of violence at detention facilities. According to staff members, **conflicts among detainees** are mostly of everyday character – about food, cigarettes, etc. They occur in the cells, in the bathroom or at the kare and involve psychological and physical violence. An interviewed child on remand in the Plovdiv Detention Facility speaks about the existence of such conflicts and his refusal to be placed with peers. The frequent change of detainees in the cell and the differences in habits and character among them lead to disagreement and often result in violence. The most common point of conflict arises when a cellmate uses the personal belongings of others without their permission. Conflicts during stay in the open often occur among detainees from different cells. An adolescent at the Plovdiv Detention Facility was “insulted” with swear words and then kicked by an adult detainee from another cell. Conflicts in the bathroom occur mostly due to the limited time in which detainees have access to the showers, which is not enough for everyone.

Adolescents on remand in detention facilities become **witnesses of violence**. A child at the Plovdiv Detention Facility claims to have seen staff members hit detainees with walkie-talkies on their hands and with batons to the body. Another adolescent on remand had been handcuffed to the bed in his cell and beaten by staff.

There are cases of violence towards adolescent detainees exercised by guards. Examples of this are provided by surveys conducted with children from various detention facilities in the country.¹

For example, a child at the Sofia Detention Facility claims to have been beaten on the shoulders by a guard with a plastic pipe. Following that beating, another guard hit the detainee with documents in the face. Another boy at the same facility explains that after being remanded, he had been seriously beaten by three guards with batons and kicks and as a result of the heavy injuries, he had to spend the next day lying in bed. The incident remained unregistered, including by the medical specialist who examined him two days later. A boy at the Burgas Detention Facility speaks about being kicked (four or five times) in the cell where he was placed. In the Sliven Detention Facility, a boy was placed in a cell with two other adolescents. Although, the children were conversing without making noise, a guard told them to

¹ During its visit at the Boychinovtsi Reformatory on 3 April 2014, the BHC handed out 48 questionnaires to literate adolescents deprived of freedom regarding the use of physical force against them at the time they were put on remand and during their stay at the police or at detention facilities, as well as regarding legal aid.

stop talking. The boy maintained that they should be allowed to talk and requested opening the window to air the room. When the boy went to the toilet the next morning, the same staff member, who made the remark the previous day, started slapping his face, kicking and punching him. The child explains that he had been beaten in the toilet outside the range of the cameras. An adolescent at the same detention facility speaks about being slapped in the face and kicked with military boots because he wanted to go to the toilet. Another adolescent, this time in the Sliven Detention Facility, claims he had been slapped in the face and kicked in the back and face. He was beaten for not having been silent, but asked for water instead.

The violent incidents always occur in the toilet of the detention facility. A boy at the Pleven Detention Facility claims to have been beaten by five staff members in the corridor of the facility and in front of the cameras. He was handcuffed, brought to the ground and kicked in the head and chest. The boy is of Roma ethnicity and on remand in the Plovdiv Detention Facility sharing a cell with another adolescent who, in his opinion, is “a Nazi”. Conflicts between the adolescents resulted in a fight but the staff member on duty did nothing to separate them. During a second fight, however, the staff member intervened and hit both boys with a baton. The use of auxiliary means was not reported and the injured were not provided with access to a medical specialist.

2.11. Discrimination and violation of other fundamental rights

Foreign citizens

According to the BHC monitoring, adolescent foreign citizens represent one of the most vulnerable groups in detention facilities. **In 2013, the number of adolescent foreign citizens rose three-fold compared to 2011** (see Table 8). Most are unaccompanied adolescents registered with the State Agency for Refugees as asylum seekers. As previously mentioned, they are remanded mainly upon allegations of attempted illegal crossing of state borders.

Table 8: Adolescent foreign citizens at detention facilities (2011-2013)

Year	Number
2011	26
2012	40
2013	81

Source: EPDG

Most of the problems result from the lack of translation and interpreting. The Criminal Procedure Code provides for obligatory translation and interpreting during criminal proceedings for persons who do not speak Bulgarian. The scope of the provision also includes translation of the court decisions explaining why the person is remanded. However, it is also possible for the person to refuse the translation of these documents. In the course of this research, no instances have been found of translation of a document associated with the remand of an adolescent foreign citizen. The declaration for the rights of detainees is filled out in Bulgarian with help from an interpreter who is not made available immediately following the remand but at the court hearing which has to decide on the remand. Asked if they are actually aware of the content of declaration they have signed, the adolescents respond negatively. Hence, frequently these individuals “voluntarily”, but without actually understanding this, give up their rights including, for example, the right to have their family notified about the remand.

The BHC discovered this type of case at the Slivnitsa Detention Facility where, in April 2014, two adolescents were remanded – one was a Syrian citizen and one – Afghan citizen. The Afghan citizen had a copy of a declaration about his rights as a detainee but explained that

the declaration had been filled out by an interpreter who had failed to clarify the content of the rights listed in it. The adolescent was only required to sign the declaration. Hence, the Afghan citizen “voluntarily” gave up his rights including, for example, the right to free legal aid and the right to have his relatives or friends notified about the remand. The translation/interpretation rarely meets the necessary quality requirements and sometimes these services are provided in a language which the detainee does not understand.¹

Communication with staff members is extremely difficult as it may be conducted only in Bulgarian and the use of an interpreter during remand is not legally provided for.

2.12. Inspections

Detention facilities are subject to control by state bodies, non-governmental and other organisations.² The Prosecutor’s Office also supervises the legality of detention on remand and the law grants considerable powers to the prosecutors performing the supervision.³

The widest range of functions in terms of institutional control belongs to the Execution of Penalties Directorate General which controls all aspects of detention on remand. Other internal bodies include the Inspectorate at the Ministry of Justice under Article 46 of the State Administration Act. The Inspectorate conducts complex inspections which observe the activities of the inspected institution occurring over a long period of time.⁴ Both bodies perform internal inspections which makes them less efficient and thorough. Moreover, the reports by the Unit for Security and Safety in Detention Facilities at the Execution of Penalties Directorate General fail to recognise the extreme vulnerability of adolescents detained on remand in detention facilities. The reports of the Unit for Security and Safety in Detention Facilities for 2012 and 2013 mention no activities, trainings or other components specifically referring to working with remanded adolescents.⁵ The absence of efficient control inside the system is confirmed by the fact that between 2012 and 2014 no staff members at detention facilities received disciplinary punishment for violating the rights of adolescent detainees⁶ regardless of the cases of violence identified by the BHC.

The frequency of inspections in relation to legal supervision conducted by the Prosecutor’s Office varies among detention facilities but in general these occur regularly. The results are recorded in books specially dedicated to this activity. Strikingly, in most cases each inspection enters an identical text and finds no violations whatsoever, which puts into question the efficiency of the exercised control.

Similarly to other places for those deprived of liberty, detention facilities fall outside the scope of control exercised by specialised state health inspectors. Instead, inspections of hygiene and cleanliness, healthy and safe working conditions, quantity and quality of food and other aspects of living conditions are conducted by medical staff in the detention facilities, which seriously undermine the efficiency of these inspections.⁷

1 An adolescent boy who is an Iraqi citizen and speaks only a Kurdish language was provided with an interpreter from and to Arabic during the criminal proceeding.

2 Law on Execution of Penalties and Detention (2009), Art. 4(2).

3 Judiciary Act (2007), Art. 146.

4 For more information, also see subchapter A.1. Reformatories.

5 Ministry of Justice, Execution of Penalties Directorate General (2014), *Activity report by the Unit for Security and Safety in Detention Facilities – 2013*; Ministry of Justice, Execution of Penalties Directorate General (2013), *Activity report by the Unit for Security and Safety in Detention Facilities – 2012*.

6 Information received from the Ministry of Justice, Execution of Penalties Directorate General under APIA with Ref. No. 8111 from 15 August 2014.

7 Law on Execution of Penalties and Detention (2009), Art. 150(1). For more information, see subchapter A.1. Reformatories.

External inspections are conducted, if rarely, by the Ombudsman's Office in their capacity of a National Preventive Mechanism¹ as well as by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).² These inspections, however, do not focus on adolescents on remand.³ For example, the Report of the National Preventive Mechanism about the 42 detention facilities visited in 2012 has only one conclusion related to adolescents – namely, the absence of the opportunity to provide meaningful activities. Furthermore, the recommendations made by these organisations have no obligatory force and at times remain unfulfilled. Thus, for example, in 2010 the CPT discovered that to talk to individuals on remand in detention facilities, non-governmental organisations such as the BHC were obliged to request permission from the supervising prosecutor; the CPT recommended the revision of the practice.⁴ In 2014, however, the practice continues to exist and is legally grounded⁵ which has a significant negative impact on the detainees whose chance to communicate with independent external organisations is seriously limited.

Overall, the state fails to recognise in any way the extreme vulnerability of children detained on remand in places for deprivation of liberty, including detention facilities whose operation remains outside the scope of the mandate of the State Agency for Child Protection. It is the Minister of Justice who is responsible for providing protection to the children placed in correctional facilities. The responsibility of the Minister, however, is “to ensure [only] the safety of the children detained on remand” but not their rights.⁶ This practice results from the deficiencies of the Child Protection Act⁷ and deprives the children detained on remand from access to the child protection system and to efficient control over the observance of their rights.

1 In 2012, the Ombudsman in their capacity as National Preventive Mechanism visits 42 detention facilities. For more information, see Ombudsman of the Republic of Bulgaria (2013), *Annual Report of the Ombudsman of the Republic of Bulgaria for their activities in 2012 as National Prevention Mechanism*.

2 In 2008, the Committee for the Prevention of Torture visits one detention facility – the Slivnitsa Detention Facility; in 2010, six detention facilities are visited, and in 2012 no detention facilities are visited. For more information, see CPT (2010), *Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 15 to 19 December 2008*, available on: www.cpt.coe.int/documents/bgr/2010-29-inf-eng.htm#_Toc226773911. CPT (2012), *Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 18 to 29 October 2010*; CPT (2012) *Report to the Bulgarian Government on the visit to Bulgaria carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 4 to 10 May 2012*.

3 Ombudsman of the Republic of Bulgaria (2013), *Report about their activities in 2012 as National Prevention Mechanism*, p. 23. For more information, see 2.6. Education and activities in the current subchapter.

4 Committee for the Prevention of Torture (2010), *Report to the Bulgarian Government on the visit to Bulgaria carried out from 15 to 19 December 2008*, §. 63.

5 Law on Execution of Penalties and Detention (2009), Art. 253(1).

6 Child Protection Act (2006), Art. 6a(4)(4b).

7 *Ibid*, Art. 17a.

3. DISTRICT POLICE DEPARTMENTS AND BORDER POLICE DEPARTMENTS

There is no legal framework that adequately ensures respect for the rights of children detained in district police departments and border police departments. Minors and adolescents are not treated any differently when it comes to safeguarding their right to have their parents and guardians notified about their detention, the right to access to a medical expert and legal counsel.

After a survey conducted with children from the Boychinovtsi Reformatory, the BHC found that more than 50% of the children interviewed had experienced severe physical abuse and psychological ill-treatment during their detention and stay in district police departments. The acts of ill-treatment were carried out to punish, humiliate and extort confessions. Roma children, in addition to being beaten, were subjected to racist abuse by police officers.

Children foreigners who are detained in border police departments are in a particularly vulnerable position. No adequate translation is provided for them during their stay in border police departments, and thus, they are effectively deprived of their fundamental rights during detention.

Despite the serious violations, the state authorities do not recognise children placed in district police and border police departments as children at risk, and these places of detention are not subject to institutional supervision by child protection authorities.

3.1. General information

The district police departments (DPD) and the border police departments (BPD) are units of the Ministry of Interior (MoI), which have designated facilities for the placement of detained persons, including minors and adolescents. The country has 179 DPDs and 38 BPDs, of which in the course of the study, the BHC visited six DPDs (First, Second, Third and Ninth Sofia DPD, and Fourth and Sixth Plovdiv DPD) and four BPDs (in the cities of Bregovo, Vidin, Ruse, and Svilengrad¹).

¹ The structure of Svilengrad BPD includes Kapitan Andreevo Border Checkpoint (BCP). The BHC visited the place of accommodation of detainees at Kapitan Andreevo BCP.

Minors and adolescents can be forcibly detained in police custody in premises of DPDs and BPDs for up to 24 hours.¹ Detention is carried out on the basis of a warrant issued under the Ministry of Interior Act (MoIA);² detainees are permanently guarded while detained. Prerequisites for police detention of children do not differ from those for adults. Some of them are: evidence of a crime committed, failure to establish the identity of the child and obstructing the police authority to carry out its official duties after being duly warned.³

In the specially designated premises in DPDs for the purpose of serving a penalty, imposed also on adolescents, under the Protection of Public Order During Sports Events Act (hereinafter: Sports Hooliganism Act)⁴ and Decree No. 904 on combatting petty hooliganism (hereinafter: Decree on combatting petty hooliganism)⁵. Penalties can take the form of detention in the district department for a period of up to, respectively, 10 or 15 days. Some DPDs have additionally separated premises for the placement of children with a police protection measure under the Child Protection Act (CPA).⁶

Statistics about detained minors and adolescents are not collected and aggregated either centrally by the MoI, or by the police departments themselves. The only way to establish the number, sex, duration of stay and the reasons for detention is by reviewing the detainee books filed at the MoI structures. This seriously hampers the overall study of the practice of detention.

3.2. Placement

District police departments

As part of the study, the BHC found that detention of minors and adolescents is imposed most often in connection to escapes from institutions or from home, suspicion of committed crimes and breaching public order at sports events. With the adoption of the new Ministry of Interior Act in July 2014, the grounds for detaining "minor offenders who have left their homes, guardians, custodians or public institutions, where they reside" were repealed.⁷ This means that children escaping from CBS, SBS, HCDPC or other institutions can no longer be detained by order of the MoI, and instead protection measures should be undertaken regarding such children.

Under the Bulgarian law, minors cannot be held criminally responsible. Nevertheless, **if there is suspicion of a crime, the police can also detain children under 14.** For example, in the Ninth Sofia DPD in the period 13 March - 28 April 2014, 38 children were held, of whom nine were minors, **the youngest of whom was seven.**⁸ There are cases when minors stay overnight at a police station, and are placed with adults. For example, in April 2014, an 11-year-old girl was detained for the maximum duration of 24 hours allowed by law in relation to information about a theft she committed. Such incidents involving adolescents are considerably more frequent. In 2013, in the Sixth Plovdiv DPD, 22 adolescents were detained and half of them spent the night in the district department. Of 38 children detained in the Ninth Sofia DPD in the period 13 March - 28 April 2014, seven shared a cell with adults and six spent the night in the police department. These are extremely alarming practices whereby **children are treated**

1 Ministry of Interior Act (2014), Art. 72(1).

2 *Ibid.*, Art. 74.

3 Ministry of Interior Act (2014), Art. 72.

4 Protection of Public Order During Sports Events Act (2004), Art. 25(4).

5 Decree № 904 of 28 December 1963 on Combatting Petty Hooliganism (1963), Art. 1(1).

6 Child Protection Act (2003), Art. 37-43.

7 Ministry of Interior Act (resc. July 2014), Art. 70(1)(4).

8 Data extracted in a review of the detainee book.

as adults, regardless of the damage to their mental and physical well-being at such an early age. The principle of "ensuring the best interest of the child"¹ does not apply when the police exercises its powers to detain.

According to regulatory requirements, persons, detained by police authorities in a DPD without a separate place for detention, are transferred to the nearest MoI structure, which has such premises. In the First Sofia DPD, there is no such detention cell for minors and adolescents, but according to official data obtained from the MoI, during the first six months of 2014, there were 114 children detained there, including six minors.² Placement in another DPD or in a Home for Temporary Placement of Minors and Adolescents (HTPMA) was undertaken for just 22 children, since their detention continued through the night. All the rest were de facto detained in the territory of the First Sofia DPD, without the existence of the necessary conditions.

The duration of detention depends on the volume of the operational work that police officers must carry out on the child's case. The detention period also depends on how quickly police can contact detainees' parents. During the monitoring, no formally registered cases were established of exceeding the maximum detention period, but a number of cases came close. After the expiry of the 24-hour period of police detention, the coercive detention of children in a MoI structure can be prolonged by imposing a measure of police protection, or placement in a HTPMA.

Border police departments

Mainly accompanied and unaccompanied children are held in the places of detention at border police stations. Usually the children are foreign nationals who have been detained while attempting to enter or leave the country illegally. For the period from early 2012 to the end of the first half of 2014, there were 781 minors and adolescents detained in all BPDs, except those located on the Bulgarian-Turkish border.³ **In the first six months of 2014 alone, the children detained at the Bulgarian-Turkish border, under the authority of the Elhovo Border Police Regional Directorate, numbered 310, and 261 of them were Syrian citizens.**⁴ From data received from the Border Police Directorate General (BPDG), it is unclear in which cases the children were accompanied and in which they were not.

In the course of its study, the BHC found that, in 2013, in the area of the Ruse Border Police Regional Directorate, which is responsible for the control of the border between Bulgaria and Romania, 114 persons were detained aged under 18. According to data provided by the BPDG, 40 of them were detained in places, other than police departments, namely: in the centre for temporary placement in Lom, the shelter for neglected children in Ruse, and other social services of residential type, in hotels in Dobrich, General Toshevo, Ruse, Vidin, and the village of Aydemir, Municipality of Silistra. The duration of detention in these places is unclear from the data. In fact, it is within the powers of the police authorities to place children left unattended for up to 48 hours in specialised institutions or social services of a residential type. However, this is a measure of protection under the Child Protection Act and not an administrative measure of detention. The BHC learned that placement in hotels was at the expense

1 Child Protection Act (2003), Art. 3(3).

2 Information received from Sofia Directorate of Interior, First Sofia DPD, under APIA with Ref. No. 34508 from 29 September 2014.

3 Information received from Ministry of Interior, Criminal Police General Directorate, under APIA with Ref. No. 812104-83 from 26 August 2014.

4 Despite the request submitted, pending the completion of this report, the Criminal Police General Directorate has not provided the BHC with data on the number of minors and adolescents detained in 2012 and 2013 in the departments of the Elhovo Border Police Regional Directorate.

of the detainees; in such a case, orders for detention under the MoIA were not issued, but those persons were guarded by a police officer who stayed in the hotel lobby.¹ Persons placed in social services are also under the supervision of a MoI officer. The data obtained testify to an illegal practice of detention, in which there is no possibility to supervise the legality and conditions of detention. In addition, detainees do not have access to certain rights guaranteed by the law, thus creating a risk of abuse and arbitrariness, especially in cases of detained children.

The fate of detained minors and adolescents after the expiry of the initial detention of 24 hours is another issue referred to the BHC.² Difficulties arise in cases of detained families with children, when criminal proceedings are initiated against an adult family member, who are then remanded. In these circumstances, the children appear as temporarily unaccompanied and measures should be undertaken for their protection, especially when they are minors, until their relatives are released. MoI authorities may undertake measures for police protection for up to 48 hours, but mechanisms are lacking for coordination and cooperation with child protection departments, which would provide for a longer-term care for the child.³ Table 9 illustrates the traceable measures taken with regard to children detained in the structures of Ruse BPRD between January 2012 and July 2014, after the expiry of the 24-hour period of detention pursuant to the MoIA.

Table 9: Types of measures imposed on children after the expiration of the initial period of police custody in police establishments, part of Ruse BPRD (January 2012 - July 2014)

	Total number of children detained	Special Homes for Temporary Placement for Foreigners	State Agency for Refugees	Social services	Coercive inistrative measures	Correctional boarding school	Other
Number	190	37	125	4	15	1	8

Source: MoI

During the last months of 2013, following the civil war in Syria and the withdrawal of the international military contingent from Afghanistan, the number of asylum and protection seekers entering Bulgaria increased dramatically. By mid-September 2013, all existing registration and reception centres were overcrowded and completely overwhelmed. As a result of the lack of any available capacity at the structures of the State Agency for Refugees (SAR) for reception and accommodation, newly arrived refugees seeking asylum were accommodated for 24 hours in places for administrative detention at the BPDG and, in particular, those of the Elhovo BPRD.^{4,5}

The international human rights organisation Human Rights Watch describes in its report a number of cases, in the period before November 2014, in which asylum seekers, including children, were housed for long periods (in some cases up to 10 days) in the territory of Elhovo

1 Information obtained in a conversation with the head of Vidin BPD.

2 Information obtained in a conversation with the head of Bregovo BPD.

3 The problem was thoroughly discussed with the Head of Bregovo BPD during the visit of the BHC in Vidin.

4 The structure of the Border Police Regional Directorate includes five BPD – Malko Tarnovo BPD, Sredetz BPD, Bol-yarovo BPD, Elhovo BPD, and Svilengrad BPD. For more information: Ministry of Interior, Border Police Directorate General, Information on the Elhovo Border Police Regional Directorate, available at: http://www.nsgp.mvr.bg/Structure/Units/rbs_elhovo.htm.

5 Bulgarian Helsinki Committee (2014), *Annual Report about Human Rights in Bulgaria of BHC in 2013*, pp. 64-65.

BPD in rooms and spaces which lacked appropriate conditions.¹ Thus, for example, a 17-year-old Afghan related his placement in Elhovo BPD for nine days, eight of which were without food. The boy noted that he shared a bed with three other people, and in the BPD building there was only one tap with running dirty water, which he could use on permission from the authorities.²

Other issues relating to detention of children in DPDs and BPDs

Bulgarian legislation has not introduced an obligation for immediate official notification of parents, guardians or other relatives of the child regarding police detention and the reasons behind it. Children are informed on a general basis that they are entitled to designate a person to be notified of their detention, but this is too weak a guarantee for ensuring proper protection and prevention of arbitrary detention.³ The presence of a parent in talks and conversations with the minor or the adolescent at the detention premises is ensured only at the discretion of the police authority.

Another serious deficiency of the regulatory framework is the lack of a requirement for the children to familiarise themselves with the reasons for detention and their rights in an appropriate and understandable language. The detainee fills in a declaration stating that they are informed of their rights, among which are the rights to health care, to legal counsel, to appeal before the court against a measure of detention, to inform a person designated by them, to contact the consular authorities of their country of origin, if a foreigner. If the detained person is illiterate, the declaration shall be filled in by a MoI officer but "the declaration of intent is dictated by the person themselves".⁴ Foreigners who do not understand Bulgarian should be informed of their rights in an understandable language, and, "if necessary", are provided with a translator.⁵ The form for the declaration of the rights of detainees, at the visited BPD, is only available in Bulgarian.

In most places for police detention visited by the BHC, there were internal regulations, which were, however, located in places that did not allow easy accessibility so that detainees could inform themselves regarding the regulations. The internal regulations are not translated into another language, even in border police departments, where the detainees are almost exclusively foreigners. In Sofia Third DPD, BHC researchers were denied access to internal regulations on the pretext that this was "restricted information".

3.3. Judicial review and legal aid

According to the law, even though there is a possibility for detainees to benefit from legal counsel from the moment of their detention, the BHC did not find a single case of such a possibility realised by children. Other studies reveal that the number of adult detainees having benefited from this right is minimal as a rule,⁶ and in the absence of any differentiated approach towards detained minors and adolescents, we cannot expect better results. Vari-

1 Human Rights Watch (2014), *Containment Plan: Bulgaria's Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants*, p. 35-42.

2 Human Rights Watch (2014), *Containment Plan: Bulgaria's Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants*, p. 37, available at: <http://www.hrw.org/node/124858>.

3 Ministry of Interior (2009), Instruction № I3-1711 (2009) for the equipment of the premises for placement of detainees at the structural units of the MoI and the order in them, art. 14 (1) (4).

4 *Ibid.*, art. 14 (3).

5 *Ibid.*, art. 15 (2).

6 Open Society Institute (2011), *National Final Report on the Project "Civil Monitoring of the Police" during the period August 2010-2011*, pp. 12-14, Council of Europe Committee for the Prevention of Torture (CPT), *Report to the Bulgarian Government on the visit of the European Committee for the Prevention of Inhuman or Degrading Treatment and Punishment in Bulgaria from 18 to 29 October 2010*, p. 19, §22.

ous factors account for the ineffective exercise of the right to access legal aid: insufficient information on rights,¹ misleading detainees regarding the role of the lawyer,² discouraging detainees from using a lawyer's services³ and a lack of updated lists regarding the lawyers on duty⁴. Another factor undermining the detained children's quest for legal assistance is the lack of obligation to urgently notify parents, or relatives, of the detention. In addition, the approach to providing information is incompatible with the age and social maturity of the children.

The BHC found that the judicial review of the police detention of children is also not implemented. The normative text regulating the possibility to appeal against the detention measure before an administrative court ensures only an ex-post review of the legality of the issued order, which does not meet the standards for the detention of children.⁵ The right to appeal against the sanction of "detention in a territorial structure of the MoI for a period of 10 to 15 days" is not legally provided for under the Sports Hooliganism Act. This substantially restricts the right to a fair trial for children.⁶

3.4. Material conditions

District police departments

The premises where children are held must be specifically equipped and adapted to their needs as well as meet higher safety standards as laid down in the legislation.⁷ Part of the **district police departments** visited (Fourth and Sixth Plovdiv DPDs, First Sofia DPD) did not have **cells designated for the detention of minors and adolescents**. Children are either not detained (Sixth Plovdiv DPD) or they are placed in cells for adults (Fourth Plovdiv DPD). The BHC found that even in DPDs, with specially designated areas, children are not always detained in them,⁸ and that these premises also accommodate adults⁹.

In the Third Sofia DPD, the detention premises are on the semi-underground floor, but there is no access to natural light there. The building is new, only three years old. The room for adolescents **lacks a signal button**,¹⁰ and the children are forced to "knock on the door if they want something,"¹¹ as officials put it. The room is equipped with two iron beds, a table and two chairs. The sheets, blankets and pillows are very dirty, worn out, and the cell has a pungent odour. According to officials, there is a ventilation system, but at the time of the visit, it was not working. Although the conditions were relatively new, the appearance of the room for adolescents in the Third Sofia DPD is unwelcoming, not at all suitable for detaining children. The hygiene in the room is also inadequate.

1 *Ibid.*, p. 12.

2 CPT, *Report to the Bulgarian Government on the visit to Bulgaria carried out from 18 to 29 October 2010*, p. 19, § 22.

3 *Ibid.*

4 Open Society Institute (2011), *National Final Report on the Project "Civil Monitoring of the Police" during the period August 2010-2011*, p. 13.

5 CRC, General Comment No. 10, § 83.

6 Protection of Public Order During Sports Events Act (2004), Art. 24 (1).

7 Ministry of Interior (2009), Instruction № I3-1711(2009) for the equipment of the premises for detainees in the MoI structures and the order in them, Art. 74.

8 The finding is based on a review of the detainee book in Ninth Sofia DPD.

9 On the visit of the BHC in Ninth Sofia DPD, at the facility designated for detention of adolescents, an adult male was placed.

10 Ministry of Interior (2009), Instruction № Iz-1711(2009) for the equipment of the premises for placement of detainees at the structural units of the MoI and the order in them, Art. 74(4).

11 The quote is from an interview with officials from the Third Sofia DPD, held on June 12, 2014.

In the First Sofia DPD, **there is no cell for detention of adolescents**¹, and the children “remain on the bench,”² as noted by the police officials. In this district department, they are questioned in the office of the inspector from the Children’s Pedagogical Room or in the room for staff meetings. Both premises are unsuitable for the purpose of questioning. The inspectors’ office is a small and confined space where five inspectors work and there is practically no free space. The staff meeting room is large, without conditions for questioning. After questioning, children are either evacuated to the nearest available district department, or released.

In the Fourth Plovdiv DPD, **adolescents are detained in cells for adults**. Employees noted that detained adolescents are accommodated separately. This police department is housed in an old building that was intended to be a nursery. The department has two cells with a total capacity of five people. The cells are internally facing and have no access to natural light, with no air conditioning and ventilation. There are no signal buttons installed; the furniture of the cell comprises of two iron beds only. The appearance of the cells is extremely shabby, the furniture is insufficient and old, and the hygiene poor.³

In the Sixth Plovdiv DPD, the premises are new, equipped with everything necessary, and the conditions are good, but **no children are detained** in this police department. Adolescents are placed in the Plovdiv HTPMA instead.

The persons detained for 24 hours on the territory of the DPD have the right to free food. According to the employees of the Fourth Plovdiv DPD, the lunch is BGN 1.42 (EUR 0.73), and breakfast and dinner are BGN 1.04 (EUR 0.53) each. Employees of the district department buy food for the detainees using the total available sum at their dispense, and provide the detainees with the purchased food. Detainees who have **personal funds** can buy additional food of their choosing.

The existing statutory prohibition on the **presence of metal pipes (rails) for handcuffing in the places of accommodation of detainees** is ignored in some of the visited DPDs. Such rails can be found in front of the office of the inspector from the Children’s Pedagogical Room in the Second Sofia DPD and in front of the interrogation room in the Ninth Sofia DPD. In the First Sofia DPD, near the bench where detained children usually remain, there is also a metal rail installed. Officials noted that the pipe was not used and that the detained adolescents were not handcuffed. They also stated that there was always a person with the adolescent throughout their stay on the territory of the district department. Nevertheless, during the BHC’s visit, a detained man was handcuffed to the rail, discrediting the officials’ words.

Only in the Ninth Sofia DPD was there a functioning separate room for the implementation of the “police protection” measure. **Rooms for meeting with a lawyer are designated**, but defence lawyers rarely appear, and if they do it is mainly for adolescents detained more than once. In the Third Sofia DPD, there are two rooms for visits, which allow no direct surveillance. **The cameras** in the sector with detention facilities are installed in the corridors.

Border police departments

Some of the border police departments visited by the BHC – Svilengrad BPD⁴ and Vidin BPD – have premises for the detention of children. The Bregovo BPD does not have any place for detention and thus, uses the cells in the Vidin BPD, which are located in the same facility complex. According to officials of the Ruse BPD, the detained adolescents remain in the DPD

1 Officials indicate that the detention facilities are under construction, but nothing has been finished until now.

2 The quote is from an interview with officials from the Third Sofia DPD, held on June 12, 2014.

3 There is a new building built next to the old one, which in the words of staff in a very short time will be used by Fourth Plovdiv DPD.

4 The place for detention is located in the territory of Kapitan Andreevo BCP.

in the city, whereas the minors are housed in a shelter or another social care establishment, together with their mothers, if they are accompanied.¹

The detention room in the Vidin BPD, which is used also by the Bregovo BPD, has two cells with underfloor heating. Access to daylight and fresh air is notably limited. The equipment in the cells is old, and hygiene - poor. The detention area has one toilet, which is dirty and in a poor state of repair, and there is no bathroom. At the time of the BHC's visit, a third room in the same building was in the middle of re-equipment for the provision of police protection and accommodation of young children and mothers with children.

The Kapitan Andreevo BCP has a room to accommodate minors and adolescents, as well as a separate room for mothers and children. The furniture in the rooms for accommodation is old, but well-kept and has capacity for four persons. Bed linen is worn-out but clean. In the cells, access to natural light is ensured, there is air conditioning and hygiene is good. There are bars on the windows. According to officials at the border department, detained mothers with children are allowed to leave the cell.² There is one bathroom, as officials explain, which is used "when needed", and one toilet. Hygiene in the bathrooms is good. The visiting room at Kapitan Andreevo BCP is furnished with a table, two chairs and a camera without a microphone.

3.5. Health care

Children detained in DPDs and BPDs receive the same health care as adult detainees. According to the Instruction № Iz-1711 for the equipment of the premises for detained persons at the structural units of the MoI and the order in them (hereinafter: Instruction № Iz-1711), medical examinations are carried out at the request of the detained person or when the health status of the person requires it.³ In addition, a request for a medical examination can be made by a parent, guardian, custodian, legal counsel and a representative of the diplomatic mission of the State of which the detained person is a citizen.⁴ The legal framework also allows for a medical examination by a person designated by the detainees at their expense.⁵

Although the provisions of Instruction № Iz-1711 formally meet international standards, in practice, the procedure for the provision of medical care with regard to minors and adolescents detained in DPD and BPD is not tailored to their needs and does not provide them with adequate access to a health specialist, and respectively, to the possibility of reporting and preventing cases of abuse. The very high percentage, established by the BHC, of incidents involving physical force against adolescents in detention and during their stay in the DPDs attests to this. Meanwhile, for the period 2012 – 2014, there have been no DPD officials with imposed disciplinary sanctions in connection to their work with minors and adolescents.⁶ Also, there have been no complaints regarding cases of abuse of children in detention.⁷

1 For more information, see 3.2. Placement.

2 Interview with officials from Kapitan Andreevo BPD, conducted on 3 June 2014.

3 Ministry of Interior (2009), Instruction № I3-1711(2009) for the equipment of the premises for detained persons at the structural units of the MoI and the order in them, Art. 20(1).

4 *Ibid.*, Art. 20(2).

5 *Ibid.*, Art. 20(4).

6 The information is on disciplinary sanctions to staff of DPD at Varna RDMI - and Plovdiv RDMI -. With Application Ref. No. 812104-59 from 1 August 2014, the BHC expressly requested information from the MoI on disciplinary sanctions of DPD officers throughout the country in relation to their work with minors and adolescents. Nevertheless, the MoI provided information only about officers of the DPD to Plovdiv RDMI and Varna RDMI. For more information, see Information received from the Ministry of Interior, Criminal Police General Directorate under APIA with Ref. No. 812104-59 from 1 August 2014.

7 *Ibid.* The information is on submitted claims and complaints against officers of DPD at Varna RDMI and Plovdiv RDMI.

District police departments

According to the BHC's observations, medical examinations of minors and adolescents in DPDs are infrequent or do not take place, and in the words of officials at the Sofia Second DPD, children "do not want" medical examinations. The BHC also did not find a single case of parents or guardians of children requesting a medical examination on their behalf.

According to information received from the Medical Institute of the MoI, medical care of minors and adolescents detained in all DPDs in Sofia is the responsibility of the medical service in the Sofia Directorate of Interior (CDI), and at night - the emergency ward of the Medical Institute at MoI.¹ At the same time, there is no provision in Instruction № Iz-1711 that explicitly refers to detained children who are placed in a highly vulnerable position - most often without the means to pay for an examination by a medical person designated by them. Thus, detained children are effectively denied access to independent medical care, especially where there is a conflict of interest between children and their parents/ guardians, or when detainees are placed in a specialised institution.

Border police departments

The right to a medical examination of adolescents and minors detained in BPDs is varied in practice. In the Bregovo BPD and the Vidin BPD, the examination is conducted by a medical person working in the respective emergency medical centre, and according to staff, children, after being detained, must pass through the "emergency centre", where they undergo a medical examination. Only then are they placed in cells. A major problem with this practice is the lack of adequate translation for the purpose of the medical examination, which is essential for verifying cases of psychological or physical abuse and other health problems.

In other BPDs (Ruse BPD and Svilengrad BPD²), medical care is administered by internal staff of the MoI system, who are employed by the Ruse and Svilengrad Border Police Regional Directorates. Adolescents and minors, who are foreign nationals, particularly, if they are unaccompanied, are highly vulnerable because of the language barrier and their unfamiliarity with the situation in Bulgaria. There is no legal requirement or practice for providing detainees a list of medical personnel to whom they can turn, if they would wish to see an independent doctor outside the MoI structures.

3.6. Activities and education

Due to the short duration of police detention, activities and education are not envisaged for the detained children. During the 24-hour detention, the children do not have the right to stay in the open.

3.7. Contacts with the outside world

Detained children have the right to visits from relatives and to receive food after written permission and under the supervision of a security guard.³ According to officials of the Sixth Plovdiv DPD, visits from parents often take place, and they bring food to their children. In practice, despite the legal provision, there are no visits in BPDs because mainly foreigners are placed there.

1 Information received from Ministry of Interior, Medical Institute of the MoI, under APIA with Ref. No. 8132100-12939 from 2 September 2014.

2 The place for detention is located in the territory of BCP - Kapitan Andreevo.

3 Ministry of Interior (2009), Instruction № Iz-1711 (2009) for the equipment of the premises for detained persons at the structural units of the MoI and the order in them, Art. 44(2).

Parents are notified by MoI officials of the detention of their children at the request of the detainees themselves or if the police authorities consider that parents should be present during conversations and discussions with their children.¹ If parents cannot be notified/ found, the children are placed in a HTPMA. During their stay in DPDs, the children communicate with MoI officials, including an inspector from the Children's Pedagogical Room.²

When detainees are foreign nationals or Bulgarian nationals with foreign citizenship, the Ministry of Foreign Affairs is notified through official channels, and it notifies the respective diplomatic mission.³ Detainees may opt for informing the respective diplomatic representatives themselves. The telephone conversation takes place in the presence of an interpreter and under the supervision of the operational officer on duty in the DPD/ BPD so that the detainee does not try to obstruct police actions through the conversation.⁴ Detainees in DPDs and BPDs are not entitled to make phone calls.

3.8. Disciplinary practices, use of force and complaints

There is no official disciplinary practice in DPDs and BPDs. There are also no cases identified of a legitimate use of force against adolescents. However, there are numerous allegations of children, including minors, being physically abused by police officers upon detention in DPDs.⁵ In police departments, however, no mechanisms are provided for detained minors and adolescents to submit complaints and appeals to independent institutions which are external to the MoI.

According to official data, during the period January 2012 - July 2014, there were two cases that were reported against BPD officers in connection with incidents involving minors and adolescents detained in BPDs. Both were submitted by persons other than the victims.⁶ One relates to an "illegitimate action" by the head of the Balchik BPD against an adolescent. The second report, also against an officer from the Balchik BPD, was submitted by the Regional Directorate of the MoI in Burgas to the chairman of the Commission on Human Rights and Citizens' Complaints at the National Assembly in connection with the detention of a group of foreigners, including a minor. To investigate the received reports, a committee was appointed, which established violations and imposed disciplinary sanctions on those responsible.

3.9. Personnel

District police departments

Generally, there is no specialised training provided to police officers on children's rights and international standards relating to the treatment of children in detention. According to information from the Academy of the Ministry of Interior, within the framework of the police officer training for the period 2010-2014, there were no mandatory courses or follow-up trainings at the academy related to children's rights. Within the undergraduate programme for combatting crime and protection of public order, there is an optional subject on the prevention of delinquency and crime of minors and adolescents, which, according to the MoI Academy, includes information on international and national documents on the rights of the child. In

1 For more information, see 3.2. Placement.

2 For more information on the activity of ICPR, see 3.9. Personnel.

3 Ministry of Interior (2009), Instruction № I3-1711(2009) for the equipment of the premises for detained persons at the structural units of the MoI and the order in them, art. 21(1) and (2).

4 *Ibid.*, Art. 21 (3).

5 On this issue, see 3.10. Abuse.

6 Information received from Ministry of Interior, General Directorate "Criminal Police" under APIA with Ref. No. 812104-83 from 26 August 2014.

addition, police investigators and inspectors from Children's Pedagogical Rooms have passed additional qualification courses on the subject of specialised hearing of children victims of abuse.¹

According to data from the MoI, during the period January 2012 - July 2014, DPD officers in the country were included in a series of trainings organised by two projects. During the period September - December 2013, 140 police officers were involved in the strengthening of the administrative capacity of the police officers to prevent sexual abuse against children. Within the second project on the establishment of a national system of early alert for missing children in Bulgaria, several trainings were organised during the first half of 2014.²

Children's Pedagogical Rooms

The Children's Pedagogical Rooms are specialised institutions, which "take part in the prevention of crime and antisocial behaviour of children".³ They combine many functions in relation to minors and adolescents, including protective, accusatory and punitive.⁴ Although the Children's Pedagogical Rooms are established at the municipal level upon the proposal of the police authorities, their activities are governed and supervised by the police.⁵ Children's Pedagogical rooms are run by inspectors, MoI officials, who must have a university degree and pedagogical qualification.⁶ Some pedagogical rooms are located on the territory of DPDs⁷ in violation of the requirement that they should be placed in premises "outside the police buildings".⁸

Three inspectors work at the Third Sofia DPD.⁹ At the First Sofia DPD, there are five inspectors and one operating officer on juvenile crime. At the Fourth Plovdiv DPD, there is only one inspector at the Children's Pedagogical Room, and at the Sixth Plovdiv DPD, there are two. According to Article 22(1) of Instruction № Iz-1711, conversations and discussions with children are held in the presence of a pedagogue or psychologist, and most often this is an inspector. Inspectors noted that the presence of a **psychologist** is seldom required to attend interrogations or only "in exceptional cases, when the child is traumatised".¹⁰ Another duty of the inspectors is to register the minors and adolescents who have: committed crimes and demonstrate antisocial behaviour, are sentenced for committing general crimes and are released from reformatories, correctional boarding schools or social-pedagogical boarding schools.¹¹ **In 2013, there were 10,536 children registered in the Children's Pedagogical Rooms, of which 2,319 are under 14 of age.** Children continue to be registered at the Children's Pedagogical Rooms for a period of two years, and throughout this period, they are observed and periodically called in by the inspectors to attend meetings and conversations. A long-term, binding and direct contact with law enforcement authorities, apart from working on a specific case, is a traumatising and victimising experience for children, especially for minors. Inspec-

1 Information received from Ministry of Interior, Academy of the Ministry of Interior, under APIA with Ref. No. 458100-138 from 27 February 2014.

2 Information received from Ministry of Interior, Border Police General Directorate, under APIA with Ref. No. 812104-83/ 26 August 2014.

3 Ministry of Interior (1998), Rules for the Child Pedagogical Rooms, Art. 1(1).

4 *Ibid.*, Art. 1 and Art. 7.

5 *Ibid.*, Art. 2(1) and Art. 5(1).

6 *Ibid.*, Art. 4(2).

7 Such is the situation in all DPD visited by the BHC.

8 Ministry of Interior (1998), Rules for the Child Pedagogical Rooms, Art. 3.

9 According to the legal framework, the number of ICPR is determined depending on the crime situation in the area of the respective police department and of the population in the area, but not "more than 30,000 inhabitants per inspector." Ministry of Interior, Rules for the Child Pedagogical Rooms, Art. 4(4).

10 Quote from an interview with an officer from First DPD - Sofia, held on 12 June 2014.

11 Ministry of Interior, Rules for the Child Pedagogical Rooms, Art. 7(8).

tors also perform the role of a bridge between the institutions under the JDA, social institutions, the local commission, parents and children themselves.

Loaded with all these functions, inspectors are at the same time directly subordinated to the MoI, and as such, are not independent. This casts doubt on their effectiveness in relation to one of the fundamental principles of their work - protection of children's rights.¹ This is confirmed by testimonies of children, who maintain they have been subjected to physical abuse in the presence of inspectors.²

Border police departments

According to officials at the border police departments visited by the BHC, a major problem is the lack of staff with knowledge of foreign languages (especially Middle Eastern and African languages) and the number of staff. Despite the need for qualified personnel, only 16 employees at BPDs in the country passed training in Arabic in the period January 2012 - July 2014.³

For the period 2012-2014, staff underwent two training courses related to minors and adolescents on the topics of implementation of best practices in working with unaccompanied minors and adolescents (in 2012) and order of action of BPDG employees in escorting minors and adolescents (in 2013). According to data from the MoI, these courses were based on national and international documents governing the rights of the child.⁴

3.10. Violence

District police departments

Adolescents placed in reformatories reported **abuse during detention** in DPDs.⁵ Most of them – 24 out of 47 adolescent respondents or about 51% - testify that they underwent **mental and physical abuse** during police questioning. Children were insulted on ethnic grounds, humiliated, experienced stress because they were screaming at, threatened with ill-treatment, even with death, and physically abused in various ways, including by showing them bullets and guns. An adolescent detained in the Radnevo DPD was questioned by two police officers who hit him with a wooden stick on his back and arms. They also threatened to chop off his fingers with an axe.

They held a gun to his head and showed him bullets. The boy said that he was told that, if he did not confess, they would take him to the forest, kill him there, and no one would find him. Another child detained in the same district department was questioned by two officers. They punched him with fists and slaps to the face and hit his legs with a truncheon. His face started to bleed. They threatened that if he did not confess, they would "pull a gun" on him.

In quite a few cases, the children reported that they were **forced and coerced to confess** to acts they had not perpetrated. An adolescent, detained in the Montana DPD, was urged by six officers to confess to a theft that he had not committed. Various objects were placed in front of

1 *Ibid.*, Art. 1(2).

2 See 3.10 Violence.

3 According to information received from the MOI, other language courses passed by BPD officials in the period January 2012 - July 2014 were: English (total of 361 employees total), Greek (total of 35 employees) German (total of 36 employees) Russian (total of 33 employees), Turkish (total of 24 employees), Romanian (total of 20 employees), and Serbian (total of 20 employees). Information received from the Ministry of Interior under APIA with Ref. No. 812104-59 from 1 August 2014.

4 *Ibid.*

5 The examples of abuse in DPD are based on interviews with adolescents accommodated in the Boytchinovtsi Reformatory, held on 3 April 2014. The topic of the interviews was regarding the stay of children deprived of liberty in police departments and detention facilities.

him, such as sticks, hoses, pipes and an electric truncheon, and he was asked to choose with which object he preferred to be beaten. He was handcuffed the whole time. He was insulted, threatened and beaten with a cable and an electric truncheon on his back. The interrogation lasted three hours. He denied everything until the end. Another boy was detained in the First Pleven DPD. Four officers questioned him, trying to force him to confess to something of which he was innocent. They continued to slap him throughout the interrogation. A third child reported that he was held in the DPD in Sliven, which he himself called "the private place". He was questioned by three officials who wanted him to confess to something he had not done. They hit him with a truncheon and pulled his ears with pliers. After three hours of interrogation, the boy confessed out of fear.

Most often detainees are **simultaneously threatened, manipulated and abused**. A boy, detained in the DPD in Sliven, reported that he was questioned by three officers, who clubbed him on the back, shouting obscenities, including because he was Roma. They "yelled" throughout the interrogation and threatened that if he did not confess, the abuse would continue. Physical abuse of adolescents during their detention in DPDs includes slapping, punching, kicking; pulling ears with pliers; hitting with various objects: truncheons (including electric truncheons), wooden sticks, pipes, cables, hoses, and other items all over the body. An adolescent, detained in the First Pleven DPD, was questioned by seven officers simultaneously, who hit him with fists, slaps, kicks and threatened him. The interrogation lasted for about two hours. Another boy, detained in the First Sofia DPD, was slapped repeatedly while being questioned. The officials abusing the child laughed after every blow. An adolescent, detained in the Burgas DPD, reported that he was under the influence of alcohol and was beaten in the toilets of the department. He was kicked, punched all over his body and had a plastic bottle thrown at his head. A boy detained in the Sixth Sofia DPD was questioned by three police officers. They hit his hands with a wooden stick, punched him in the stomach and slapped his face. The interrogation lasted for about half an hour. Another case concerns a child detained in the Second Pleven DPD, where, in his words, officers from the department kicked him in the head, body, hands and feet. They used electric shocks on his neck and nipples. Officers used a truncheon to beat his chest and beat his back with a lath. A boy detained in the Fourth Plovdiv DPD reported that he was beaten with a metal pipe on his shoulders, back and arms.

Abuse of detained adolescents continues until confessions are extracted. This is evidenced by an adolescent detained in the Stara Zagora DPD, who was beaten in a police car and upon detention in the police department. The violence only ended after they extorted a confession of theft. Children are abused also when denying allegations during questioning. An adolescent was slapped in the First Sofia DPD and beaten with a truncheon because he denied committing robbery.

Attempts by adolescents to complain about violence perpetrated against them remain unsuccessful. Such is the example of an adolescent detained in the First Ruse DPD under drug and alcohol influence. Two officers from the department, during the interrogation, which lasted three to four hours, threatened him with an electric truncheon and slapped him. After questioning, the boy complained about the violence, but no one paid any notice. He noted that they advised him, ironically, that if he wanted to write a complaint, he should write that he had been playing cards throughout his stay.

In case of injury as a result of physical abuse, detainees were not given medical assistance. Such is the example of an adolescent detained in the Dimitrovgrad DPD. He was questioned by seven people, who insulted him ("insults related to my mother") and hit his body with plastic pipes and truncheons. His face bled and his ear was very sore and swollen after the violence, but no one paid attention to him. They questioned him repeatedly, almost around the clock.

There are cases where after physical abuse during questioning in the district police department, the children sustain **injuries that could be easily observed**. An adolescent was detained in the Sliven DPD, where they beat him with cables and used electric shock. He had bruises to the body, arms, back and chest. He reported that they stamped on his head and beat him until he confessed. A boy detained in the Yambol DPD was beaten with a truncheon and kicked in the head and chest. His whole body was bruised. Another child detained in the Silistra DPD noted that he was taken into the basement where three policemen beat him in the dark. One of them did so with a truncheon, the other two used their fists and feet. Blows were aimed at his body, face and head. His nose and mouth bled and he had a scar. His whole body was bruised.

Some of the detained adolescents develop **serious health problems** as a result of violence. An adolescent detained in the Nova Zagora DPD was beaten to “frame”, as he puts it, someone else. He was beaten with truncheons, which resulted in hernia that required an operation. Electric shocks were applied to his head and hands. Another boy detained in the Varna DPD was hit with gloves to the kidneys and with a truncheon on the back and legs. He could not stand up, and had bruises. Since then, he has had difficulty urinating.

There are cases, in the words of children, **in which violence is exercised against them in the presence of other officials** - inspectors from Children’s Pedagogical Rooms, witnesses of the events, who remain indifferent. For example, an adolescent was detained in the First Veliko Tarnovo DPD. Two officers questioned him and beat him with truncheons, fists and kicks. At the time of the violence another official was present – an inspector. The interrogation lasted about an hour.

A minor placed in a HTPMA reported that upon his detention in a DPD, violence was used against him twice, accompanied by methods of intimidation. He was detained at the Plovdiv DPD, where, after the police cuffed him very tightly, they set dogs on him to extract confessions of theft. Upon detention a second time in the same department, officers again tried to extort confessions from the child through setting dogs on him and hitting him with a truncheon.

The BHC team witnessed **the attitude and approach** of one of the officers at the Third Sofia DPD towards detained adolescents. Asked about the profile of adolescents placed in custody, the officer used expressions like “any imbecile” with reference to the children. Asked about what measures were taken in the case of violating the facility order, the same officer replied, “I’ll tie him like a monkey”.

Border police departments

Regarding detention in BPDs, two international human rights organisations, Human Rights Watch¹ and Amnesty International², revealed cases in which children were detained for days in the Elhovo BPD in extremely poor conditions, and witnessed beatings and physical abuse against family members by police officers.³ The incidents occurred in the period prior to 6 November 2013.

After an unprecedented escalation in the number of asylum seekers in Bulgaria, in November 2013, 1,400 policemen were despatched by the MoI to the land border with Turkey. Their aim was to stop the influx of people crossing the border illegally. Within this operation, according to Human Rights Watch and Amnesty International, many people became victims of physical

1 The website of the organisation is: <http://hrw.org/>.

2 The website of the organisation is: <http://amnesty.org/>.

3 Human Rights Watch (2014), Containment Plan: *Bulgaria’s Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants*, pp. 37 and 39.

violence and psychological abuse by police officers at the border. They were hit and kicked, and border guards set dogs on them and directed verbal threats against them.¹ Three boys from Afghanistan reported that they were threatened with weapons, including by shooting over their heads;² a family with children reported that they were beaten with truncheons all over the body;³ two boys aged 13 and 16 were beaten with truncheons on their hands and knees.⁴ A child and four men spent the night in an unidentified place before being returned to Turkey without food and water, and then forced to cross a river by boat to the sound of gunfire.⁵

According to the Border Police Directorate General at the Ministry of Interior, for the period January 2012 - July 2014, no disciplinary sanctions were imposed on BPD officers in connection with physical abuse and other ill-treatment of adolescents or minors.⁶ In the words of officials at Social Assistance Directorate in Svilengrad, there was not even a single case of a complaint of violence in the territory of the Svilengrad BPD. On its visits, the BHC team did not find any minor or adolescent detained in BPDs, with whom to talk about the conditions and the attitude towards them during detention.

3.11. Discrimination and other violations of fundamental rights

Ethnicity

The BHC identified a number of cases where children during their detention in DPDs were subject to insults because of their Roma ethnicity. In all cases revealed, racist insults were used during beatings with the purpose of punishment or extortion of confessions.

Also, Roma children are over-represented as illustrated by the records kept by the inspectors of Children's Pedagogical Rooms. In 2013, as many as 48.5% of those registered with the Children's Pedagogical Rooms in the country were Roma, 44.3% were of ethnic Bulgarian origin, and 6.7% of Turkish origin. At the same time, according to the official data, the ethnic profile of the children having committed criminal acts was very different – 71% of the minors and 62% of the adolescents were of Bulgarian origin, and only 27% of the minors and 20.9% of the adolescents were Roma.⁷ This trend, alongside the verbal abuse established by the BHC, raises serious concerns and clearly demonstrates the extent of institutionalised discrimination towards Roma children.

Translation

The right of detainees in DPDs and BPDs of access to an interpreter of a language they understand is the main guarantee that all other rights will be respected. Nevertheless, officers at all BPDs said that they were experiencing an acute shortage of interpreters and extreme difficulty in securing such, especially for Eastern languages.

1 *Ibid*, p. 22.

2 *Ibid*, p. 17.

3 *Ibid*, p. 19.

4 Amnesty International (2014), *The Human Cost of Fortress Europe: Human Rights Violations against Migrants and Refugees at Europe's Borders*, p. 9, available at: <http://amnesty.org/en/library/info/EUR05/001/2014/en>.

5 Human Rights Watch (2014), *Containment Plan: Bulgaria's Pushbacks and Detention of Syrian and Other Asylum Seekers and Migrants*, p. 21.

6 Information received from Ministry of Interior, General Directorate "Border Police" under APIA with Ref. No. 812104-83 from 26 August 2014.

7 According to the CCCJD, without indicating the way in which the information on the ethnicity of the children was collected. Central Commission for Combatting Juvenile Delinquency (2014), *Report of the CCCJD on the status and trends of crime and delinquency of minors and adolescents. Crimes against them. Activity of the Central and Local Commissions for combating juvenile delinquency* (from now on Report of CCCJD for 2013), pp. 9-10.

Particularly revealing is the case in the Bregovo BPD and the Vidin BPD, the only available interpreter to Farsi in the region is also a judge in the Belogradchik District Court. According to officers at the Bregovo BPD, in some cases agents of the State Agency for National Security are enrolled as interpreters, who also question detained foreigners. This is a grave conflict of interest that, especially with regard to detained unaccompanied children, puts them at risk.

Even if the authorities succeed in providing a timely and adequate translation, BPDs are unable to pay their interpreters in a timely manner but officers at the Bregovo and the Vidin BPDs say that the interpreters continue to work in good faith.¹ In addition, BPDs do not have funds available for written translation, and a number of BPD documents, like their internal order regulations, have not been translated into foreign languages.

3.12. Inspections

The legal framework provides for inspections on the part of a number of internal and external authorities and representatives of civil society. General supervision of the legality of detention and the protection of human rights in police custody is carried out by the Prosecutor's office.² Internal supervision within the MoI system is carried by different structures of the MoI and the Inspectorate of the MoI, who "alone or jointly with the structures and units under Article 9 of MoIA, carries out complex, partial, thematic, supervising, reporting and inspection reviews."³ Separately, the State Health Control Unit of the Management of Property and Social Activities Directorate carries out sanitary-hygienic supervision, including in the detention places within the MoI.⁴

In addition, DPDs and BPDs are subject to review by external national and international bodies – the Ombudsman of the Republic of Bulgaria as a National Preventive Mechanism (NPM) and the CPT, however, these inspections are not focused particularly on the situation and rights of children within the DPDs and BPDs. Although both institutions make a number of visits to places of detention within the MoI⁵ with regard to access to legal advice, medical examination, notification of relatives, as well as physical and mental abuse, evident from the findings in the present study, many of these problems demonstrate the serious deficits in the functioning of the system.

Apart from the institutional supervision, DPDs and BPDs are subject to supervision from the civil society, which is granted access through pre-notification.⁶ This provision represents a

1 In the words of officers from Vidin BPD and Bregovo BPD.

2 Ministry of Interior (2009), Instruction № I3-1711 from 15 September 2009 for the equipment of the premises for detained persons at the structural units of the MoI and the order in them, Art. 85.

3 Ministry of Interior (2013), Internal Rules of the Organisation and Activity, Conditions and Procedures for Exercising the Powers of the Inspectorate - MoI, approved by Order Iz-979 of 14 May 2013, Art. 17(1), available at: <http://www.inspektorat.mvr.bg/NR/rdonlyres/D858809C-39EA-424F-847B-24E2F1C779F4/0/VPravilaDI.doc>.

4 Ministry of Interior (2014), Rules for the structure and activities of the Ministry of Interior, Art. 95, available at: http://www.mvr.bg/NR/rdonlyres/C9F9EB92-82BC-4BB0-9170-064562087560/0/PRAVILNIK_USTR_DEINOST_MVR.pdf. According to the MoI, for the period from January 2010 to July 2014, in part of the DPD visited by the BHC regular healthcare control was carried out - in Second and Third Sofia DPD a total of 10 inspections were took place; in Ninth Sofia DPD - 5 inspections. There is no information on inspections to have been carried out in BPD. Information received from Ministry of Interior, Medical Institute of the MoI under APIA with Ref. No. 6353 from 19 August 2014.

5 In 2012, NPM made 22 visits to places of detention in DPD, and in 2013 - 84 visits to places of accommodation of detainees in the MoI structures. For more information, see: Ombudsman of the Republic of Bulgaria (2013), *Annual Report of the Ombudsman of the Republic of Bulgaria on its activities in 2012 as a National Preventive Mechanism*, available at: <http://www.ombudsman.bg/documents/Report%20NPM%202012.pdf>; Ombudsman of the Republic of Bulgaria (2014), *Annual Report of the Ombudsman of the Republic of Bulgaria on its activities in 2013 as a National Preventive Mechanism*, available at: <http://www.ombudsman.bg/documents/prevantiven%20mehanizam%202014.pdf>. In 2010 CPT visited 8 DPD in Sofia, Varna, and Balchik. CPT (2012), *Report to the Bulgarian Government on the visit to Bulgaria carried out from 18 to 29 October 2010*.

6 Ministry of Interior (2009), Instruction № I3-1711(2009) for the equipment of the premises for detained persons at the structural units of the MoI and the order in them, Art. 54(3).

good opportunity for civil society organisations to supervise the conditions and treatment of detainees in the MoI structures. At the same time, this opportunity is not used systematically. The last such visit took place in 2011 in the framework of the project on civil monitoring of the police, a joint initiative of the Open Society Institute – Sofia and the Security Police Directorate General at the MoI.¹

Children detained in the DPDs and BPDs are in a highly vulnerable situation. Nevertheless, neither the MoI authorities, nor the child protection authorities recognise this. The State Agency for Child Protection does not visit places of detention within the MoI structures and does not collect information on children in detention. At the same time, the Minister of the Interior is not explicitly attributed the function of ensuring the protection of children's rights.²

1 For more information, see: Open Society Institute (2011), *National Final Report on the Project "Civil Monitoring of the Police" during the period August 2010-2011*.

2 Under the Child Protection Act, the responsibilities of the Minister of Interior as a protection body are only "a) ensures the provision of police protection of the child through the specialized bodies of the Ministry of Interior; b) participates in the implementation and control of the specialized child protection in public places; c) exercises control of the passage of children through the Bulgarian state border". Child Protection Act (2000), Art. 6a(4)(2).

B. Institutions belonging to the juvenile delinquency system

1. CORRECTIONAL BOARDING SCHOOLS AND SOCIAL-PEDAGOGICAL BOARDING SCHOOLS

Despite avowals to reform child justice, children from vulnerable groups continue to be placed in correctional facilities based on unclear criteria and contradictory court decisions for long periods and in violation of their rights (the right to information, the right to protection, and the right to appeal). The most serious issue is the placement in correctional boarding schools and social-pedagogical boarding schools of children who are victims of crimes such as sexual abuse and human trafficking, and who should instead be provided with protection and support.

Children placed in these boarding schools languish in inhuman conditions. They are deprived of the necessary materials to maintain good personal hygiene, to have access to nutritious and sufficient food, personal belongings and clothes. Suicide attempts and self-injuries among the children placed in these institutions are testimony of inadequate levels of psychological and medical support.

The education process is of a low quality while vocational training is practically non-existent due to inadequate material conditions, poor motivation of the educators and the current practice of bringing students of different age and development levels into the same group. Children with disabilities are also deprived of quality education. Children find the available extracurricular activities boring and the possibilities to watch television or to surf in the Internet are limited.

Some children are employed illegally outside the boarding schools. They would also often be punished by having to provide forced labour (an unlawful measure) within the boarding school itself. In addition, they often receive punishments that are inhuman and degrading. Most children experience severe forms of physical and psychological violence inflicted on them by peers and staff.

Personnel is unsatisfactory both in terms of numbers and qualifications. Furthermore, through their inaction, staff foster violence among the children. Inspections conducted at the boarding schools fail to uphold the rights of the children placed in them.

1.1. General information

Correctional boarding schools (CBSs) and social-pedagogical boarding schools (SBSs) are special boarding schools under the authority of the Ministry of Education and Science (MES). As of 2014, Bulgaria has four CBSs and three SBSs. They house children aged eight to 18 who

have committed some type of crime (CBSs) or delinquent act (CBSs, SBSs), or who are deemed susceptible to commit a delinquent act (SBSs).¹

Bulgaria has declared its commitment to introduce a holistic reform to juvenile justice. The Road Map for the implementation of the Road Map for the Implementation of the Concept of State Policy on Juvenile Justice (2013-2014)² includes closing down SBSs and reforming CBSs. Nevertheless, no real decrease in the number of placements has been achieved in the period 2013-2014 (see Table 10).

Table 10: Children placed in CBSs and SBSs (2012–2013)³

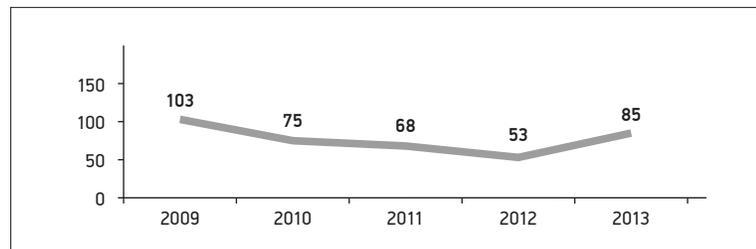
Institution type:	Children as of the end of 2012	Children as of the end of 2013	Boys as of the end of 2012	Boys as of the end of 2013	Girls as of the end of 2012	Girls as of the end of 2013
CBS	168	168	137	125	31	43
SBS	107	105	86	83	21	22

Source: SACP

In 2012, a total of 176 new children were placed in CBSs and SBSs with correctional measures. In 2013, this number was 170.⁴ There were 12 cases of the court relieving adolescents of serving the deprivation of liberty punishment and placing them in a CBS in 2013,⁵ and 11 in 2012.⁶

This trend undoubtedly indicates the reluctance of the Local Commissions for Combatting Juvenile Delinquency (hereinafter: Local Commissions) to harmonise its activities with the government's commitment to close down SBSs by the end of 2014.⁷

Figure 2: Number of newly placed children in SBS per year (2009-2013)



Source: NSI

1 As a result of conducted inspections and identified numerous violations, Straldzha SBS was closed down and has ceased to function since the start of the 2014/ 2015 school year. The children formerly placed there have been transferred to Varnentsi SBS and Dragodanovo SBS.

2 Road Map on Juvenile Justice (2013-2014), p. 22.

3 Information received from the State Agency for Child Protection under APIA with Ref. No. 05-00-9 from 18 December 2013.

4 National Statistical Institute (2013), "Minors and adolescents reporting to the Child Pedagogical Rooms under educational measures for minors and adolescents", available on: <http://goo.gl/SCiZLq>. Although, the number of placements in CBSs in 2013 (85 children) marks a decrease in comparison to the previous year, 2012 (123 children), SBS placements mark a considerable increase: from 53 children in 2012 to 85 children in 2013. The number of placement measures in SBSs in 2013 rises significantly to 41% compared to the previous year.

5 Criminal Code (1968), Art. 64(1).

6 Prosecutor's Office of the Republic of Bulgaria (2013), *Report on the implementation of the law and on the activities of the Prosecutor's Office and investigating bodies in 2013*, pp. 104-105, available on: www.prb.bg/uploads/documents/docs_4609.pdf.

7 Road Map on Juvenile Justice (2013-2014), p. 22.

1.2. Placement

Children placed in CBSs and SBSs are members of highly vulnerable groups:

- Nearly 80% of them are **Roma**.¹ In 2011-2013 the police estimated that an average of 63% of all child perpetrators of crimes were Bulgarian while the share of Roma was only 29%.² The disproportionately high share of Roma children in CBSs and SBSs is probably an indication of discrimination.
- About 35% of them arrive directly **from another specialised institution** or a community based service – CBS, SBS, crisis centres, homes for children deprived of parental care, family-type placement centres.³
- About 32% of them belong to the lowest age group – **eight to 12 years**.⁴

The MES is responsible for the distribution of children among CBSs and SBSs. It has been impossible to identify what is the key criteria used in this procedure and it is unclear whether the Ministry places children according to their usual residence, which is of key importance for children. Even if the MES is willing to observe this principle, it cannot be applied in the distribution of girls in CBSs and SBSs as the country has only one institution for girls of each of the two types.

The number of children **actually present** in the institutions is smaller than the figures for those officially registered. This is the result of numerous runaways and absences due to so called “city leaves” and “home leaves” – leaving the institution for periods ranging from one to several days, which is approved by the director, but is not a legally regulated action. The research found a case of an adolescent punished with “deprivation of liberty” and placed in the reformatory in Boychinovtsi, while, at the same time, the boy’s placement at a SBS had not been terminated. The practice of transfer of children from homes for children deprived of parental care in SBSs and CBSs differs. Sometimes the placement in the preceding institution is not terminated by the court. The key motive behind this lies in guaranteeing the institution’s budget, which is calculated according to the number of placed children, while in other cases it is the result of a slow judicial procedure.

Neither the law, nor the court practice determine clearly **the upper age** limit at which children may be placed and detained in CBS and SBS – 16 or 18 years.⁵ The placement order specifies the **placement duration** very rarely. Consequently, most children are assigned the longest legally possible duration of placement – three years. Moreover, some placement orders specify a duration which, in view of the law, is inadmissible such as “*until reaching the age of majority*”,⁶ or “*until a change in the circumstances which prompted the placement*”,⁷ or “*until reaching the age*

1 Data according to estimates by the director and staff at CBSs and SBSs.

2 Council of Ministers, Central Commission for Combatting Juvenile Delinquency (2011, 2012 and 2013), *Reports on the current situation and trends in crime and delinquency among minors and adolescents. Crimes against them. Activities of the Central and Local commissions for combatting juvenile delinquency in 2011, 2012 and 2013*, accordingly p. 11, p. 11 and p. 10.

3 State Agency for Child Protection (2013), *Analysis of the results of a planned inspection of social-pedagogical boarding schools and correctional boarding schools in 2013* (Summary), p. 6.

4 Information, provided from the State Agency for Child Protection under APIA with Ref. No. 05-00-9 from 18 December 2013; Information received from the State Agency for Child Protection under APIA with Ref. No. 14-0037 from 31 March 2014.

5 Burgas District Court (2014), Decision No. 966 from 21 May 2014 on Private Criminal Case No. 1105/ 2014. In this case, the Burgas District Court denied as unfounded the motion by the Local Commission to apply the educational measure “placement in SBS” to a girl aged 16, the court reasoning being that the girl’s disagreement to reside at the correctional institution constituted an objective obstacle to her placement there. Burgas District Court (2013), Decision No. 1654 from 29 December 2013 on Private Criminal Case No. 3464/ 2013. Under identical circumstances, a jury at the same court found no legal reasons to prevent the placement.

6 Pleven District Court (2013), Decision No. 822 from 25 September 2013 on Private Criminal Case No. 2295/ 2013.

7 Cherven Bryag District Court (2012), Decision No. 362 from 21 November 2012 on Private Criminal Case No. 344/ 2012.

of majority and completing the corresponding education degree”.¹ This research established that children are not informed about the duration of their placement. Moreover, statistics indicate that, once introduced, the measures for placement in CBSs and SBSs lead to **long-term institutionalisation**.²

Residents may willingly **prolong the duration of their stay** after the prescribed term in order to complete their education. This procedure does not require a formal consent of a parent (guardian) or a social worker. A quarter of the students filed declarations to prolong their stay during the 2013/ 2014 school year. School staff motivate the children to stay due to the school’s financial interest. Some institutions have created their own declaration forms where resident children are required to fill in either “I agree” (or “I do not agree”) “to continue my education at SBS after the completed duration of my stay in the institution” (Straldzha SBS). Meanwhile, the existing mechanism to **discontinue placement following revision of the correctional measure by the pedagogical council of the school**, which should be performed at the end of each school year, is not functioning. In 2012 and 2013, out of 165 cases of children who left CBSs, only 6% had their placement discontinued on such grounds.³ In most cases placement was discontinued on the grounds of **reaching the age of majority** (50%) or **reaching the longest statutory duration of placement** (27%).

Following a referral made by the Bulgarian Helsinki Committee (BHC) and a consequent intervention of the State Agency for Child Protection, the placement of three girls at Podem CBS suffering from epilepsy and not receiving adequate medical care, was discontinued.⁴ Another case of early termination of the placement concerns a girl from the same CBS, who attempted suicide and, as a result, was hospitalised for a long period of time. The placement of **pregnant girls and girls who have just given birth** has also been discontinued if they have a suitable family environment to return to. Otherwise, pregnant girls are placed temporarily until giving birth in a “Mother and Baby” social service. After the baby is born, however, the girls return to the CBS or SBS until the duration of the educational measure expires or until they reach the age of majority.

Frequently, **the delinquent acts** that served as grounds to initiate the correctional proceedings **are not specified**, which makes it hard to assess the necessity and proportionality of the correctional measure for placement. In some cases, a delinquent act did not take place, but correctional measures were, nevertheless, imposed for the purposes of prevention.⁵ Instead of referring to a particular act, the court’s reasoning stems from information about the low social status and poor material living conditions of the children and this is a good enough reason for the court to impose the most severe correctional measure. A number of court decisions explicitly refer to the children’s Roma ethnicity in their reasoning.⁶

1 Haskovo District Court (2008), Decision No. 860 from 18 December 2008 on Administrative Criminal Case No. 1231/ 2008. A similar case is that of a 12-year-old boy placed in Kereka CBS “until coming of age and completing the respective educational degree”. At the time of the BHC visit, the boy was 17 and had been living at the boarding school for two years over the prescribed time limit.

2 Information, received from the State Agency for Child Protection under APIA with Ref. No. 05-00-9 from 18 December 2013; Information received from the State Agency for Child Protection under APIA, Ref. No. 14-0037 from 31 March 2014. Out of a total of 168 children placed in CBSs at the end of 2013, the actual duration of stay for 62 of them was between one and two years, for 40 of them – between two and three years, and for 10 children – over three years.

3 Information received from the State Agency for Child Protection (2013) under APIA with, Ref. No. 05-00-9 from 18 December 2013; Information received from the State Agency for Child Protection (2013) under APIA with, Ref. No. 14-0037 from 31 March 2014.

4 Pleven District Court (2014), Decision No. 50 from 24 January 2014 on Private Criminal Case No. 168/ 2014; Pleven District Court (2014), Decision No. 115 from 17 February 2014 on Private Criminal Case No. 348/ 2014; Pleven District Court (2014), Decision No. 113 from 21 February 2014 on Private Criminal Case No. 402/ 2014.

5 Pleven District Court (2013), Decision No. 813 from 25 September 2013 on Private Criminal Case No. 2352/ 2013.

6 Kazanluk District Court (2010), Decision No. 18 from 13 January 2010 on Private Criminal Case No. 1472/ 2009.

Delinquent acts, which result in a placement in CBSs and SBSs, include involvement in **truancy, running away from home, arrogant attitude, conflict with fellow students or teachers, and vagrancy**.¹ At the same time, adults are not punished for committing any of these acts. Most of the children transferred from institutions/ community-based services (crisis centres, homes for children deprived of parental care, family-type placement centres) receive this sanction because of their **inability to adapt to institutional order**.² The research further established two cases of placement in CBS in 2013 of adolescent foreign nationals for illegal border crossing.

A disturbing observation is the placement of **girls**, frequently based on status violations of moral concern such as **prostitution**,³ **sexual activity**,⁴ **relationships and cohabitation with adult males**,⁵ and **contacts with individuals who have been convicted**.⁶ The Roma ethnicity of the individuals the adolescent girls maintain contacts with is another ground for placement in a CBS.⁷ The research did not establish any cases of boys, who were placed in CBSs and SBSs on similar grounds, which is indicative of the institutionalised sexist attitudes of all stakeholders involved in the juvenile delinquency system. Other girls who receive placement for the purposes of correction and education include those known to the police and court to be **victims of crime – primarily human trafficking for the purpose of sexual exploitation**,⁸ **solicitation of prostitution**,⁹ and **rape**.¹⁰ In contravention of the standards for protection of children victims of crime, **the courts continue to condemn victims' conduct** as incompatible with the norms of public morality. Hence, this practice, in fact, results in the re-victimisation and stigmatisation of the girls.

The argument in favour of enforcing the severest correctional measures claims that **all other measures used to influence the child's behaviour have been exhausted**. Rarely, however, are these other measures described explicitly in the court decisions. Some children are placed in CBSs without being subjected to any other measures beforehand.¹¹

No practice has yet been established to provide each newly placed child with a copy of the internal rules of the institution or with contact information of those institutions/ organisa-

1 State Agency for Child Protection has similar conclusions. State Agency for Child Protection (2014), "SACP announces the results of inspections at CBSs and SBSs", Press release, 20 February 2014, available on: <http://sacp.government.bg/novini/2014/02/20/dazd-obyavi-rezultatite-ot-proverkata-na-spi-i-vui/>.

2 Burgas District Court (2013), Decision No. 1654 from 29 August 2013 on Private Criminal Case No. 3464/ 2013.

3 Pleven Regional Court (2013), Decision No. (unknown) from 16 July 2013 on Second Instance Private Criminal Case No. 495/ 2013.

4 Burgas District Court, Decision No. 1652 from 29 August 2013 on Private Criminal Case No. 3464/ 2013.

5 Yambol District Court (2013), Decision No. 121 from 5 August 2013 on Second Instance Private Criminal Case No. 245/ 2013; Burgas District Court (2013), Decision No. 546 from 13 March 2013 on Private Criminal Case No. 778/ 2013; Pleven District Court (2013), Decision No. 204 from 21 February 2013 on Private Criminal Case No. 322/ 2013. Nikopol District Court (2013), Decision No. (unknown) from 21 March 2013 on Private Criminal Case No. 409/ 2012. The decision concerns a girl placed in Dragodanovo SBS due to "the moral inclination she demonstrates through her conduct by cohabitation with individuals of legal age, which is an indicator of a high degree of public threat by both her and her deed". Pernik District Court (2012), Decision No. 702 from 6 August 2012 on Private Criminal Case No. 1113/ 2012. Part of the written personal profile of the adolescent girl placed by the court at a CBS contains the conclusion that the girl is "unable to control her physiological needs for contacts with the opposite sex and changes her partners frequently".

6 Burgas District Court (2013), Decision No. 546 from 13 March 2013 on Private Criminal Case No. 778/ 2013.

7 Pleven District Court (2013), Decision No. 801 from 19 September 2013 on Private Criminal Case No. 2253/ 2013. For example, the Pleven District Court observes that the girl whom the court placed in Podem CBS maintained "contact with [...] a person of Roma ethnicity with the name 'Sergey'".

8 Pleven District Court (2013), Decision No. 560 from 10 June 2013 on Private Criminal Case No. 1362/ 2013.

9 Velingrad District Court (2012), Decision No. (unknown) from 1 August 2012 on Private Criminal Case No. 311/ 2012; Stara Zagora Regional Court (2009), Decision No. 129 from 9 September 2009 on Private Criminal Case No. 742/2 009.

10 Pleven District Court (2013), Decision No. 204 from 21 February 2013 on Private Criminal Case No. 322/ 2013.

11 CEDH, *A. et autres c. Bulgarie*, § 9.

tions with which that child may file complaints. In some institutions, the children, including those who are illiterate,

sign a declaration that they have been informed about the internal rules. Elsewhere, the internal rules are displayed in a conspicuous place in the corridor. According to children interviewed during the research, both practices have been introduced because of the more frequent inspections conducted by state institutions in 2013, although, in reality, neither practice has raised awareness of the rules.

1.3. Judicial review and legal aid

The right of the child to be duly and timely informed about the nature of the proceedings under the Juvenile Delinquency Act in a language they understand is not provided. Interviewed children explain that **they have been unable to gain sufficient understanding of the nature and purpose of the proceedings** and in many cases even about the reasons for initiation in the first place. Although the presence of a relative in the procedure before the Local Commission is obligatory, it is not always ensured. Children living in social care institutions are particularly vulnerable. The directors of the corresponding institutions act as representatives of these children and they are, usually, the same people who have alerted the Local Commission and demanded initiation of the correctional proceedings.

Upon receiving a report about a delinquent act at the Local Commission, two public educators are assigned to conduct an inspection.¹ However, the researchers came across reports resulting from such inspections that were unprofessional and not objective.

Proposals forwarded by the Local Commission to the court concerning the imposition of correctional measures under the Juvenile Delinquency Act appear to have similar deficiencies. These proposals are too abstract; they lack proof and are imprecise in terms of the timing of facts and circumstances; there is no discussion whether a delinquent act is committed, or not; and no motives for the choice of correctional measure proposed are included. In most cases, the court reproduces these severe deficiencies in its own decisions. The blank description (or the lack of such) of the delinquent acts is a serious obstacle to identifying the exact starting point of the six-month limitation of actions to initiate and hear correctional proceedings in accordance with Article 13(b) of the Juvenile Delinquency Act.

The case for placement is heard by a criminal jury of the district court at the child's place of residence. **Efficient defence** during the hearings requires the participation of the child, their parents (or the persons who replace them) and a lawyer. However, according to the law, it is obligatory only to summon these individuals to court (as opposed to be present in court) whereas in practice a parent and/ or a lawyer are often actually not present. The proceedings do not necessitate the presence of a pedagogue or a psychologist. Hence, the children are represented either by a lawyer or by a trusted representative (ensuring professional legal aid depends on a decision by the jury in the proceedings). Moreover, public defenders are assigned by the court on the day of the court hearing and, thus, their participation is purely formal and practically inefficient. Usually, the trusted representative is a social worker with no legal education or independence and his or her presence is also formal. The trusted representative does not act to express the opinion and will of their trustees but against them. The research established that in court the trusted representatives insist that the proposed measure for placement in CBS or SBS is enforced regardless of the will of the child and the parents.² As legal aid is not made available, the number of appealed decisions remains modest. Existing legislation excludes placement in CBSs and SBSs from regular judicial control. Once placed

¹ Juvenile Delinquency Act (1958), Art. 16(2).

² The situation of applicant B. in the *A. and Others v. Bulgaria* case is similar. For more information, see CEDH, *A. et autres c. Bulgarie*, §16.

in an institution, the children and their parents have no legal means to request directly the re-examination of the imposed correctional measure.

1.4. Material conditions

Due to the absence of clear placement criteria, children of various ages reside together in CBSs and SBSs. **Children's personal space** is considerably limited and they are totally deprived of privacy. **The rooms inhabited by the children** are poorly furnished and the few personal possessions that they have are easily stolen. **The facades of the boarding schools are old with mouldering wall-plaster and paint.** They lack ventilation and air-conditioning systems. The walls in most dormitories are covered in moss; the windows are out of order or broken, and the flooring is old and worn-out. None of the boarding schools provides suitable conditions for children with physical disabilities. **The heating** is turned on only for a few hours during mornings and evenings; not all radiators in the larger premises work. During the winter months, some of the institutions maintain a very low temperature in their dining rooms,¹ as well as in all of their sports facilities and celebration halls. In fact, children keep their coats on during the day and the night in the cold months. At the same time, there is a striking difference in temperature between the premises for the children and those for the administration.

The **lavatories** in some institutions are common premises in poor condition (the showers are broken or lacking, lighting is often minimal and there is no heating) and very few in number. Moreover, access to them is limited. Bathrooms are used by several children simultaneously for a limited period and without any personal space. In four boarding schools, bathrooms are located in the basement, which makes their supervision difficult, thus creating possibilities for abuse.² In the summer, some of the children visit public baths once a week³ or bathe outdoors.⁴ Most toilets are in poor condition (without toilet seats or toilet paper) and their hygiene is unsatisfactory. The sanitary premises have sinks with no running hot water or soap available. Rakitovo CBS, Kereka CBS and Varnentsi SBS have outdoor toilets, which are old and unhygienic. The children use them daily and are responsible for maintaining hygiene in them.

Most of the children have very poor **personal hygiene** (bathing in some SBSs and CBSs takes place once a week). At some boarding schools the bathrooms are locked when not in use. Usually, only soap is provided and its use is supervised by the educators. According to the children in Rakitovo CBS, on a bathing day, staff members provide three bars of soap for 20 children. The children in Kereka CBS explain that the bar of soap is cut in several pieces so that "there is soap every time". Hot water is available only at certain hours or when the central heating is on, and its quantity is usually insufficient for everyone. Maintaining oral hygiene is also a challenge, either because the children have no toothpaste or toothbrushes, or because they have no such habits and no one helps them cultivate them. Toiletries (such as sanitary pads, tampons and razors) are indeed provided but not on a regular basis, and their quality, according to the children, is unsatisfactory. In all boarding schools the children are responsible for keeping their rooms clean and in most of them they have to clean the common premises, too. To do this, the children use only water and a mop. Their bedlinen is seldom changed. Some children wash their clothes by hand, for which they receive a handful of washing powder, but have no access to plastic basins or other washing containers or to places suitable for drying clothes.

1 Straldzha SBS, Varnentsi SBS.

2 Rakitovo CBS, Kereka CBS, Podem CBS, Dragodanovo SBS.

3 Rakitovo CBS.

4 Podem CBS.

Stay in the open in the boarding school's courtyard has no limitation (even during classes). In the courtyards of the boarding schools, there are sports grounds and outdoor recreation grounds most of which are old, unwelcoming, unsuited to the children's age and insalubrious. Organised activities outside the institution are short and of sporadic nature.

The children complain about the lack of **food** (not enough bread, only occasional snacks between meals and minute portions, especially at dinner) as well as about **the food's poor quality** (lack of hygiene, no diversity in the menu, bad taste and unwanted particles in it, such as small stones, hairs or insects). Most children placed in these institutions explain that they go to bed at night while still hungry. In Straldzha SBS, where food is provided by a catering company, the BHC found that the individual portions are extremely insufficient for the children, who are still growing; no supplementary food is available. For example, soup in the lunch menu is served in a plastic cup of 200 ml., which is filled up only two-thirds. The afternoon snack consists of a single grated carrot. Kitchen equipment is old and the used cooking utensils and cutlery are worn out. Dining premises are dark, unwelcoming and cold.

The food's poor quality partly explains why children **run away**. Some children abscond because they are hungry and try to find money to buy food from local shops. At the same time, children at CBSs and SBSs are not allowed to have **pocket money**. They only have their own money if the family gives them some (the children spend it mainly on food and cigarettes) and those who have money are subjected to manipulation and aggression. The staff's "favourites" receive additional quantities of food and drinks (in front of the other children).

The clothing available to the children is worn out, mainly second-hand (from donations) and not appropriate for their size and age. Children change their clothes and underwear with clean ones once a week. Clothes are kept in a separate room, and, hence, the children have no spare pair if they need it. The boarding schools provide new shoes only very rarely which in most cases are the same for everyone. The children do not like them, and they become easily worn out. Sometimes, the children sell these shoes to buy cigarettes and food. Clothes and shoes have become key objects for theft at boarding schools. Some boys in Kereka CBS and Straldzha SBS wear oversized military-like coats and boots. The bedlinen is old, worn-out and often missing an item to make up a complete set. Blankets are also dirty and too few in winter.

1.5. Health care

Although some CBSs and SBSs have medical offices, according to existing legislation the institutions are not obliged to employ full-time **medical staff**.¹ Rakitovo CBS is the sole exception with an employed feldsher (but only during the day). Zavet CBS and Straldzha SBS have a feldsher visiting several times a week but the schedule of the visits is frequently not observed. The need for medical intervention is decided by the institution's staff, who is not specially trained to recognise medical conditions. According to children interviewed by the BHC, staff normally treat their health complaints with **indifference, distrust and even annoyance**. Medical services are provided to the children by external general practitioners assigned to them. Three of the boarding schools (Dragodanovo SBS, Varnentsi SBS and Kereka CBS) are located in villages without a medical doctor. The children at these institutions receive access to their general practitioner very rarely – from once a fortnight to several times a week when the general practitioner visits to provide medical services to the village.² The children explained that even this significantly limited timetable for visits frequently goes

1 Ministry of Education and Science (2006), Rules for organisation and operation of correctional boarding schools and social-pedagogical boarding schools (hereinafter: Rules for organisation and operation of CBSs and SBSs).

2 According to information collected by the BHC, Varnentsi SBS and respectively the village of Varnentsi receives access to medical services by a general practitioner once a week, Dragodanovo SBS – once or twice a week, and Kereka CBS – once a fortnight.

unobserved. At those boarding schools located in areas with a resident general practitioner, access to the practitioner is again based on the sole discretion of the personnel. The children also have a dental practitioner assigned to them. Nevertheless, all of the interviewed children claimed that **access to a dentist** is rare or impossible.

CBSs and SBSs house children in need of daily **specialised care** including children with epilepsy, mental and behavioural disorders, HIV/ AIDS, addictions, pregnant girls or new mothers,¹ but such care is not available. Access to a specialist such as a child psychiatrist, gynaecologist or neurologist is nearly impossible. At some institutions, transportation to the office of the medical specialist is paid for by the children (Podem CBS). A further obstacle to reaching medical professionals is the requirement that the child should be accompanied by a member of staff. The Ministry of Education and Science admits that some of the children in CBSs and SBSs have “psychological [...] problems”.² Despite this, quality **psychological care** is practically absent. Most boarding schools employ a psychologist but the children do not feel free to share their problems with them. BHC has identified at least six cases of self-harm and attempted suicide by children at two institutions – Dragodanovo SBS (where the BHC identified at least three cases of self-harm through stab wounds caused by a piece of glass or razor in the area of the wrist, and at least two cases of girls with cigarettes burns on their arms) and Podem CBS (where the BHC identified a case of a girl who jumped off the school roof). Cases of self-harm can be seen as a bid to make the staff heed their needs.

Sexual violence and physical and verbal aggression among the children are rife. For example, the BHC team witnessed a beating of the youngest boy at Straldzha SBS by older students. During visit of the BHC in the Dragodanovo SBS, a 16-year-old girl inflicted violence on two other girls, one of whom was in an advanced stage of pregnancy. Symptomatic also is the case of a 17-year-old girl who, at the time of the BHC visit, was highly distressed after her newborn baby was placed in another institution and she could no longer see her child.

A medical certificate for performed examination is drafted according to a required template and attached to the personal file of each child newly placed at these institutions.³ Performing an initial detailed medical examination prior to placement is of key importance to preventing the effects of neglect and ill-treatment at the institutions. However, in reality, if such an examination is performed at all, it is only perfunctory and fails to establish the child’s actual health status. In addition, any accompanying medical documents detailing the child’s past are unavailable. Any medical documentation issued at the time of the child’s stay in the institution is stored in the general administrative files access to which is available to all staff members. In the course of this research, no cases were established of a medical professional who registered and reported injuries to a child resulting from ill-treatment at the institution or during previous periods of confinement. During their visits to the institutions, BHC researchers identified signs of violence on some children (Podem CBS, Straldzha SBS, Varnentsi SBS). The victims confirmed the lack of access to medical help even in the case of open wounds.

Informed consent from the parents when their children receive therapy or medical interventions is not requested. In some cases, parents have to fill in a general form where they agree to all medical interventions regarding their child. In reality, the directors of the boarding schools give their consent about each particular intervention when necessary.

1 The data was further corroborated by the State Agency for Child Protection during a 2013 inspection of all CBSs and SBSs, in particular: five children were diagnosed with epilepsy, three children – with other chronic diseases, one child with AIDS, 15 children with developmental disabilities, 33 children with mental and behavioural disorders, there were seven pregnant adolescent girls and seven children on permanent medical therapy. State Agency for Child Protection (2013). *Analysis of the results of planned inspection of social-pedagogical boarding schools and correctional boarding schools in 2013* (Summary).

2 Ministry of Education and Science (2014), Letter No. 0211-108 from 4 June 2014 to the Minister of Healthcare regarding medical services at CBSs and SBSs.

3 Rules for organisation and operation of CBSs and SBSs, (2006), Art. 9(8).

The Regional Health Inspectorate carries out regular screenings for **sexually transmitted diseases** at the boarding schools by taking blood samples. The children are not informed about the results of these or other performed medical tests whose purpose most of them even fail to understand. The personnel of the boarding schools do not provide for an adequate **health and sexual culture**, which puts the life of children at risk. Most children in boarding schools smoke. In some institutions this practice is encouraged and sometimes staff even sell cigarettes to the children or hand them out for free.

1.6. Activities and education

The **individual work plans**, as well as the psychological and pedagogical evaluation of the children, contain scarce information; they are also often identical and unsubstantial.¹ The children are not included in the process of developing the individual work plans and remain uninformed of their contents. There is no link between planned and implemented activities. Frequently, the questionnaires and planned educational discussions are completely inadequate for their intended purpose.² The response to **critical situations** lacks professional intervention, coherence and a systematic approach, thus, resulting in violent episodes.

The **daily life** of the children in institutions is monotonous, oppressive and filled with psychological tension. In their free time, the children either remain idle or work to earn pocket money. Educational and recreational activities are not tailored to the individual needs of the children and, consequently, many of them quickly lose interest and stop attending. The unsuitable selection of children for separate group work, or the indifference and inability of the presiding staff member to conduct a particular activity, also contributes to inefficiently planned activities. The children explain that the activities they do like are sometimes abruptly suspended without explanation. In most cases, a child's visible talent is ignored and no efforts are made to encourage their skills as a form of personal and behavioural development. Organised activities outside the boarding schools are rare. In the opinion of school staff, this is due to budget shortages, lack of motivation, staff's inability to deal successfully with the children and understaffing. Only some of the children eventually participate in these activities because the main criterion for their selection is their good behaviour and the personal preferences of staff.

Children have limited access to indoor leisure time activities such as watching **television and listening to the radio**. The material conditions in television rooms at some boarding schools are poor (Rakitovo CBS and Kereka CBS). Elsewhere, the children watch television during classes (Podem CBS, Kereka CBS, Straldzha SBS). Listening to the radio is possible only for children who have their own personal radio or another player in their room.³ Computer and internet access is also limited.

CBSs and SBSs have many small or merged classes that combine pupils of a different age and grade. There is a shortage of teachers covering the main subjects or sometimes the teachers have to teach more than one subject. The students placed at these institutions are isolated from their peers in the wider community during the education process. The curriculum followed does not correspond to their school level or age, and each child has a different level of literacy compared to their classmates. The children fail to meet the national educational standards, further confirmed by poor results from the independent student assessment.⁴ The

1 Rules for Organisation and Operation of CBSs and SBSs, (2006), Art. 49.

2 One example is the topic of discussion on the theme: "Discussion on the topic 'I find it difficult to obey but everyone does it' - correctional behaviour for girls in Podem CBS. Information received from Plevna Regional Inspectorate of Education with Ref. No. 6 from 13 December 2014.

3 Rakitovo CBS, Kereka CBS, Podem CBS, Varnentsi SBS.

4 Information received from Silistra Regional Inspectorate of Education under APIA with Ref. No. 2755 from 1 August

school learning process is fragmented and sporadic with no real classes taking place. None of the children interviewed spoke a foreign language despite attending foreign language classes. **Classroom equipment and furniture** are scarce, old and do not help children to learn. Hence, most children go to school out of obligation and find it boring. Children vent their frustration by destroying school property and often teachers spend most classes trying to enforce discipline rather than actually teaching.

Education provided to **children with special educational needs** is either inefficient or completely non-existent. The resource teachers employed by the institutions explain that working with these children is extremely difficult. In their opinion, both learning materials and equipment in the classrooms for resource support fail to meet the standards set in present-day approaches and teaching methods.¹ At the Varnentsi SBS there are no registered cases of children with special educational needs, which, in view of the data received from the rest of the boarding schools, raises suspicion.² Only the Rakitovo CBS has a sensory room used for relaxation – as members of staff chose to refer to it – by the students who need it and who are free to decide when to use it. The sensory room is unsuitably furnished with items such as mirrors, glass and sharp objects, which could pose a danger to children in an emotional upheaval.

In two out of a total of seven boarding schools, **vocational training for the children** is not provided (Varnentsi SBS and Dragodanovo SBS). In the remaining five schools, the conditions in which this training takes place are inadequate: the used equipment poses a threat to the children's health; poor hygiene; overall chaos. Vocational education at the Straldzha SBS has been discontinued due to the flooding of the underground premises where the training used to take place, and the serious risk of electric shock. In reality, the vocational training at these institutions is very poor due to the lack of basic materials and technical equipment. Hence, classes do not take place. The diploma certificates make reference to the boarding school, which automatically subjects the children to social stigma and lowers their chances of employment.

Children at five boarding schools³ are **illegally employed**. With the knowledge of school authorities, these children work on gardens, farms and construction sites owned by the locals. Labour safety is not guaranteed, there is no supervision or control, payment is often derisory, and examples of misconduct are not infrequent. According to the children, the director of the Straldzha SBS coerces students into providing unpaid labour at the director's private property. In many cases, the children are disgruntled because they feel tricked and used but, nonetheless, they are pressed to work because this is their only source of personal income.

1.7. Contacts with the outside world

Boarding schools are often **located in villages** or in areas immediately outside small towns. This leads to social isolation, limited chance for visits or contacts with the outside world and

2014. According to the Regional Inspectorate of Education in Silistra, the Varnentsi SBS comes last according to student achievement in the district and thus, contributes to lowering average figures and affecting the place of the district in the national rating. The Regional Inspectorate considers external evaluation an unsuitable tool for this type of school.

1 Information received from Pleven Regional Inspectorate of Education under APIA with Ref. No. 6 from 13 August 2014. Over the past three years, the Podem CBS has accommodated two girls with special educational needs, it has not been seen as necessary to provide access to a resource teacher.

2 Information received from Silistra Regional Inspectorate of Education under APIA with Ref. No. 2755 from 1 August 2014.

3 Rakitovo CBS, Kereka CBS, Straldzha SBS, Varnentsi SBS and Zavet CBS.

undermines the availability of qualified staff. The incoming and outgoing regime is completely disorganised or absent even when the children leave for weekends and holidays. The children are rarely escorted by an adult on their way from the institution to and from their home, which may lead to delays or running away, as well as abuse or misconduct by other people. **Outsiders, who can often be found present on the territory of the boarding schools, may easily access the school courtyards.** For example, the children at the Straldzha SBS confirm that outsiders sometimes exercise, distribute drugs or abuse the children within the territory of the boarding school. Former staff members, dismissed for disciplinary reasons, are also free to await, threaten and manipulate the children.

The decision on whether a child can be permitted to go home for the holidays is left to the subjective discretion of the representatives of three different institutions – the Local commission for combatting juvenile delinquency (hereinafter: local commission), inspectors from the Children’s Pedagogical Rooms and the Child Protection Department at the child’s place of residence. According to the directors of the boarding schools, their opinions often differ and thus, the directors face the difficult task of issuing a decision.

Visits by the children’s families, relatives and friends seldom occur or do not occur at all due to the remote location of boarding schools, often far away from a child’s residence. Parents and relatives often also lack an interest in their children. The few visits, which actually take place, usually occur outside the visiting schedule, which are permitted by the staff unless they may hurt the best interests of the child. Children frequently run away from the boarding schools to go back to their families because of their sense of isolation and unsuccessful adaptation. Most children communicate with their parents using **the office phone of the school’s administration**, not more than once a week, for a conversation lasting just a few minutes. All conversations take place in the presence of the boarding school staff. The children who own mobile phones leave them with the educators and use them under supervision. Only at the Kereka CBS is children’s access to mobile phones unlimited. Receiving letters or parcels is rare. The confidentiality of parcels and correspondence is violated. The correspondence often triggers conflicts and violence between staff members and children, or between children. Many children do not communicate with anyone outside the institution. Children’s contacts include peers and persons of legal age with whom they have formed personal relationships¹ (where the line between relationship, misconduct, pandering and trafficking is too blurred) and adults among the locals, who provide employment to the children, or members of staff at the boarding school, with whom they have informal relationships.

The children have **an obvious need to receive attention and to communicate** and in the presence of outsiders it appears to be difficult for them to control their emotions. A meeting with an outsider enables them to complain about their life in the institution and to change their monotonous daily routine. **The children explain, ‘This is not a school, this is a prison’, ‘I want to get away from here’, ‘I can’t stand it here’.**

Compared to other types of institutions for children, CBSs and SBSs receive **the lowest number of visits** and maintain the least contact with different types of organisations. Donations are rare. The children receive attention mainly from foreign organisations, which send presents and volunteers, who sporadically visit the children as part of one-off or short-term programmes. Local donations include mostly old clothes, shoes and objects, or food from the Bulgarian Red Cross. The lack of contacts with the outside world results in isolation and uncontrollable violence.²

1 The reference concerns mainly the girls in Podem CBS and Dragodanovo SBS and to the boys at Varnentsi SBS, Zavet CBS and Kereka CBS.

2 The case from Straldzha SBS indicates that the presence of outsiders has a preventive effect. For more information, see 1.10. Violence of the current subchapter.

1.8. Disciplinary practices, use of force and complaints

Punishments imposed on children in SBSs and CBSs are laid down in the Rules for the Implementation of the Public Education Act and the Rules for Organisation and Operation of social-pedagogical boarding schools and correctional boarding schools (hereinafter Rules for Organisation and Operation of SBSs and CBSs).

Violation of school discipline or intended “damage to the interests” of the other students, or of pedagogical staff, committed by children placed in CBSs and SBSs, can be sanctioned with following punishments: a remark; warning to transfer to another school; transfer to another school; transfer from a daily to a individual form of education – for students aged 16 or above; duty of apology to the victim; duty of removing the damage inflicted with personal labour, where possible; exclusion from the participation in formal events at the school. Obligatory elements of the procedure for imposing punishments are: written notification to the parents containing information about the committed violation and the parent’s right to participate in the proceeding; drafting a written report on the case; hearing of the child; notification to the Social Assistance Directorate at the current registered place of residence of the student. A directorate representative may be present at the child hearing in view of protecting the rights and interests of the student.¹ The order issued by the school director or pedagogical council concerning the imposed punishment may be appealed before the Minister of Education and Science.

Shocking violations of the international standards were established in the disciplinary practice at CBSs and SBSs. Both the Rules for the Implementation of the Public Education Act and the Rules for Organisation and Operation of SBSs and CBSs include **punishments related to involuntary labour**, which benefits the school. Moreover, in the CBS and SBS institutional system, this punishment is among the most widely applied and in some cases acquires the status of forced labour. **Imposing punishments is random and fails to observe the disciplinary procedure set by law.** The additional shifts children take to maintain hygiene in the sanitary facilities, dining rooms and corridors, together with cleaning school courtyards and gardens, and removing the snow and the weeds, constitute punishments, which are applied in all boarding schools without exception. The girls in the Podem CBS receive additional shifts cleaning up the school’s cesspit as punishment. At the Straldzha SBS, the Varnentsi SBS and the Kereka CBS, a punishment involving the “cleaning of outdoor toilets” is imposed, which, officially, should have been banned long ago.

Internal regulation documents are drafted to add new forms of punishments, an act which contravenes the principle of legality and violates the children’s basic rights. An order issued by the director of the Straldzha SBS,² for example, adds alternative punishments such as “**assigning a guardian**”, “**deprivation from home leave**”, “**deprivation from city leave**”, “**no access to a free phone**”, “**cleaning the area for a week**”, “**forwarding of the child’s case to a prosecutor**”.³ Furthermore, the children at SBSs are threatened with transfer to a CBS, while those already at a CBS fear transfer to a reformatory. Disciplinary punishments are hardly ever registered officially. Directors explain the lack of registration with the fundamental inapplicability and inefficiency of the punishments with respect to the children placed in institutions.⁴

1 Ministry of Science and Education (1999), Rules for the Implementation of the Public Education Act, Art. 140.

2 Straldzha SBS, Director’s Order No. 7 from 17 September 2012.

3 *Ibid.*

4 Razgrad Regional Inspectorate of Education, *Report on the inspection conducted at Zavet CBS, No. IID 04-35 from 31 February 2014*, p. 7; Information received from the Razgrad Regional Inspectorate of Education under APIA with Ref. No. 10 from 4 August 2014. The inspection at the Zavet CBS conducted by the Razgrad Regional Inspectorate of Education in January 2014 found out that only three punishments have been imposed since the beginning of the school year. Despite

Existing violations include: failure to inform the parents about their right to participate in the disciplinary procedure; failure to hear the students; failure to achieve clarity of facts and circumstances concerning the alleged violation; and lack of impartiality of the body proposing punishment and its imposition (the same body). The monitoring visits established no cases of appeal against an order imposing a disciplinary punishment. Alongside the officially imposed punishments, CBSs and SBSs have a rich informal practice of disciplinary punishments, which embrace **the severest forms of violations concerning children's rights and the psychological and physical integrity** of children. In the summer of 2012, an adolescent girl was caught during her attempt to run away from the Podem CBS by her fellow students, who beat her up and left her "covered in bruises". Because of understaffing in the summer, to avoid further escape attempts, the teacher forced the girl to strip down to her underwear for a period of over a month-and-a-half. The girl claimed that they forbade her to wear clothes even overnight. Another cruel method for preventing escape, which is used at the Straldzha SBS, is tying the children with ropes. In accordance with this practice, a minor spent an entire day bound to a bench in the courtyard of the boarding school while his fellow students brought him food there.

Rewards are not often used as a method to motivate students. There are no objective criteria defining the reward allocation principles. Consequently, in most cases, certain staff favourites are "rewarded" with extra time for city or home leave,¹ placement in a single room, material awards² and food³.

Schools have the obligation maintain a **complaints boxes** although registered complaints are extremely rare. Indeed, the children distrust this method of communicating their complaints. Some of them comment, somewhat ironically, that the boxes are there "just for decoration", others describe particular cases when their complaints were destroyed right in front of them, and there is yet another group, who fear a backlash from staff. The phone number of the national hotline for children cannot always be found in a visible place. Only a few non-governmental organisations conduct monitoring on the CBSs and SBSs system and come in direct contact with the children placed in them.

1.9. Personnel

Both CBSs and SBSs experience staff shortages. No legal standard presently determines the ratio between educators and children at a particular institution. The consequences are clear, particularly during night shifts and non-working days when on-duty staff consists predominantly of male employees, in direct violation of European regulations.⁴ In most institutions, children spend the night under the supervision of a single staff member, which, in addition to the inefficient division of the children by age, is insufficient for exercising vigilance in order to prevent violence or other incidents. Only male members of staff usually take night and weekend shifts. At the Varnentsi SBS, which was the most populated SBS in Bulgaria at the end of 2013, the number of staff members is the lowest. The education and training of 38 children is in the hands of five teachers and four educators. There is no medical practitioner, hygienist, resource teacher or social worker and a psychologist visits the school once a week.⁵

the small number of such cases, the legal procedure in place for imposing punishments was not followed, and the existing opportunities for the students to defend their rights and interests were completely disregarded.

1 Podem CBS, Rules, Art. 30.

2 Kereka CBS, Rules, Art. 109(8).

3 Kereka CBS, Rules, Art. 109(8). 58 State Agency for Child Protection (2014), *Report on the inspection conducted at Straldzha SBS in response to a signal filed in 2013*.

4 CPT (1999), *9th General Report on the CPT's activities covering the period 1 January to 31 December 1998*, p. 13.

5 Information received from the State Agency for Child Protection under APIA with Ref. No. 14-0037 from 31 March 2014.

These institutions employ no specialists who would be of key importance to the children's development such as special needs pedagogues, speech therapists, child psychiatrists and art therapists. At the same time, access to such specialists outside the institution is very difficult. Most boarding school employees have numerous responsibilities due to staff shortages (including hygienists and security).

CBS and SBS employees are very demotivated in their work with the children. The main reasons for this includes: low remuneration, possible closure of the institution, the lack of supervision, the location of the boarding schools, the lack of further qualifications and training. SBS and CBS staff takes part in various trainings organised by non-governmental organisations but these are organised only sporadically and, as the BHC has observed, fail to reverse the general trend.

Another serious issue is the conflict of interests of employees. The BHC has identified at least one case of conflict of interests in which a teacher at the Varnentsi SBS acts as a member of Tutrakan local commission.¹ Another factor leading to a conflict of interests involves the funding scheme of boarding schools based on the number of placed children. This does not motivate staff to invest time in preparing a child for their departure and re-integration into society. Some staff members at CBSs and SBSs have developed the practice of illegally selling food and drinks to the children, including unhealthy products such as coffee and cigarettes.²

1.10. Violence

The physical and social isolation of boarding schools, the insufficient number of personnel, the lack of trainings for staff, and the lack of sensitivity towards problems faced by the children placed in CBSs and SBSs all contribute to an atmosphere of hostility and violence. The attitude of staff members towards the children frequently verges on inhuman and degrading treatment. The BHC has identified an **overwhelming occurrence of physical and psychological violence against children in CBSs and SBSs**. The use of violence directly by staff members or other children on children or indirectly by staff members who exercise such violence on children by forcing other children to abuse them. **Staff indifference and inaction** have been identified in all such institutions following alerts about cases of violence. The child victims of violence realise the lack of support when the perpetrators' actions remain unpunished. The victims are fully aware of the fact that staff have ordered, or have passively assisted, in the ill-treatment inflicted by children.

The child committing the "commissioned" act of violence is also a victim who seeks an escape from violence or punishment. These complicated relationships are at the core of the institutional order.

One form of physical violence has to do with staff punishing children by forcing them to practise **exercises** such as push-ups and numerous squats (Straldzha SBS), laps around the playground (Straldzha SBS, Zavet CBS), duck walks (Podem CBS) and leapfrogging, accompanied by kicking the children (Straldzha SBS). Another form of physical violence is depriving children of food and the systemic stealing of food between the children (Straldzha SBS).

Numerous cases of child beatings by different staff members have been identified: director (Straldzha SBS), educators (Straldzha SBS, Rakitovo CBS, Kereka CBS, Zavet CBS, Dragodanovo SBS), teachers (Rakitovo CBS), security guard (Straldzha SBS), psychologist (Zavet CBS), maintenance and supply administrator (Kereka CBS), general workers (Kereka CBS), as well as police staff (Straldzha SBS, Kereka CBS). Instances of physical abuse vary but include ear

1 Juvenile Delinquency Act (1958), Art. 10(1). The local commissions may submit proposals to the court requesting suspension of the enforcement of correctional and educational measures and introduction of new such measures with respect to the children at the boarding school.

2 Kereka CBS, Zavet CBS.

pulling, slapping, punching, and kicking either with hands or feet or with auxiliary means such as truncheons, wooden sticks, clubs, handcuffs and other available objects. These may be inflicted secretly either within the institutions, for which purpose the children are locked in rooms used as isolators, the rooms of the educators and security guards or unused premises (Straldzha SBS and Rakitovo CBS) or outside the institution in nearby fields (Straldzha SBS). Sometimes children are beaten in front of other children as demonstrative punishment, to serve as an example, to humiliate and instil fear (Straldzha SBS, Kereka CBS, and Rakitovo CBS).¹

The worst case of violence documented dates back to autumn 2013 in the Straldzha SBS. The French volunteer organisation Bon-min first raised the alarm, after which the facts about gross violations committed over a long period became widely known. The children had been subjected to cruel beatings by staff members, leading to heavy bleeding or loss of consciousness from the inflicted pain. They were then left to treat their injuries by using random rags to stop the bleeding. Only one child, who it is thought to have sustained a broken arm, was taken to hospital.

In the autumn of 2013, the director and students from the Kereka CBS revealed an incident regarding a night guard, who had solicited a student into stealing from the boarding school and from village houses. Once the child disobeyed, the staff member tied him up to the central heating system and beat him up severely.

To avoid direct responsibility for physical violence inflicted by beatings and its possible repercussions, staff members at boarding schools encourage violence among the children themselves (Podem CBS, Varnentsi SBS, Straldzha SBS). According to accounts from children at the Podem CBS, in exchange for privileges such as living independently in new temporary housing buildings at the school, they observe the order and discipline in the institution and if necessary, use physical violence against perpetrators of violations. They isolate the offender in a bedroom at the school and turn the music up so loud so that no one can hear the screaming, and then they beat them up with sticks and belts, and kick and punch them etc. Children from the Varnentsi SBS reported that their fellow students who have been assigned the role of “administering justice and punishment” perceive themselves as protectors of order and discipline and beat the children who “cause problems” (hitting them with a stick or smacking them). In exchange, the informal supervisors receive keys to various premises, are placed in the best rooms and own a lot more personal belongings.

Sexual harassment and abuse including sexual hints, groping and violence such as molestation and rape are not isolated occurrences in CBSs and SBSs. The children fear sharing such experiences also because they feel ashamed. Even if they decide to complain, no one pays attention and instead they get treated with distrust. Victims and abusers continue to co-habit and instances of violence multiply. Staff intervention is untimely and inadequate. The children are not seen by specialists or given professional help. A member of security staff at the Straldzha SBS urged children to molest other children.²

At the same school, according to children and staff members at the Straldzha SBS, a group of adolescent children molested minor boys for several days late at night in the bedrooms and toilets on one of the floors of the boarding school. The victims were threatened and severely abused; one of them was abused with various random objects. At the Podem CBS, the girls reported that “the commanders” isolate the new and weak girls in one of the rooms and mo-

1 Interviews with the children by the BHC and Report by the State Agency for Child Protection on the inspection conducted at Straldzha SBS in response to a report filed in 2013.

2 State Agency for Child Protection (2013), *Report on the inspection carried out at Straldzha SBS in response to a report filed in 2013*.

lest them by beating them until they cease fighting back. A girl from the Dragodanovo SBS claimed she was raped by a classmate. Another girl complained that the same boy had tried to rape her, unsuccessfully, many times before. According to the same girl, the boy sexually harassed several girls at the institution. At some boarding schools, children perform sexual services for other children in exchange for money, cigarettes and protection (Kereka CBS, Rakitovo CBS, Varnentsi SBS and Zavet CBS).

Violence at CBSs and SBSs is not limited to isolated incidents but has grown into an inextricable part of the way the system functions. The institutionalised violence undoubtedly indicates the degraded state of existence of correctional education institutions.

1.11. Other violations of fundamental human rights

Educational and correctional work with the children should be aimed at establishing positive behavioural models, teaching respect for the individual and non-infringement of human rights and dignity. However, the personal examples set by staff employed at CBSs and SBSs promote the opposite behavioural and communication model.

The personal preferences of staff members all too clearly dominate attitudes towards the children based on external characteristics nearly coinciding with ethnic identity. Those who are “white”, “blond”, and “Bulgarian” benefit from better care and additional privileges compared to students of Roma ethnicity. Another form of discrimination can be detected in the ban on speaking Romani and Turkish (Rakitovo CBS). Insults directed at the children are based on their ethnicity, gender, status (their family, what institution they attended before their placement, as well as the fact that they are currently placed in an institution), alleged homosexual orientation, etc. During a visit to the Rakitovo CBS, the BHC research team witnessed a teacher yelling at the children in class and addressing the children with insulting qualifications such as “old Gypsy”, “mob”, “dirty Gypsy trash”. At the Straldzha SBS, the children stated that they had been called “pikey” (*мангал*), “Gypsy” (*циганин*), “twirp” (*клепар*). At the Kereka CBS, they are called “fag” (*недал*), “faggot” (*недерастче*), “pikey” (*мангал*), “trash” (*боклук*). At the Podem CBS, the girls complained of insults such as “nits” (*гниди*), “lice” (*въшки*), “scrag” (*мърши*), “skank” (*мърли*). The school director explained that these children were already used to “bad ways” and that “unless you yell, they won’t hear a word”.

In the Kereka CBS, the Straldzha SBS and the Rakitovo CBS, **the boys’ hair is cut** on admission if they have parasitic insects. Phone tapping and a ban on using the telephone to contact their family represent other infringements of the children’s privacy and show disrespect for their right to a family life and correspondence.

In the context of involuntary placement in closed institutions, it remains harder to determine whether **sexual contacts** involving adolescents are consensual. The likelihood of their being forced is much greater than it would be outside the institution. CBS and SBS staff members lack the required sensitivity and approach to deal with the issue and have never received special training to recognise signs of sexual violence. Improving sexual culture is not among the objectives for individual work with children. No regular talks take place on topics related to safe sex or prevention of sexually transmitted diseases. These young people have no access to contraceptives which particularly affects the girls. Inspections, conducted in CBSs and SBSs by the State Agency for Child Protection in 2013, identified seven pregnant girls out of 65 female residents, which exceeds 10%.¹ Five out of these seven girls became pregnant after the beginning of their placement at the boarding school. These young women, who are often aged between 14 and 16, are not consulted about the possibility of terminating an unwanted

¹ State Agency for Child Protection (2013), Analysis of the results of planned inspection of social-pedagogical boarding schools and correctional boarding schools in 2013 (Summary), p. 9.

pregnancy. This may violate several of their rights including the right to access health care, the right to privacy and the right not to be discriminated on the grounds of gender, age, or personal status.

1.12. Inspections

CBSs and SBSs are subject to planned inspections and inspections in response to complaints by different state bodies including the Regional Inspectorates of Education, the Regional Health Inspections and the State Agency for Child Protection (SACP). Together with on-site visits, annually the SACP collects information from all CBSs and SBSs, which contains data about changes in the number of placed children, their health status, staff, etc. The boarding schools may also be visited by other independent national and international bodies such as the National Preventive Mechanism at the Ombudsman and the CPT.

Despite the considerable number of inspecting bodies, multidisciplinary inspections which lead to actual results occur **only in attested severe cases** of infringement or media attention. Thus, in view of a case of severe physical and sexual violence at Straldzha SBS in September and October 2013, the Department of Legality Supervision, Protection of Public Interest and Citizen Rights at the Supreme Administrative Prosecutor's Office (SAPO) orders all competent bodies to perform inspection in seven CBSs and SBSs.¹ In the months following the inspection ordered by SAPO, the number of inspections in Straldzha SBS increased considerably but to no great effect.²

Although, the existing severe deficiencies in child care at CBSs and SBSs have been known to the institutions for years, it was not until the wide media coverage of the cases in Straldzha SBS that actual attempts were made to improve the situation, albeit unsuccessfully. For example, the serious shortage of employed medical staff in most boarding schools has been known to the State Agency of Child Protection at least since 31 December 2012. However, it was not until 2014 that the SACP issued a recommendation to the Ministry of Education and Science to ensure more medical specialists. At the same time, the Ministry of Education fails to assert the need for change in the legislative framework, which does not require the availability of employed medical staff in CBSs and SBSs. Instead, the ministry simply requests the assistance of the Ministry of Healthcare to help solve the existing problem. Hence, as ordered by the Ministry of Healthcare, the respective Regional Health Inspectorates request the assistance of local mayors. However, even in these cases the responsible institutions tend to shift responsibility rather than undertake action to resolve the main problems once and for all.

In general, the numerous inspections³ fail to achieve the necessary prevention of rights violations affecting the children placed in CBSs and SBSs. A significant share of recommendations based on these inspections refers to the lack of procedure or to inaccuracies in documentation as well as to material conditions. Although the directors implement these recommendations, the situation of the children residing there has not improved.⁴ There are certain **discrepan-**

1 Prosecution of Republic of Bulgaria (2013), *Information concerning the inspection assigned by the Supreme Administrative Prosecutor's Office of all correctional boarding schools and social-pedagogical boarding schools*, 7 November 2013, available on: <http://prb.bg/main/bg/News/4133/>.

2 Information received from Yambol Regional Inspectorate of Education under APIA with Ref. No. 336 from 19 August 2014. Thus, over a period of nearly 21 months (1 January 2012 – 20 September 2014), the Yambol Regional Inspectorate of Education conducted 11 inspections. Following media reports, in the next 10 months (30 September 2013 – 30 July 2014), the Yambol Regional Inspectorate of Education conducted at least 16 inspections.

3 The BHC has sent out individual letters to all responsible regional inspectorates of education and regional health inspectorates in Gabrovo, Pazardzhik, Pleven, Razgrad, Silistra, Sliven and Yambol. The letters request information about the inspections conducted by these institutions at CBSs and SBSs between January 2012 and July 2014.

4 "The directors of the boarding schools are in the absurd position of having to provide primarily for the full curriculum, teaching and working hours of teachers and educators". Ombudsman of the Republic of Bulgaria (2014), *Report on the*

cies between the findings of inspection authorities and the actual situation¹ and when these bodies identify any omissions, they explain them with the existence of external factors such as budget deficiency.² When inspections by the state bodies directly concern the children, the latter to a large extent fail to understand the meaning and purpose of the inspection and their opinion is rarely heeded. The juveniles are not aware of their rights, or of the functions of inspecting institutions. Thus, they fail to recognise the opportunity to seek help by experts participating in the inspection while it is taking place.

The results and findings from these inspections **lack publicity**. At the same time, the information they collect is of public interest and easier access to it would lead to stronger control of the civil society of these institutions as well as to more successful prevention of violations concerning the rights of the children there.

findings of inspections and assessments of the situation and implementation of the rights of the children placed in social pedagogical boarding schools and correctional boarding schools in the Republic of Bulgaria, p. 11.

- 1 For example, in June 2014 the Silistra Regional Inspectorate of Education found that “the number of staff members employed at the [Varnentsi SBS] is enough” and is a prerequisite “to ensuring good care for the students”. At the same time, the BHC discovered a serious deficiency of staff at the same boarding school. Information, received from Silistra Regional Inspectorate of Education under APIA with Ref. No. 2755 from 1 August 2014. In another case, Gabrovo Regional Inspectorate of Education, established that the children in Kereka CBS receive “timely and quality medical care from a general practitioner”, although, the students there explained that the general practitioner visits once in a fortnight. Information, provided from Gabrovo Regional Inspectorate of Education under APIA with Ref. No. 1653-RD-21-09 from 30 July 2014. Protocol from 14 January 2014.
- 2 In this sense, Silistra Regional Inspectorate of Education found that “the school budget does not allow for employing a 24-hour security service or applying a special entry mechanism”. Information received from Silistra Regional Inspectorate of Education under APIA with Ref. No. 2755 from 1 August 2014.

2. HOMES FOR TEMPORARY PLACEMENT OF MINORS AND ADOLESCENTS

The placement in homes for temporary placement of minors and adolescents (HTPMA) is a form of administrative coercion. Children of Roma origin are over-represented at these facilities. Children are often held for a maximum duration of two months, and the share of those placed for a second time or more is very high. The detention measure is disproportionate; less restrictive measures are not applied and the detention is not subject to judicial review.

The quality of care at HTPMAs is extremely low. Children are not effectively separated by age, their personal hygiene and access to sanitary facilities are restricted, and food provided is of poor quality. Children are not entitled to wear their own clothes during their stay at the institution. Their right to a personal life and personal space is violated. Detained children are under constant video surveillance, even in their bedrooms. During their detention, the children have no access to education. The HTPMAs lack targeted organised leisure time activities. Minors and adolescents spend their time locked on the same premises. Access to fresh air and contacts with the outside world are severely restricted.

HTPMAs are also used to accommodate children with serious health issues who are not provided with adequate and consistent health care. The minors and adolescents detained in such facilities have no access to independent external care provided by specialists. Adequate health prevention programmes are also lacking. Disciplinary punishments, such as “isolation in a single room”, are imposed in these homes. There are cases where physical force is used against children. There is a lack of qualified professionals working with minors and adolescents. Personnel turnover is high. The results and findings of inspections and checks conducted by the Ministry of Interior’s bodies are not transparent.

2.1. General information

The homes for temporary placement of minors and adolescents are special institutions of the Ministry of Interior (MoI) used to place and accommodate certain categories of children between 6 and 18 years of age, as defined in the Juvenile Delinquency Act (JDA)¹ and the Child Protection Act (CPA). HTPMAs are a unit within the archaic system of institutions established by the JDA; its functions are regulated in more detail by the Rules on the Organisation and the Functioning of the Homes for Temporary Placement of Minors and Adolescents (hereinafter: Rules on the Organisation and the Functioning of the HTPMA)².

¹ Juvenile Delinquency Act (1958), Chapter Six.

² Rules on the organisation and the functioning of the homes for temporary placement of minors and adolescents (hereinafter: Rules on the organisation and the functioning of the HTPMA) (1998).

There are five HTPMAs in Bulgaria, spread equally on its territory: in the cities of Sofia, Plovdiv, Burgas, Varna and Gorna Oryahovitsa. The total number of children in these homes was 1,211 in 2012 and 1,190 in 2013.¹

Table 11 shows the number of children in HTPMAs in 2012 and 2013, by gender and age.

Table 11: Placement and exit of children in HTPMAs (2012-2013)

Year	2012		2013	
Total number	1211		1190	
Age	6 to 14	14-18	6 to 14	14-18
Girls	89	440	76	403
Boys	135	547	131	580

Source: MoI

HTPMA is yet another institution in which Roma children are overrepresented: approximately 63% of all children placed in 2013, more than twice the children of Bulgarian origin. The ethnic profile of the detainees in these MoI institutions remained constant over the two-and-a-half-year period studied by the BHC (see Table 12).

Table 12: Number of children based on ethnicity (January 2012-June 2014)

Period	Total number of children	Bulgarian	Roma	Turkish	Other
2012	1211	332	767	96	16
2013	1190	329	734	86	41
January to June 2014	489	131	326	23	9

Source: MoI

2.2. Placement

Placement in HTPMAs is a form of administrative coercion. It is effected at the discretion and proposal of one of the following bodies: the police; the Central Commission for Combating Juvenile Delinquency (hereinafter: Central Commission); a Local Commission for Combating Juvenile Delinquency (hereinafter: Local Commission); or the Social Assistance Directorate (SAD).² However, this measure is most frequently imposed by the inspectors at the Children's Pedagogical Rooms and the police bodies: two-thirds of all placements in 2012 and 2013 were proposed by these bodies. During the same period, the Local Commissions placed only five children, while the Central Commission placed none.³

Under the general provision, the duration of the placement in a HTPMA cannot exceed 15 days, and any stay longer than 24 hours is subject to a prosecutor's authorisation.⁴ The duration of the detention may be extended by a prosecutor's authorisation when "necessary in the best interests of the child", but cannot exceed two months.⁵ Table 13 shows the number of children placed in HTPMAs in 2012 and 2013, by duration of detention and by gender.

1 Information received from Ministry of Interior under APIA with Ref. No. 812104 from 26 August 2014.

2 Rules on the organisation and the functioning of the HTPMA (1998), Art. 8(2).

3 Information received from Ministry of Interior under APIA with Ref. No. 812104 from 26 August 2014.

4 Rules on the organisation and the functioning of the HTPMA (1998), Art. 14(1).

5 *Ibid.*, Art. 14(2).

Table 13: Number of children passing through HTPMAs, based on length of stay and gender (2012-2013)

Duration of stay	Up to 24 hours	Up to 15 days	Over 15 days
2012	811	348	50
- boys	492	176	14
- girls	319	172	36
2013	812	330	38
- boys	512	184	15
- girls	310	146	23

Source: MoI

The data indicates that on average girls are kept longer in HTPMAs than boys. In 2012, for example, more than 40% of all girls placed there have stayed longer than 24 hours, compared to 27% of boys. The duration of the placement is the longest for the children in the HTPMA in Varna, while the lowest number of children detained for more than 15 days is observed at the HTPMA in Sofia.¹

In the course of the study, the BHC found that **prosecutors do not visit the HTPMAs to meet the children and get acquainted with the documentation of their cases.** The duration of placement at HTPMAs is extended on the basis of information provided by HTPMA staff in a phone conversation. This is a puzzling practice, especially given that the prosecutor is to determine whether staying at a HTPMA for more than 15 days is “in the best interest of the child”.

The share of children placed for a second or consecutive time is extremely high – almost one quarter of the children accommodated at HTPMAs annually.² There are no statutory barriers before two consecutive placements, each for up to two months.

The statutorily defined profile of individuals who may be placed in a HTPMA is quite extensive. It includes: neglected and children, involved in vagrancy; children victims of exploitation (begging, prostitution); children who have “left without authorisation facilities for compulsory education or involuntary treatment”; children who have committed antisocial acts, as well as children under police protection.³

According to the MoI statistics, **running away from an institution** (correctional boarding school (CBS), social-pedagogical boarding school (SBS), homes for children deprived of parental care (HCDPC)), **from a community-based social service** (crisis centre, family-type placement centre) **or from home, is the main reason behind the placement of children in HTPMAs.** The placement of 70% of all children accommodated in HTPMAs in 2012 was based on these grounds (74% in 2013).⁴

Girls are detained three to four times more often for running away from home than boys.⁵ **The BHC found also that children of foreign nationality who have “left refugee centres without authorisation” have also been detained at HTPMAs, despite the fact that placement**

1 Information received from Ministry of Interior under APIA with Ref. No. 812104 from 26 August 2014.

2 *Ibid.*

3 Juvenile Delinquency Act (1958), Art. 35(1).

4 Information received from Ministry of Interior under APIA with Ref. No. 812104 from 26 August 2014.

5 In 2012, on the basis of “running away from home”, 162 girls (50% of all detained girls) and 50 boys (7% of all detained boys) were detained, while in 2013, 162 girls (33% of all detained girls) and 74 boys (10% of all detained boys) were detained.

in the facilities of the State Agency for Refugees is not compulsory.¹ When found, the children are accompanied by police officers back to the facility which they have “left without authorisation”. Thus, the stay at HTPMA is temporary, until children are transported back, or simply held overnight during their transportation. This type of placement is usually short: up to several days.

Another major categories of children placed in HTPMAs are those “with antisocial behaviour” and “neglected children”.² During 2012, they accounted for 22% of all children in HTPMA, and 18% in 2013. In the course of the study, the BHC found that some of these are children involved in a correctional proceeding, following the imposition of placement in a CBS or SBS. The purpose of the detention in HTPMA is to prevent them from absconding and committing further antisocial acts. In these cases, the stay is long, close to the two-month maximum under the JDA.³ For other children in the “with antisocial behaviour” category, the placement in HTPMA is a substitute or an extension of police detention.⁴ For example, if the parents of a minor or an adolescent detained by the police cannot be found within the 24-hour maximum duration of the detention under the Ministry of Interior Act (MoIA), the children are referred to HTPMA and the duration of the detention is extended.

Children involved in vagrancy and begging and children whose identity cannot be established are also placed in HTPMA. In 2012 and 2013, their share was about 8%.⁵

Regarding the proportionality of the detention at HTPMA, the head of the home in Plovdiv said that children who could be subject to other, less restrictive measures, such as placement in a social institution or service, are indeed placed in HTPMA.⁶

The following procedures are applied to children entering the homes: the children are searched, their possessions are inventoried and taken away; the children are then subjected to “hygienic care” and, if necessary, to “sanitary processing”.⁷ The Rules on the Organisation and the Functioning of the HTPMA stipulate that, “the admitted minors and adolescents shall initially be placed in isolation until the necessary medical examinations are performed”.⁸ The home’s staff notify the parents or the persons substituting them, the inspector from the Children’s Pedagogical Room at the child’s place of residence and, in case of placement due to running away from an institution, the management of that institution. If the duration of the placement is more than 24 hours, the children are informed about the home’s internal regulations.

2.3. Judicial review and legal aid

The homes for temporary placement are not treated as closed institutions by the national legislation. However, in the case of *A. and others v. Bulgaria*, the European Court of Human Rights (ECtHR) noted that the HTPMAs are subordinated to the Ministry of Interior and that they are in essence places for the deprivation of liberty. In its judgment the “Court reminds that Article 5 § 4 recognises the right of the detained to file complaints in order to exercise control on the respect of procedural and substantive rules necessary to establish the “lawfulness”,

1 BHC received information that foreign children have been detained at the HTPMAs in Sofia and Plovdiv.

2 Information received from Ministry of Interior under APIA with Ref. No. 812104 from 26 August 2014.

3 Two children interviewed by BHC, one in Sofia and one in Plovdiv, were detained on such grounds.

4 For more details, see 3.2. Placement of subchapter A.3. District Police Departments and Border Police Departments.

5 Information received from Ministry of Interior under APIA with Ref. No. 812104 from 26 August 2014.

6 Information from an interview with the head of the HTPMA in Plovdiv on 5 September 2013.

7 Rules on the organisation and the functioning of the HTPMA (1998), Art. 14(1).

8 *Ibid.*, Art. 14(2).

under the Convention, of their deprivation of liberty”.¹ The review of the lawfulness must be conducted through a procedure that provides legal guarantees. Otherwise, “the state must provide an opportunity for effective appeal before another competent body which provides all legal guarantees”.

The placement in HTPMAs is imposed by bodies of the executive power, which are operationally independent. This procedure is devoid of any legal procedural regulation. At the same time, the minors and adolescents placed in HTPMAs have no access to any effective remedy to review their deprivation of liberty. Formally, the placement for up to 24 hours may be contested under administrative procedural law but the review is ex-post only. The prosecutor’s order for placement exceeding 24 hours and for extending the detention are subject to appeal before a higher-ranking prosecutor’s office; however, this is a type of institutional control that does not provide the same procedural guarantees as judicial review. In reality, since the possibility for appeal is not explicitly foreseen in the JDA or the Rules on the Organisation and the Functioning of the HTPMA, there is no practice in appealing the placement. The ECtHR, therefore, upheld a violation of Article 5(4) of the Convention.²

Between January 2012 and June 2014, orders for placement for more than 24 hours were appealed in only three cases, and were repealed by the higher-ranking prosecutor’s office in two cases. All three cases concerned the HTPMA in Plovdiv. The head of the home said that he had personally helped the children draft their complaints.

2.4. Material conditions

The HTPMAs are located in large cities. The HTPMA in Plovdiv has a serious issue with its location. It is housed in a former recreational facility of the MoI, well maintained, but located outside the city, in an isolated, hard to find and rather inaccessible place.

HTPMA capacity varies between 18 and 22 beds. In HTPMAs, children are divided according to gender in the dormitories. However, the age of the children who can be placed in the same institution varies widely: from 6 to 18 years. This makes it **impossible to achieve effective separation by age**, especially where there is only one dormitory for girls and one for boys, as is the case in the HTPMA in Sofia. Three institutions have separate rooms for children under police protection, which allows children victims of violence to be separated when necessary from children who have committed antisocial acts.³

The material conditions of the five institutions are relatively good, **except for the condition of the buildings in Sofia and Gorna Oryahovitsa**. The HTPMA in Sofia is located on two storeys of an old three-storey house in a generally deplorable condition.⁴ The building of the HTPMA in Gorna Oryahovitsa is also very old and in need of renovation. Conditions are inadequate for the placement and care of children. According to staff, this home no longer receives donations and the staff maintains the building only through personal means. Partial repairs were conducted in some homes (in Plovdiv, Sofia and Varna) over the past several years, with financial support from the International Organisation for Migration.

The number of the beds in the dormitories varies between four and 10 bunk beds. With the exception of the HTPMA in Burgas, the dormitories are well lit and there is sufficient natural light despite the bars; however, the children are not allowed to stay in the dormitories during the day. **The dormitories in the HTPMA in Plovdiv look like prison cells; they have**

1 CEDH, *A. et autres c. Bulgarie*, no 51776/08, Arrêt du 29 novembre 2011, § 105.

2 *Ibid.*, § 107 and 108.

3 HTPMA in Sofia, Plovdiv and Gorna Oryahovitsa.

4 The first storey of the house used by the HTPMA in Sofia is a private residence. The building is adjacent to a multistorey residential facility, which literally looms over the house.

metal bars instead of doors and there is no artificial lighting. The children in the HTPMA in Plovdiv are explicitly prohibited from bringing personal items into the dormitories. **The dormitory lights in the HTPMA in Sofia stay on throughout the night so that police officers can monitor the children on CCTV.**

The premises in the homes are tidy and are kept so by cleaners and the children. The homes usually have a sitting room equipped with a small library, chairs and tables, a TV and other furniture, often obsolete. All HTPMAs have **isolation rooms for medical and disciplinary purposes.**¹ The premises for children under police protection are in considerably better condition than those for detained children.

Heating is provided by air conditioners or electric heaters and hot water is generally available at all times. Staff do little, however, for children's personal hygiene. A child placed in the HTPMA in Plovdiv said that he was not given a toothbrush and toothpaste even though his stay had exceeded one month. Soap is the only hygiene consumable provided at the HTPMA in Sofia. A child placed in the HTPMA in Varna said that he had not taken a shower since his placement, and that he had just been given him clothes. A child placed in the HTPMA in Gorna Oryahovitsa said that he rarely has the chance to use the bathroom.

Children's access to sanitary facilities overnight is also problematic. The rooms of children who have committed antisocial acts are locked for the night and the toilets are only accessible by calling the police officer on duty. A minor boy from the HTPMA in Plovdiv said in an interview that during the night he had to use a plastic bucket for his physiological needs due to restricted access to the sanitary facilities. Employees at the HTPMAs said that the rooms of children, placed with a measure of police protection are not locked for the night. The BHC found just the opposite. A child under police protection placed in the HTPMA in Varna stated that he was kept locked at all times, both in the dormitory and in the sitting room, and had to ask staff for permission to go to the toilet.

Food in the homes is provided from different sources: the local prison (the HTPMA in Sofia), the local MoI canteen (the HTPMA in Plovdiv), a social kitchen (the HTPMA in Burgas) or from local stores.² Food provided to the children at the HTPMA in Varna and Burgas consists **entirely of canned food**, which is warmed up before consumption. The food at the HTPMA in Gorna Oryahovitsa is provided from local stores; according to the staff, the children are always given "at least bread and yellow cheese". There is no special menu for the children and, although children under six, who require a special diet, are not placed in the homes, **children still have different dietary needs from adults.** The MoI canteen in Plovdiv is closed during August and children there are given frozen food during that period. In the summer, food is provided twice a day there. Children, who can afford it, may buy additional food and drink with the help of the staff. A child placed in the HTPMA in Sofia said that meat is rarely on the menu but that he was satisfied with the food in general. As in prisons, the children in HTPMAs are not given forks.

Upon arrival at a HTPMA, **the child is provided clothes.** His own clothes are sanitised and returned upon release. There is no budget for the purchase of clothes, which were provided by donations in the past or brought by staff. A child interviewed by the BHC at the HTPMA in Plovdiv was dressed in pyjamas and said that he is not allowed to wear his own clothes. A boy placed in the HTPMA in Sofia had his own clothes, while a child placed in the HTPMA in Varna was given old but preserved and clean clothes for his stay at the institution. A child in the HTPMA in Gorna Oryahovitsa was dressed in old and dirty clothes. It was evident that the staff was doing little to improve his personal hygiene.

1 For more details, see 2.8. Disciplinary practices, use of force and complaints of the current subchapter.

2 Information received from Ministry of Interior under APIA with Ref. No. 812104 from 26 August 2014.

Personnel pointed out that, since the HTPMAs are bodies part of the Ministry of Interior, they are not allowed to accept donations, including consumables for hygiene or food and clothes for the children.

2.5. Health care

The children detained at HTPMA have the right to “free medical treatment, including free medicines, when prescribed by a doctor”.¹ Treatment is most often provided by internal medical staff, usually a nurse working day shifts only. Until September 2013, the HTPMA in Varna had a full-time child psychiatrist on staff register but he had left. The HTPMA in Burgas is the only one without medical staff and health care is provided by the medical service of the MoI’s Regional Directorate and local emergency medical services.

Upon arrival at the HTPMA, children are subjected to a basic medical examination. They are checked for scabies, lice and fleas. Bruises, wounds, scars and tattoos are also described and the children are interviewed about diseases and medical issues. Some children arrive with medical documents prepared in advance, including hospital epicrisis. According to the head of the HTPMA in Varna, these are mainly children who have been detained at police departments.

No medical staff is available at the homes overnight. The local emergency medical services are relied on in emergencies. Parents or guardians are not always notified about emergency medical service calls, and in some cases the parents cannot be reached. Obtaining informed consent for medical interventions is also problematic. The head of the HTPMA in Varna stated that there were cases in which she had to provide informed consent, in contradiction with the law.²

Children with serious medical conditions are also placed in HTPMA. In 2013, for example, there were several cases of children suffering from epilepsy placed in the HTPMA in Plovdiv. Several instances of self-inflicted injuries, hunger strikes and violent and aggressive children were registered at the HTPMA in Sofia. According to HTPMA staff, in crisis situations staff try to talk to the child and discuss the reasons for his or her behaviour. Violent children or children suffering from drug withdrawal are given Valeriana pills³ (the HTPMA in Plovdiv) or are injected with Diazepam⁴ until the situation is under control (within 24 hours). Follow-up procedures, if any, are unclear.

The children may be subjected to **psychological and educational assessment** by the head of the home. The Rules on the Organisation and the Functioning of the HTPMA does not require that parental consent be obtained prior to conducting such assessments. Ninety-four assessments were performed in 2013, including 19 complete and 75 partial. The results show the presence of 11 “psychopaths”, 10 “drug addicts”, nine “neurotics”, one “psychotic”, one “oligophrenic” and 33 suffering from “other diseases” among the assessed children.⁵ **The terminology used in assessments is obsolete and extremely degrading.**

1 Rules on the organisation and the functioning of the HTPMA (1998), Art. 11(3).

2 The procedure for obtaining informed consent with regard to minors and adolescents is exhaustively described in the Health Act. Such consent is provided by a parent or guardian and, exceptionally, by the Social Assistance Directorate. For more information, see: Health Act (2005), Art. 87.

3 For more information, see Summary of Product Characteristics, Valeriana, approved by the Bulgarian Drug Agency: <http://www.bda.bg/images/stories/documents/bdias/ss9407q.pdf>.

4 For more information, see Summary of Product Characteristics, Diazepam, approved by the Bulgarian Drug Agency: http://www.bda.bg/images/stories/documents/bdias/img_3462.pdf

5 Information received from the Ministry of Interior, Criminal Police General Directorate under APIA with Ref. No. 8121p-14829 from 5 August 2014.

According to medical staff at the HTPMA in Sofia and Plovdiv, the incidence of children suffering from drug withdrawal or drug abuse/ addiction has decreased in recent years. According to the Havana Rules, the facilities for detention and deprivation of liberty should also have, apart from drug prevention programmes, detoxication programmes.¹ A child addicted to drugs may be referred to a specialist but **medical staff at the homes are often unaware of the existence of methadone treatment programmes** and of how the child can access such treatment.

In some homes, medical staff organise health information sessions on topics such as safe sex. Psychologists or non-governmental organisations sometimes visit the homes to organise and hold staff seminars on children in crisis centres or children victims of trafficking.

Generally, the children have no access to independent external medical services during their stay at the HTPMA. Such services can help establish cases of ill-treatment and violence both during the stay at the HTPMA, during the detention at the police station and the transfer to the institution.

2.6. Activities and education

Regardless of their age and the duration of their stay at the HTPMA, **detainees have no access to structured educational activities**. At the HTPMA in Plovdiv, for example, the BHC researchers encountered a 13-year-old boy, i.e. of compulsory school age, detained for up to two months. He could not attend school during the entire period. Vocational training or workshops, where specific crafts or skills can be acquired, are also lacking.

According to the common agenda of the homes, children in HTPMAs participate in correctional education activities, usually conducted by a psychologist and/ or a teacher working full-time at the home. The HTPMA staff states that correctional and educational activities are only organised when the child is placed for a longer period of time (more than 24 hours). When necessary, consultations with a psychologist are carried out. Individual consultations are also organised for every child under police protection, and such children do not take part in group activities. The children interviewed at HTPMAs, however, do not mention any involvement in correctional and education activities.

Children placed in HTPMAs may spend only a limited amount of time in the open. Legislation stipulates that children have the right to spend at least three hours a day outside. At the same time, not all homes have a garden or a courtyard where the children can play in the open. A child at the HTPMA in Sofia says that he spends between 30 minutes and an hour in the little courtyard of the building, but that he is not allowed to go out when there are insufficient staff. He usually goes out in the presence of a male police officer but, according to the child, this specific police officer is often absent on convoy escort duty. The child, thus, spends days on end without going out. A child at the HTPMA in Gorna Oryahovitsa stated that he has not been out into the institution's courtyard since he was placed there and until the BHC visit. A child under police protection at the HTPMA in Varna also says that he has not been out since his placement. Being under police protection, he complained of being constantly alone in a period when he needed to communicate with others and occupy his time with something in order to stop thinking about what had happened to him.

Children spend their days in the HTPMA **closed up in a single room**. At the HTPMA in Sofia, the children spend most of their day in a sitting room. This room is used as a sitting room, activity room and canteen. A child from this home said that he has access to the Internet from this room, but that social networking sites are banned. At the HTPMA in Plovdiv, the children spend most of their time in the so-called large sitting room, which is also used as an activity

¹ Havana Rules, Rule 54.

room and TV room. At the HTPMA in Varna, the children also spend most of the day in front of the TV in the sitting room. **Watching TV is the main activity of children interviewed at HTPMA.** They say that other activities are rarely organised, and usually on their initiative: playing cards, using a computer, reading books and playing other interesting games. Some children use materials available at the home to draw pictures.

The staff at the HTPMA in Plovdiv say that the children can participate in structured activities, such as planting flowers and trees, cutting grass, painting walls or removing snow, but these activities are optional and there is no compulsory labour. At the HTPMA in Sofia, children are actively involved in cleaning the premises. The children at the HTPMA in Plovdiv and Sofia are required to wash their dishes after eating. A child at the HTPMA in Gorna Oryahovitsa told researchers that when he refused to take part in cleaning activities, a staff member hit him twice in the stomach forcefully. The child did not file a complaint.

2.7. Contacts with the outside world

The children have the right to visits, which, according to the staff, can occur at any time. Visits are carried out with the permission of the head and in the presence of a psychologist. The place of residence of 73% of the children in HTPMA in 2013 was different from the location of the institution in which they were held. This in itself creates difficulties in maintaining regular contact between children and their relatives.

As mentioned above, the HTPMA in Plovdiv is located outside the city, in an inaccessible place and without convenient public transport connections. This poses a significant obstacle for relatives to visit children held in the institution.

Some homes have a computer and Internet connection, which allows the children to maintain contact with their parents and friends. The HTPMAs have a phone, which the children can use. Children also have access to the phone numbers of inspectors from the Children's Pedagogical Room and the social services. A child placed in the HTPMA in Sofia says that in theory, he has the right to make phone calls only to a land line, but it is mostly his parents who call him. So far he has used the home's telephone only once, under staff supervision. A child who had already spent about 20 days at the HTPMA in Gorna Oryahovitsa had no contact with his relatives, nor had a relative visited him.

In the case of placement of foreign children, the respective embassy is notified and the responsibility of the child is transferred to the consulate. In one case, the responsibility of a Polish girl was handed over to the embassy.

In some homes, the children are visited by Bulgarian and international organisations such as Doctors without Borders.

2.8. Disciplinary practices, use of force and complaints

The Rules on the Organisation and the Functioning of the HTPMA stipulate the following punishments that can be imposed on children who violate the internal rules of the home: reprimand; warning and isolation in a single room for up to three days.¹ The punishment is imposed by a written order of the head of the institution. It is prohibited "to impose punishments involving physical violence and deprivation of water, food and physiological needs".² The legislation lacks basic procedural guarantees for a just disciplinary process, such as the right of the child to be heard, the right to legal counsel, an obligation to notify a parent or another legal representative or a child protection body and the right to appeal.

1 Rules on the organisation and the functioning of the HTPMA (1998), Art. 25(1).

2 *Ibid.*, Art. 25(4).

The BHC did not find a single case of an officially registered punishment imposed on a child. At the same time, the heads of the institutions shared different methods used by them as punishments in cases of bad discipline, conflict with other children or attempted runaways. At the HTPMA in Sofia, for example, these included punishments such as standing in a corner, “being locked in a room” as a form of isolation, refusing a child’s request to have food bought at a store, and prohibition to watch television.¹

“Isolation in a single room” is a punishment imposed at the HTPMA in Burgas, Gorna Oryahovitsa and Plovdiv. In the HTPMA in Burgas, this punishment is carried out in two small solitary cells, equipped with only two bunks, without access to natural light. The room used for solitary confinement at the HTPMA in Gorna Oryahovitsa is in a deplorable condition – very narrow, with no furniture and without any access of daylight. It is used in situations when, to quote the staff, “the child becomes violent”, for no more than an hour. The punishment is imposed by an internal order of the head of the institution. The isolation room at the HTPMA in Plovdiv is also dark, with no access to natural light and equipped with a double bunk bed. Solitary confinement is a form of physical restriction, which may have lasting consequences on the mental health of the child and should not be imposed on underage children.

The MoI database contains only one registered case of handcuff use by the staff of the HTPMA in Sofia during the transfer of an adolescent.²

2.9. Personnel

Personnel are usually comprised of the head, a teacher, a psychologist, a medical officer, a cleaner and a driver. Apart from full-time staff, there are also police officers on duty, usually two per a 24-hour shift. One of these officers, known also as an evacuation officer, makes the day trips necessary to escort the respective child to a given destination. The other officer remains on duty at the home for 24 hours and is responsible for the admission and the placement of the adolescents in the institution.

The staff at the HTPMA in Sofia maintain that their number is sufficient and that work is distributed evenly. Personnel in the other homes are not always satisfied with their wages. The staff turnover is the greatest among the police officers on duty. The staff job descriptions are not always observed when hiring new employees, and in some cases are so generally formulated that they allow people with no experience in working with children to occupy the post.

The HTPMA in Plovdiv requires its personnel to complete a specialised course on working with children and child offenders, which is organised by the MoI Academy. The MoI also provides training in shooting, physical endurance and personal protection for police officers. Each topic is covered in 45 minutes. The topics cover the regulation of several legal acts: the MoI Act; Regulation on the Structure and the Activities of the MoI; Decree No. 904 on combatting petty hooliganism; the Rules on the Organisation and the Functioning of the HTPMA; the Internal Rules at HTPMA; JDA; Ordinance on the Rules and Procedures for Awarding Police Protection as well as all instructions concerning staff activities.³ The training results in improvement of the personnel’s awareness and competence in making adequate decisions, preventing violations in the admission of minors and adolescents and in working with children. In some homes (Plovdiv and Burgas), researchers were told that staff take part in MoI trainings. In the past, the MoI has also organised seminars on discrimination and juvenile delinquency but not all staff members have had the opportunity to participate. Also, internal trainings are sometimes organised on the initiative of staff.

1 Information collected during an interview with the head of the HTPMA in Sofia on 27 August 2013.

2 Information received from Ministry of Interior under APIA with Ref. No. 812104 from 26 August 2014.

3 *Ibid.*

There are cases of disciplinary punishments imposed on HTPMA staff for allowing children to escape from the home and for “illegal actions with regard to the placement of a child”.¹

2.10. Discrimination and other fundamental rights violations

In terms of respect for the right to privacy and personal space, the visit to the HTPMA in Sofia found that **cameras have been installed in the dormitories** and that lights are kept on overnight, in order to prevent possible escape attempts. The children at the HTPMA in Gorna Oryahovitsa are also under constant video surveillance in the dormitories. Children interviewed in the homes in Sofia and Gorna Oryahovitsa state that they **cannot freely express their opinion in front of staff** because they are afraid of repercussions.

The statistical data collected by the MoI about the children placed in HTPMA contain **obsolete, insulting and stigmatising terminology**. For example, the Activity Report of the HTPMAs for the period between January 2012 and June 2014 (Model No. 7) contains the fields “Gypsies” with regard to children’s ethnicity and “Psychopaths” regarding the psychological and educational assessment performed at the homes.² The same model contains a field named “Oligophrenic”,³ a diagnosis that has not been used in the International Classification of Diseases, in force for Bulgaria, since 2005.⁴

BHC received information that a child placed in the HTPMA in Gorna Oryahovitsa was subjected to violence for refusing to take part in cleaning the premises. In his own words, a staff member hit him twice in the stomach to force him to clean the room. The child mentioned that the same staff member had a **bad attitude** and challenging and aggressive behaviour.

2.11. Inspections

HTPMAs are subject to inspections by internal MoI bodies, as well as by independent external institutions.

Between January 2012 and June 2014, the central and the regional units of the MoI⁵ conducted a total of 11 inspections at HTPMAs: four at the HTPMA in Sofia,⁶ five at the HTPMA in Burgas, one at the HTPMA in Plovdiv, one at the HTPMA in Varna and none at the HTPMA in Gorna Oryahovitsa.⁷ A violation was found in only one inspection performed by the MoI Inspectorate on referral by the State Agency for Child Protection.⁸

In addition, the State Health Control Unit of the Management of Property and Social Activities Directorate of the MoI exercises sanitary and hygienic control over MoI detention facilities. Ongoing health control is the responsibility of the heads of the medical services at MoI’s Medical Institute.⁹ Between January 2012 and July 2014, the homes were visited by the State

1 *Ibid.*

2 *Ibid.*

3 *Ibid.*

4 Ministry of Health (2005), Ordinance on the introduction of classification statistical systems for the encoding of diseases and health-related problems and of medical procedures (Title amended – SG, No. 75 of 2014). International Classification of Diseases, 10th revision, available on: <http://ncphp.government.bg/2011-08-17-20-11-05.html>.

5 These include the Inspectorate Directorate of the MoI; the Counteraction to the Criminal Offences section; the Criminal Police Department of MoI’s Regional Directorate; the Security Police Department of MoI’s Regional Directorate; the Human Resources Section of MoI’s Regional Directorate.

6 Information received from Ministry of Interior under APIA with Ref. No. 812104 from 26 August 2014.

7 *Ibid.*

8 See also: 2.2. Placement of the current subchapter.

9 Information received from the Ministry of Interior, Medical Institute at MoI under APIA with Ref. No. 82121B-6932 from 22.08.2014.

Health Control Unit at different intervals. For example, the HTPMA in Burgas was inspected four times a year while the one in Plovdiv was inspected only once a year.¹

The results and findings of the inspections conducted by MoI bodies are not publicised. Thus, even if violations were found, the public would not be informed and in the position to ask for reform.

The HTPMAs are also subject to inspection by the Central Commission.² To quote the head of the HTPMA in Varna, no member of the Central Commission has ever set foot in the home. Another body, tasked with supervising the lawfulness of the placement, is the Prosecutor's Office. However, neither the Central Commission nor the Prosecutor's Office mention in their annual reports any activities related to HTPMAs.

As to external control, in 2012 and 2013, the HTPMAs were not inspected by the Ombudsman of the Republic of Bulgaria as a National Preventive Mechanism.³ Between 2010 and 2014, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment only visited the HTPMA in Varna in 2010 without formulating any special recommendations and findings.⁴

The state institutions do not regard the children in HTPMAs as vulnerable. The State Agency for Child Protection does not exercise institutional supervision over the functioning of the HTPMAs, their placement conditions and treatment of minors and adolescents. Thus, in reality, there are no inspecting or supervising bodies that exercise ongoing and timely monitoring regarding respect for the rights of the children placed in HTPMAs⁵, which is a precondition for violations and arbitrariness.

1 *Ibid.*

2 Rules on the organisation and the functioning of the HTPMA (1998), Art. 4(3).

3 Ombudsman of the Republic of Bulgaria (2013), *Annual Report of the Ombudsman of the Republic of Bulgaria on its Activities as a National Preventive Mechanism in 2012*; Ombudsman of the Republic of Bulgaria (2014), *Annual Report of the Ombudsman of the Republic of Bulgaria on its Activities as a National Preventive Mechanism in 2013*, available on: <http://www.ombudsman.bg/documents/prevantiven%20mehanizam%202014.pdf>.

4 CPT (2012), *Report to the Bulgarian Government on the visit to Bulgaria carried out from 18 to 29 October 2010*, p. 23.

5 The minister of interior is not specifically tasked with ensuring respect for the rights of the child. Under the Child Protection Act, the minister of interior's responsibilities in his capacity of a protection body include only a) to provide police protection to a child through the specialised bodies of the Ministry of Interior; b) to take part in providing and monitoring specialised protection of children in public places; c) to supervise the crossing of the Bulgarian state borders by children. Child Protection Act (2000), Art. 6a(4)(2).

C. Institutions belonging to the child protection system

1. HOMES FOR CHILDREN DEPRIVED OF PARENTAL CARE

The homes for children deprived of parental care (HCDPC) are institutions that provide social services for the upbringing and education of children. Children aged three to 18/ 20 are placed in HCDPCs after possibilities for living in a family environment have been exhausted. This assessment is made by the social services and the courts. About half of the children and young adults living in these institutions have some degree of disability/ illness, although this is not a formal criterion for placement. The children cannot take decisions affecting their lives, appeal their placement or protect their rights.

The material conditions, attitude of staff and teachers and the education available to the children are extremely unsatisfactory. They result from unfavourable working conditions (low wages, lack of training and supervision, inadequate child to personnel ratio) and lack of motivation and career opportunities available to institution staff. Violence, conflicts and punishments occur daily. Meaningful activities are rare. Inspections from state institutions are perfunctory and do not lead to better protection of the child's interests.

1.1 General information

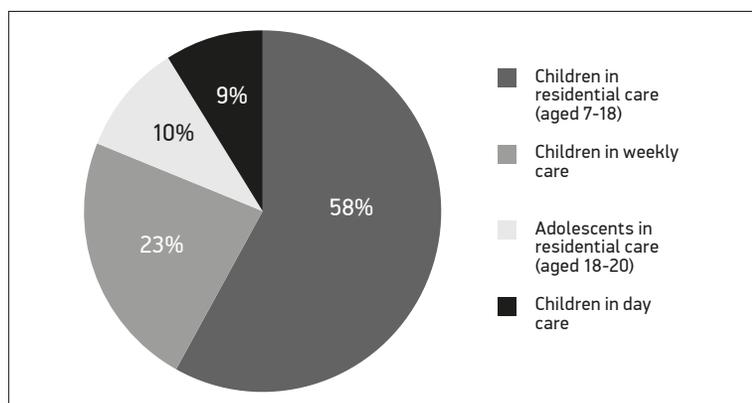
The homes for children deprived of parental care are institutions that provide social services for the upbringing and education of children at risk.¹ They are run by the mayor of the municipality, in which they are located. The mayor is the formal employer of the institution staff. Placement in HCDPCs is not connected to the children's health status or any other behavioural specificities. HCDPCs are the successors to the former orphanages. At present, however, a much broader group of children are placed in them, with just under 2% of the children having a deceased parent. These institutions are of two sub-groups – for children aged three to seven and children aged seven to 18 (with an upper age limit of 20 or until completion of secondary school). The BHC monitoring focused on the material conditions and placement in the latter

¹ According to the Child Protection Act, a **child at risk** is: one whose parents are deceased, unknown, with restricted/ suspended custody or who have left the child without their care for a lengthy period of time; who is a victim of abuse, violence, exploitation or any other form of inhuman or degrading treatment or punishment within or outside the family; for which there is a threat of harm to its physical, mental, moral, intellectual or social development; who has a disability or a medical condition that requires specialised care as established by a medical professional; for whom there is a danger of dropping out of school or one that has dropped out of school.

sub-group since in many cases it is considered to be a form of deprivation of liberty because many of the children placed there have an opinion and are able to express their wishes about staying there. BHC researchers conducted monitoring visits to five HCDPCs for children aged seven to 18/ 20 – Asen Zlatarov and P. R. Slaveykov HCDPC in Sofia, Maria Luiza and Olga Skobeleva HCDPC in Plovdiv, and Hristo Raykov HCDPC in Gabrovo.

HCDPCs can accommodate children for **residential and weekly care**, as well as children for **day care** or under **police protection**.¹ Owing to the process of deinstitutionalisation and to a decline in birth rates, the number of children placed in these types of institutions has decreased markedly. In 13 years, the number of HCDPCs has dropped from 102 to 53. The number of children has dropped from 7,145 nationwide to 1,851, with 1,535 of them living in the institutions for children aged seven to 20.² The National Strategy Vision for deinstitutionalisation of children in Republic of Bulgaria provides for the closure of all childcare institutions by 2025.³ At the end of 2013, the profile of the children placed in HCDPC aged seven – 18/20 is illustrated in Figure 3.

Figure 3: Profile of children placed in HCDPC at 31 December 2013



Source: SACP

In spite of the closure of these institutions and the drastic reduction in the number of children in them, placements continue to occur. All the HCDPCs will be substituted with a new type of community residential service – the so called family-type centres.⁴

1.2 Placement

There were 343 admissions in HCDPCs for children aged seven to 18 in 2013.⁵ A total of 80% of them were placed with an order of the Social Assistance Agency (SAA).⁶ According to data

1 Ministry of Labour and Social Policy and the Ministry of Education and Science, Rules on the Organisation of the Functioning of the Childcare Institutions, Art. 10.

2 Information received from the State Agency for Child Protection under APIA with Ref. No. 14-00-37 from 31 March 2014.

3 Council of Ministers (2010), National Strategy Vision for Deinstitutionalisation of the Children in Bulgaria, p. 7, available on: <http://www.strategy.bg/FileHandler.ashx?fileId=1026>.

4 Rules for Implementation of the Social Assistance Act (1998). According to the rules, a "family-type centre" is a set of social services that are provided in an environment that is close to the family environment for a small group of individuals – up to 15.

5 Information provided from the State Agency for Child Protection under APIA with Ref. No. 14-00-37 from 31 March 2014.

6 *Ibid.*

from the State Agency for Child Protection (SACP), **60% of the children placed in HCDPCs in 2013 came from their biological families**, 2% – from guardians/ trustees, while the remaining children came from other institutions or services. The children that pass from one institution to another through transfer exhibit all the characteristics of long-term institutionalisation and are the ones for which social inclusion is most difficult. Almost three times as many Roma children as Bulgarian children were placed in these institutions in 2013.¹ This proportion remains steady throughout the years.

According to the Child Protection Act, the guiding principle in a child's upbringing is to provide them with opportunities to grow up in a family environment. Placement in HCDPCs, therefore, is a measure of last resort after all other possibilities have been exhausted.² The usual motive for placement of children coming from a family environment is substandard material conditions, insufficient parental capacity and failure to take care of the child. Far too often, **poverty is the only motive for taking a child out of their family environment**, but this flawed approach only exacerbates the vulnerability among the most marginalised members of society. Rather, the state should make an effort to apply other social and economic measures to assist families to overcome their poverty.³ It should be noted that taking a child out of their family environment and **placing them in an HCDPC is sometimes motivated by the need to re-educate the child and handle anti-social acts.**⁴

Placement in an HCDPC is usually carried out on the basis of a **temporary administrative protection order** issued by the director of the social assistance directorate.⁵ The social assistance directorate determines the specific location and institution where the child is to be placed. There is no legislative provision that requires that the child to be placed near their family (if they have a family) to preserve emotional ties between them. Profiling of the institutions is not laid down in law.

A considerable number of children are placed parallelly in a **HCDPC and in another type of specialised or residential institution**, which means that they are living outside their homes. This applies to children placed in juvenile correctional institutions, those attending remedial schools, specialised educational professional centres or those serving custodial sentences.⁶

The length of placement in a HCDPC is determined by the court – for a specific period of time until reaching the age of maturity or without a time limit – until the grounds for protection are no longer valid. The social assistance directorates at the location of the institution, and not the one that made the initial risk assessment for placement, are responsible for monitoring the reasons for placement. This tends to undermine the process of taking children out of the institutions and successfully reintegrating them with their families.⁷

In 2013, 561 children left the institutions. The reasons are outlined in Table 14.

1 *Ibid.*

2 Child Protection Act (2000), Art. 3, (2).

3 CRC, Report on the Fortieth Session (Geneva, 12 to 30 September 2005), CRC/C/153, § 658 and 659.

4 Silistra District Court, Decision No. 226 from 25 April 2014 on Civil Case No. 531/ 2014.

5 Child Protection Act (2000), Art. 27, para. 1.

6 Information collected by BHC through interviews with children placed in HCDPC, correctional boarding schools and social-pedagogical boarding schools and interviews with the directors of these institutions.

7 Interview with the director of the Asen Zlatarov HCDPC conducted on 3 July 2014.

Table 14: Number of children leaving HCDPC in 2013

Reintegrated into their biological families	133
Reaching the age of maturity	119
Placed in foster care	84
Placed with extended family	47
Family-type centres	37
Adopted	34
Transfer to another institution	22
Transitional home	14
Correctional boarding school	10
Social educational professional centre	9
Social-pedagogical boarding school	7
Other	45

Source: SACP

1.3. Judicial review and legal aid

Judicial control over the factual and legal grounds for placement of a child in an institution is the main safeguard against unlawful and arbitrary placement. By law, within a month after the issue of a temporary placement order, the social assistance directorate submits a request to the court to review the protection measure. The court shall hear the case “promptly” and issue a decision within a month.¹

The legally prescribed periods are not observed, according to institution directors. As a result there are **enormous lags in filing the requests for court hearings by the social assistance directorates and in hearing court cases**. The court practice is similar. Thus, a minor girl was placed in the HCDPC in the town of Panagyurishte under an urgent placement order issued by the Sofia Social Assistance Directorate in June 2007. The girl’s court placement was confirmed by the Panagyurishte District Court four years later – in June 2011.² In another case, a minor girl was placed in the HCDPC in the city of Shumen under a temporary administrative order for more than two years before the social assistance directorate started a court procedure for placement.³

With imperative provisions, the Child Protection Act introduces procedural safeguards for participation of the child in proceedings that affect their rights and interests.⁴ A review of the court practice on placement in HCDPCs reveals that these safeguards are not always observed. In some cases, the child’s right to be heard in person and to express an opinion in connection with the imposed measure of protection is neglected.⁵ With regard to child participation in court proceedings, the court usually appoints a special representative – lawyer. According to the common rules for the civil procedure, minors lack legal capacity and are represented by their parents. Adolescents engage in court procedures on their own, but with

1 Child Protection Act (2000), Art. 27 and 28.

2 Panagyurishte District Court (2011), Decision No. 49 of 2 May 2014 on Civil Case No. 67/ 2011.

3 Shumen District Court (2013), Decision No. 399 of 16 May 2013 on Civil Case No. 1130/ 2013.

4 Child Protection Act (2000), Art. 15.

5 Provadia District Court (2013), Decision No. 294 from 22 November 2013 on Civil Case No. 699/ 2013; Provadia District Court (2013), Decision No. 242 from 16 October 2013 on Civil Cases No. 655/ 2013; Pleven District Court (2013), Decision No. 1216 from 10 July 2013 on Civil Case No. 1984/ 2013; Nova Zagora District Court (2010), Decision No. 26 from 3 February 2010 on Civil Case No. 42/ 2010.

their parents' consent. The need for special procedural representation arises when the child, against whom urgent procedural acts have to be undertaken, is procedurally not legally capable and does not have a legal representative or guardian, as well as when there is a conflict of interest between the two.^{1,2} Thus, the child's right to access to legal aid is realised at the same time as the procedural representation. The court uses different legal provisions to appoint a special representative – Child Protection Act, Legal Aid Act, Civil Procedure Code, or all three.³ As the court practice reveals, however, procedural representatives are not active enough in protecting the child's rights and interests. As a rule, they uphold the social assistance directorate requests for placement.⁴ The interviewed children also report that they meet their lawyers just minutes before the court hearing. At the same time, owing to the lack of a clearly defined legal requirement for appointment of a procedural representative, in a number of cases legal aid is not provided at all.⁵

Placement with a court decision can be appealed within seven days before a higher-ranking court. According to the Child Protection Act, children are entitled to an appeal in all proceedings that affect their rights.⁶ At the same time, for the carrying out of valid court actions, the general rules in the civil procedure require that minors and adolescents act through or with the approval of their legal representatives. Thus, in the hypothesis that the child's representatives support the placement measure or are entirely absent from the procedure, the child cannot independently appeal the placement measure.

Children placed in HCDPCs are not listed explicitly as individuals who can require the court to terminate the protection measure. When the legal guardians cannot, or are not, inclined to initiate such proceedings, such as for instance when the legal guardian is the director of the HCDPC, the children end up without effective access to court.

During monitoring visits, BHC established that the directors of HCDPCs often do not have the court decisions for placement, even in cases when placement was done under a court order. The social assistance directorates do not provide them with copies of the court decisions and are not required to send copies to the directors of the HCDPC or to the children because they are formally not a party to the case.

1.4. Material conditions

The buildings of the institutions visited are not tailored to the children's needs. They are **chaotic, far too big, without proper ventilation/ air conditioning and are not suited to children with disabilities**. The window frames in the Hristo Raykov HCDPC are old and some of the windows – broken. In the P.R. Slaveykov HCDPC, a visually impaired child has been placed in an environment that is not suited to his special needs. The movement of the children within the buildings of some of the institutions is exceedingly restricted. Thus, for example, the door to the group sector of the Olga Skobeleva HCDPC, which is part of a whole set of ser-

1 Civil Procedure Code (2009), Art. 29.

2 Provadia District Court (2013), Decision No. 294 from 22 November 2013 on Civil case No. 699/ 2013, Panagyurishte District Court (2013), Decision No. 33 from 14 March 2013 on Civil case No. 20/ 2013.

3 Gorna Oryahovitsa District Court (2014), Decision no. 223 from 7 May 2014 on Civil Case no. 397/ 2014, Popovo District Court (2011), Decision no. 35 from 25 February 2011 on Civil Case no. 1000/ 2011.

4 Varna District Court, Decision (number unknown) from 12 August 2014 on Civil Case No. 8439/ 2014; Panagyurishte (2013), Decision (number unknown) from 13 February 2013 on Civil Case No. 20/ 2013; Popovo District Court, Decision No. 35 from 25 February 2011 on Civil Case No. 1000/ 2011.

5 Botevgrad District Court (2014), Decision No. 96 from 25 April 2014 on Civil Case No. 276/ 2014; Botevgrad District Court (2014), Decision No. 13 from 16 January 2014 on Civil Case No. 1490/ 2013; Ihtiman District Court (2013), Decision No. 163 from 25 September 2013 on Civil Case No. 825/ 2013; Nova Zagora District Court (2010), Decision No. 26 from 3 February 2010 on Civil Case No. 42/ 2010.

6 Child Protection Act (2000), Art. 15(8).

vices, remains locked, especially when children are supposed to do homework. Hristo Raykov HCDPC in Gabrovo is located on the top two floors of a multi-purpose building. The entrance is always locked and there is no yard. In order to avoid conflicts that arise out of insufficient movement/ activities of the children within this institution, the staff allow the children to smoke on the open-air balcony adjacent to the TV room.

The main criterion when placing children in the same room is to avoid conflicts. The children's preferences for whom to share a room with are ignored. If conflicts arise, they are moved to another room. At the same time, children can enter each other's rooms constantly and without any problem.

As a result, children do not consider their rooms as their **personal space**. More than two children usually occupy a room. Children are raised in conditions that do not teach them to distinguish boundaries in interpersonal relations and to respect personal space. Only some of the children living in institutions, mainly the older ones, have the prerogative to lock their rooms. There is a noticeable variation in the furnishings of the different dormitories (Olga Skobeleva HCDPC – Plovdiv, Asen Zlatarov HCDPC – Sofia); older children's dormitories have a markedly better standard and more personal possessions.

In spite of the separation of children on the basis of age and gender, **everyday conflicts and violence** do arise between them. The different profile of those accommodated and the application of a common methodology for work with them leads to ineffective care and a deepening of their problems.

In most institutions, **lavatories** are shared and insufficient in number (with the exception of P. R. Slaveykov HCDPC). Hygiene is substandard (Asen Zlatarov HCDPC, Hristo Raykov HCDPC), showers are often out of order and access to bathrooms is limited (Olga Skobeleva HCDPC in the evenings, Hristo Raykov HCDPC throughout the day).

Children are responsible for maintaining **hygiene** in their own rooms and this explains the variations in their appearance. The differing standards of cleanliness among roommates are a frequent source of conflict. Many children have problems with personal hygiene. In the Asen Zlatarov HCDPC children are entirely responsible for cleaning communal areas and are forced into doing this in return for benefits like being granted leave from the institution. In most rooms, however, personal possessions were seen scattered all over the floor or tossed over the furniture. Children from P. R. Slaveykov HCDPC reported that some of them had been forced to clean other children's rooms because the latter categorically refused to clean them and the staff was unable to control them.

The insufficient quantity of **food**, lack of access to food outside meal times and lack of nutritional variety are a problem for the children. This leads to daily conflicts with institution staff because many of the children do not want to have dinner between 18.00 and 19.00 PM and, according to information from the directors, "harass" the staff on night duty. The food in the Hristo Raykov HCDPC and Asen Zlatarov HCDPC is prepared by an external provider and children complained about its lack of variety, lack of taste and that it was served cold. The children placed in HCDPC spend their monthly pocket money mainly on food. All children receive the same monthly personal allowance¹ – BGN 33 (which is the equivalent of EUR 17), irrespective of their age, but some possess more money from other sources and can afford more food. In Hristo Raykov HCDPC, some children who become staff favourites are given additional food. Disobedient children in Asen Zlatarov HCDPC are not given extra dessert, while those who help with serving in the kitchen are given wafers. Although all children receive a monthly stipend, some children engage in begging.

1 Rules for Implementation of the Social Assistance Act (1998).

Shoes and clothes come mainly from donations. Some children report that they buy second-hand clothes with their own money because they do not like the clothes provided by the institution (Maria Luiza HCDPC in Plovdiv).

The “disappearance” of clothes and “borrowing” of items without the knowledge of their owners is a frequent cause of conflict between the children. Some children have more money than others and this is clearly demonstrated in their outer appearance. They report that they receive money, clothes and shoes from relatives and volunteers who visit on weekends and on holidays. Other children have only what the institution provides them with. Children from the institutions, predominantly girls, report that most of the clothes and shoes they own are a “present from a friend”.

1.5. Health care

The health status of the children and adolescents placed in HCDPC is very diverse (see Table 15). Thus, while as at 31 December 2013 only 7% of the children in weekly and day care were not clinically healthy, **32% of the children and 48% of the adolescents** (over 18 years) living in institutional care had **some form of illness or disability**.

Table 15: Health status of the children and adolescents placed in HCDPC (7-18/20 years) as of 31 December 2013

	With chronic diseases	With mental and neurological illnesses	With inborn malformations	With different degrees of learning disabilities	With physical and multiple disabilities	Underweight	Healthy
Children in weekly or day care:	1	1	0	18	0	0	272
Children in institutional care:	41	64	45	178	26	22	776
Adolescents in institutional care:	4	9	5	23	5	0	53
Total	46	74	50	219	31	22	1101

Source: SACP

In spite of the high share of children with disabilities and/ or chronic and other diseases, the provision of health care also varies. According to information from the State Agency for Child Protection, there is a doctor in only one out of 53 institutions – the HCDPC in Silistra, and **18 institutions have no medical position at all**. In some of them, the medical staff is appointed by the respective municipality. Although the nurse at the Olga Skobeleva HCDPC is a municipal employee, she does not exercise her duties independently of the institution. Other HCDPCs (including Asen Zlatarov HCDPC) have no medical staff at all and the medical needs of the children are assessed by unqualified staff. External medical care is provided by general practitioners and general dentists chosen by the institution for all children. Children’s access to them is subject to a staff assessment.

HCDPC accommodate some children who are in need of daily specialised medical care, which is difficult to provide in the institution’s conditions. Often, the available medical staff is not motivated to work with the children and, according to reports from some children, does not

heed their complaints, even when they have open wounds (P. R. Slaveykov HCDPC). Thus, in most cases, children placed in HCDPC **do not have access to quality independent health care**, which is of key importance to prevent and combat abuse and ill treatment. In practice, in spite of cases of abuse of children by personnel, established by BHC, there were no cases in which medical staff had established or documented such incidents.

BHC established a problem with the lack of sufficient personnel in HCDPC. This is especially acute in the afternoon periods and at night when there is not enough staff available to accompany a child to a medical facility in an emergency. A number of cases were established in the Olga Skobeleva HCDPC and Maria Luiza HCDPC in Plovdiv, in which children were taken to the hospital by ambulance, accompanied by a member of staff, but later remained in the hospital alone, without an accompanying staff member.

Independent **psychological care** for children is mostly absent in HCDPC. Although most institutions do have psychologists among their staff, they are part of the personnel and the children have difficulties in communicating with them and prefer to confide in other people, usually strangers. BHC established one case of self-injury in one institution – cutting with a razor blade near the neck in Asen Zlatarov HCDPC.¹ External supervision by a psychotherapist – which is a prerequisite for quality psychological care – was established in just one out of the five institutions (Olga Skobeleva HCDPC). In institutions located in buildings where other social services are located (Olga Skobeleva HCDPC, P. R. Slaveykov HCDPC) children can use these. This, however, is either severely hampered or lacking in other institutions.

Children and adolescents placed in HCDPC do not have access to a thorough medical examination upon admission. Together with access to independent medical personnel, medical examinations upon admission are a prerequisite to prevent ill treatment of children in the context of institutionalisation and beyond it.

Long-term institutionalisation, poverty and the fact that many children and adolescents in HCDPC have learning disabilities, makes the residents of these institutions extremely vulnerable. Some of the children are lured into prostitution and engaged in trafficking, whilst others use drugs. The risk of HIV/ AIDS infection and STDs among the children is high. In spite of this, the personnel lack an adequate approach to these problems, thus jeopardising the children's health and lives. In 2012, it was established that children from Asen Zlatarov HCDPC had contracted HIV,² and later that year one of them died.³ The personnel's attitude towards prevention is inadequate. The children are examined for HIV/ AIDS and STDs with the assistance of the regional health care inspections, but interviews with them revealed that in some cases they had no idea what they were being tested for and what the results were.

1.6. Activities and education

Every child needs to have an **individual care plan**, but none of the children were aware of their existence. All children reported that they do not have access to their personal files and were not aware of the facts concerning their placement and institutional stay. The participation of children in decision-making affecting their personal lives is severely restricted in HCDPCs.

Genuine **assessment of the children's needs** does not take place. Children do not take part in activities tailored to their individual interests, but only in ones accessible at that moment – i.e. those that are provided free-of-charge, near the institution, and organised within the

1 Interview with a staff member at the Gavrosh Shelter in Varna conducted on 29 May 2014.

2 See, for example, bTV (2012), "HIV positive children from Asen Zlatarov institution hospitalised", 2 July 2012.

3 See, for example, Standart (2012), "Girl from Nadezhda institution dies from AIDS", 15 November 2012.

framework of funded projects. The care plans do not state why children take part/ discontinue participation in a specific activity. The weekly schedule is far too overburdened, without the children actually taking part in all of the planned activities. **Activities organised** by HCDPCs are sporadic, short-term and inconsistent. The children reported to have taken part in a number of activities within and outside the institution, but most of them added that they are not engaged in anything substantial and are bored most of the time. In most cases, they give up participation themselves. In not a few cases, especially concerning activities outside the institution, children are suspended from after-school classes. The reasons, according to them, are being late and the negative and discriminatory attitudes towards them. According to the staff, children in HCDPCs have difficulties in adapting to a strict structured regime and discipline. Children wish to take part in activities, but report that they lose interest quickly and are easily demotivated, especially when there is little support and no positive attitude from an adult.

There is a **formalistic, documentary-based approach to the organisation of activities** for children in institutions. The needs of children with disabilities are not genuinely considered when planning activities, which to a large extent explains the low success rate in organising them. They are not tailored to the personal needs, intellectual disabilities and behavioural problems of the institutionalised children.¹

A real barrier to the attendance of activities of preference by the children is the **lack of financial means** for ensuring participation in activities tailored to the talents, interests and needs of every child. Children placed in HCDPCs report that there is a division between them and the other children, when it comes to selection for activities organised by and through school. Often the class teachers announce the organisation of new classes for specific activities, mostly sports classes, but this does not apply to children from institutions. Organised camps, field trips and events from the institutions include only children from the institution itself, which further increases their **social isolation**. The limited financial means of institutions to organise such events results in their **low quality**.

Activities organised by the institutions (but outside them) include only children with good behaviour. Children running away from the institution, those that do not attend school regularly, children considered “troublemakers” and children who are prone to conflict or those who are hard to manage are **banned from participating as a form of punishment**. Such children usually do not do anything meaningful in the institution, which forces them to run away. Thus, they are drawn into the vicious circle of punishments, disappointments, stigmatisation, hostility and aggression. They state that have no plans and find it hard to imagine their future. Their only dream is to have a family.

Many of the children watch **television** in their leisure time. Because of the small number of TV sets in the institutions, conflicts frequently arise about the choice of programme. The stronger children or the institution’s staff usually decide.

Not all children in HCDPCs have genuine access to **education**. Children attend different schools based on their age and abilities. A criterion for the choice of school is the proximity to the institution because there is no personnel available to accompany the children from/ to school. They are enrolled in community schools, but truancy is a problem. There are cases, like, for instance, in the Asen Zlatarov HCDPC, where, according to the school director, many of the children of different ages refuse to go to school.² She explains their refusal by highlighting various factors: the absence of a proper educational ethic due to their socio-economic status, their ethnicity, their social environment during childhood, the lack of interest from

1 Health status of the children and young adults in HCDPC (7-18/ 20 years) as of 31 December 2013, Information received from the State Agency for Child Protection under APIA with Ref. No. 14-00-37 from 31 March 2014.

2 Interview with the director of Asen Zlatarov HCDPC conducted on 3 July 2014.

parents, and early educational deficits, etc. This institution has organised an educational course for the children that do not attend school. The director of the Hristo Raykov HCDPC reported that a 16-year-old child from the institution is in fifth grade, but none of the schools in Gabrovo is willing to enroll him. As a result, the boy had to discontinue his education. The director's interventions on the boy's behalf, as his legal guardian, were not effective because no additional actions were undertaken to enable the boy to continue his education. The situation is similar in P. R. Slaveykov HCDPC where a 17-year-old child is in third grade and attends school only rarely.¹

According to the educators, the children "have a hard time getting up in the morning". The children stated that they do not want to go to school because of the bad attitude towards them (from other school children and school staff); they are embarrassed about their institutional background, because they do not have the necessary knowledge or because they fail to see the point to education and get easily bored at school. Although the children are punished for running away from school, no therapeutic work is carried out with them to reduce the risk of dropping out. The behavioural problems and intellectual disabilities of many of the children placed in HCDPCs are not taken into account, are not diagnosed correctly or fully, or are not established at all, which leads to an **unrealistic assessment and ineffective educational support**.

The **educational level** of most of the children placed in HCDPCs is low and does not correspond to their grade. Only a few children achieve high grades and these are usually long-term institutionalised children with good relations with the institution's personnel and with their school class teachers. Institution staff reports that children that were recently placed and come from a family environment, are usually those that repeat classes several times. In fact, a first-time assessment of the children's education needs is carried after institutionalisation. Those with special educational needs are exempted from acquiring the educational minimum and pass on to the next grade by studying by an individual curriculum. They are not required to take the same class twice.²

Many of the students in the upper grades attend professional secondary schools. Although they report that they like the profile of the school, they frequently fail to attend classes. Children selected by the personnel are enrolled in professional courses, internships and trainings.

Children with special educational needs have a resource teacher appointed in the school they attend. The institutions do not ensure the quality of additional literacy classes for the institutionalised children, although there is a regulated time for this. The staff states that preparing homework is much more difficult with the children in the upper grades because the study material is voluminous, while at the same time they lack personnel to provide one-on-one support. The children reported that they frequently go to school without homework. According to the BHC, most of the children cannot speak the foreign language they are studying at school.

1.7. Contacts with the outside world

HCDPCs provide different types of care – day care, weekly or residential, with the largest share of children in **residential care**. Most of these children have families, but do not maintain regular contact with them. Visits are rare and sporadic. According to the interviewed institution staff, children who have family visits usually fail to return to the institution by the appointed hour. Some children never get visits. According to staff, the children in weekly care (i.e. the ones who spend weekends and holidays at home) frequently are not subject to effective control by their families and are led astray by them. The children are often involved

1 Interview with a child placed in P. R. Slaveykov HCDPC conducted on 2 July 2014.

2 Public Education Act (1991).

in vagrancy, and begging and frequently return dirty, underfed and emotionally stressed from their home visit.

Opportunities for communication for the children placed in HCDPC (especially those with the longest stay), are severely restricted. The longer the child's stay, the more severely restricted the contacts with the outside world are.

Running away from HCDPC is a frequent phenomenon. Some of the children run away in order **to return home**. They say that they miss their parents and want to be with them and not in the institution. Some run away because they are forced by their parents into working for them at home or on the street (Asen Zlatarov HCDPC) or to marry before reaching the age of maturity (Maria Luiza HCDPC). Children also run away because they have befriended adolescents and adults outside the institution. Girls living in HCDPC report that they have sexual partners and frequently run away to meet them. The children report that some of their friends give them money, presents or look after them. Many of the girls, according to institution personnel, are **victims of trafficking** and many of them quickly end up in the hands of the same or new traffickers.

Children are also known to run away as a result of **conflicts** (sometimes everyday conflicts) with another child or with a member of staff. The staff and children fail to build a relationship of trust. Those living in the institutions confide far more easily and more frequently in people outside the institution, which poses a significant risk. The children also run away to spend some time outside the institution or, as they put it, to take a break and have a bit of variety. The children take casual walks on the city street or beg, after which they either return alone or are brought back by the "free blue taxi", as they call the police car.¹ Frequent running away is a prerequisite for abuse and trafficking of the children placed in HCDPC.

During the period for walks outside the institution, children from the institutions engage in **begging**. BHC researchers saw one child from the Asen Zlatarov HCDPC communicating with an unfamiliar woman on the street who went on to buy him a snack. Children report that they drink alcohol and smoke cigarettes, meet with friends who encourage them to commit thefts or have sexual contacts or casually wander through the streets.

Many of the children living in HCDPC possess **mobile phones**. Those that do not have one, use one from the institution to contact relatives and friends. Children from Hristo Raykov HCDPC reported that the institution's mobile phone frequently "disappears" because some children use it without permission and later toss it somewhere in the institution.

A very small share of children in HCDPC own a computer. These are mostly older children who received it as a present from a friend or who have bought it with their own money. The other children use computers provided by the institution or go to a computer room to use the Internet. Access to the **Internet** at Olga Skobeleva HCDPC is unlimited. A child from the Hristo Raykov institution who became a victim of severe emotional trauma shared his experience on Facebook. A stranger posing as a lawyer proposed his services and the two made contact. This is an example of the severe vulnerability of the children in these institutions and the lack of genuine prevention of re-victimisation. On the one hand, children should have access to various communication channels but on the other, these channels should be safe and secure for children to use.

There is no effective control over external individuals wishing to **volunteer** at HCDPC. On the one hand, institutionalised children maintain long-term and systemic contacts with vol-

¹ Data about frequent running away and delinquency acts were corroborated in an interview with the inspector from the Children's Pedagogical Room at the Fourth Plovdiv DPD, which is where these two institutions are located, conducted on 16 May 2014.

unteers who take them out for walks (Olga Skobeleva HCDPC, Maria Louisa HCDPC) or take them for the weekend (Asen Zlatarov HCDPC). On the other hand, children reported about relationships with incidental “benefactors” who buy them things and give them money.

Children are allowed to have visits by friends exceptionally rarely. Children under 14 are banned from visiting the institution in Gabrovo. All others can enter only after legitimising themselves with an ID card. Olga Skobeleva HCDPC bans visits by friends as a preventive measure against bad company and inappropriate influence.

Children from HCDPCs receive public attention chiefly during the holiday season, like the New Year. This is the time of year when they are showered with donations, visits and organised activities. When this period passes, the social isolation sets in again. The children have a clear understanding of this and state that people think of them only around Christmas.

1.8. Personnel

According to the Methodology for determining the staff positions in specialised institutions and community-based social services, the only specialist positions necessary for the functioning of a HCDPC are: a director, social worker/ teacher and an educator. The employment of a psychologist

is recommended, and no mention is made of a medical post.¹ This leads to large discrepancies between the different institutions. Thus, for example, P. R. Slaveykov HCDPC had a maximum capacity of 80 children, accommodating 69 children (as of 31 December 2013). With this capacity and number of children, the personnel in the institution amounted to 46.5 positions,² which is the largest number of personnel in a HCDPC nationwide. Other institutions experience shortages of personnel. According to staff at HCDPCs, they need more educators during the afternoon and night shifts, as sometimes off-duty staff needs to be called in.

Often the personnel of HCDPCs is not motivated to work with the children. The reasons are the exceptionally high workload, low remuneration and lack of career development opportunities. There is no systemic external supervision where the staff can discuss cases of children and problems connected with their work.³ All of this results in high emotional tension and cases of verbal and physical aggression against the children, as evidenced by them.

There are no effective security services in HCDPC. Security staff is recruited by the municipal authorities and not by the institution itself (with the exception of Hristo Raykov HCDPC). Frequently, according to reports from the personnel, the actions of the municipal security guards are not timely and adequate.

BHC established a case of a serious conflict of interest, in which a group educator from P. R. Slaveykov HCDPC is also the member of the local commission for combatting juvenile delinquency. In this way, she takes part in decision-making regarding the imposition of punishments for children in her care. The same person takes care of the children and participates in the commission that decides whether these children's stay will be terminated or not, whether an additional measure will be imposed, etc. Her opinion is not independent and on account of the direct responsibility for providing care it can be considered subjective.

1 Ministry of Labour and Social Policy (2012), Methodology for determining the staff positions in specialised institutions and community-based social services, Annex No. 14A.

2 The educational personnel at the P. R. Slaveykov HCDPC is comprised of 28.5 staff members. In addition, there are two psychologists, three social workers, four administrative personnel and nine auxiliary staff. A nurse (not included in the above staff numbers) also visits the institution.

3 Only the Olga Skobeleva HCDPC has external supervision.

1.9. Disciplinary practices, use of force and complaints

On the basis of the Ordinance for the criteria and standards for social services for children, every service provider, including HCDPCs, should design and follow a special procedure for education and discipline.¹ Thus, a special procedure for imposing disciplinary punishments should be in place, a journal should be kept for their registration, and children should be informed in an accessible and understandable manner about the rules of conduct and the possible consequences in case of failure to observe them.

Not all of the five visited HCDPCs have such disciplinary rules and procedures.² The institutions that do have them provide for the following punishments: remark, reprimand and proposal for a juvenile correctional case (Hristo Raykov HCDPC); withholding the monthly allowance for a month, ban on leaving the institution, cleaning duty, limiting access to the computer room, additional duties, work in the institution yard (Maria Luiza HCDPC), **banning of the right to use a telephone, serving community labour and restoring the loss with their own money** (Olga Skobeleva HCDPC). It is important to stress that, according to Bulgarian legislation, non-legally capable people, such as minors and adolescents, do not bear tort liability.³

This makes the **legislation providing that children cover any damages incurred by them with their own money invalid**.⁴ Another punishment, which is frequently imposed, is exclusion from group seaside visits and holidays. Most of the disciplinary punishments are imposed on the basis of subjective evaluation by the educators; the existing procedures and safeguards for protecting children's rights are not observed. **Nowhere is a procedure provided for appeal of an imposed punishment** before a body independent from the institution. Physical punishments, although banned, are imposed in all visited institutions.⁵

The Ordinance for the Criteria and Standards for Social Services for Children provides the **possibility to use "physical restraint"** on a child when this is necessary to protect his or her life and health.⁶ These provisions are also reproduced by the HCDPCs in their internal procedures. The lack of a legal definition of the term "physical limitations", as well as the lack of clear concrete situations where such limitations can be applied, creates a real risk of incorrect application of the provisions, violating the children's rights.⁷ Thus, for example, in 2012 three girls from the Asenovgrad HCDPC – one of them under 14 – were punished by the institution director with placement in an isolation cell for a period of between one and three days for leaving the institution. During the punishment, the girls were locked against their will in one room which they could leave only if accompanied by an educator – only for short periods of time in order to maintain hygiene and eat. The Asenovgrad District Court found that the possibility to impose "physical restraint" measures cannot be interpreted as a legal

1 Ordinance for the criteria and standards for social services for children (2003), Art. 3.

2 In an interview, the deputy director of the P. R. Slaveykov HCDPC stated that the institution does not have formal rules for imposing disciplinary punishments, conducted on 2 July 2014.

3 Act on Obligations and Contracts (1950), Art. 48.

4 Recommendation for the suspension of this provision was put forward by SACP to the Hristo Raykov HCDPC.

5 According to a document of the HCDPC in Gabrovo, for example, educational methods shall not include violence or the causing of unnecessary pain. Gabrovo Municipality, Hristo Raykov HCDPC, Procedure for education and discipline, Art. 6. Educational methods shall not include violence or the causing of unnecessary pain.

6 Ordinance on the criteria and standards for social services for children (2003), Appendix 1 of Art. 17, Standard 18(2)2.

7 Bulgarian legislation regulates temporary physical restrictions – isolation and immobilisation with mechanical means such as straps and strait jackets only with respect to "patients with established mental disabilities". Measures that lead to deprivation of liberty can be applied only in medical establishments with adherence to strictly determined procedures. Ministry of Healthcare and the Ministry of Justice (2005), Decree No. 1 of 28 June 2005 on the rules for application of temporary physical immobilisation on patients with mental disabilities.

means to violate the personal liberty of movement of the children and convicted the director of the Asenovgrad institution of unlawful deprivation of liberty.¹

The mechanisms through which the children can file a complaint or report a violation are either ineffective or not in place. Complaints are usually made verbally and not registered, which results in a lack of guarantees that the issues they cite will be addressed. The number of the national children's hotline is not always publicly visible to the children. There are cases in which the children with the help of the media report serious irregularities taking place at the institutions. This was the case with a boy from Asen Zlatarov HCDPC whose accounts of violence, sexual abuse and self-injury in the institution were reported in the electronic media.²

1.10. Violence and violations of other fundamental rights

Violence between the children in HCDPCs occurs daily. This is corroborated by the State Agency for Child Protection, which carried out an inspection in these institutions in 2012.³ The children that are physically and emotionally stronger resort to hitting and causing pain to enforce their will. Threats of use of physical force are the main type of communication. To a large extent, the children do not recognise this as wrong because they are unaccustomed to other types of communication and because they have a high threshold of tolerance of such acts. In those cases when a child complains to an educator of abuse against him/ herself by another child, often there is no effective intervention. All interviewed children believe that there is "no point" in complaining because "it only get worse" and "nobody cares". They look for ways to take matters into their own hands or simply accept the situation, submit to the stronger ones when threatened and/or endure such an attitude all the time.

According to the children living in the institutions, physical violence by staff has considerably decreased compared to previous years. Many of the abusers continue to work in the institutions and take care of the children, but no longer hit them "like before". They believe that the reason for this is that the staff is "afraid now" (P.R. Slaveykov HCDPC) or that "the directors forbid it" (Olga Skobeleva, Maria Luiza HCDPC) or that they "don't dare because the children have grown up and will no longer put up with it" (Hristo Raykov, Asen Zlatarov HCDPC). Some of the children still fear the educators, while others take advantage of the new situation and provoke them.

BHC established quite a few cases of verbal and physical violence towards the children by the staff. Violence is usually quite flagrant and accompanied by insults.

1 Asenovgrad District Court, Sentence No. 61 from 10 December 2013 on Criminal Case No. 11/2012. The sentence was overturned by Plovdiv Regional Court and the case was returned for to Asenovgrad Regional Court for elimination of violations.

2 See Blitz.bg (2013), "Todor Stefanov from Asen Zlatarov institution: I was raped when I was eight by children in the institution!", 18 November 2013; Bnews (2013), "The director herself beats the children in the hell-like Nadezhda institution", 23 October 2013.

3 State Agency for Child Protection (2012), "Thematic inspection carried out by the State Agency for Child Protection establishes 46 cases of abuse in institutions for children deprived of parental care" (press release), 27 July 2012.

Cases of violence in HCDPCs

A staff member from the Hristo Raykov HCDPC behaves in a degrading manner with the children by using inappropriate remarks. Previously he used to slap them, hit them, and now mainly “embarrasses” them before the others. Another staff member from the same institution often insults the children by using obscene language like “you, filthy slut”.

...

A child placed in the P. R. Slaveykov HCDPC told the BHC how he witnessed a staff member beating another child. The reason was that the child had put up a sticker on the dormitory wall. The woman beat the child with “kicks” and pulled her hair. The same staff member systematically hits children “on the heads with keys” and with “whatever she can get her hands on”, but “doesn’t dare to hit just anybody”, just those that she is sure will not resist. Such children are “punished for long periods of time”. In order to be able to go out to the institution yard, “for a cigarette”, punished children have to perform “various errands” – “you go down to the bus station and carry the teacher’s luggage”. In the same institution, the same children are insulted by calling them “Gypsies” and “monkeys”. Younger children are slapped with “not-so-hard slaps” by the staff, their ears are pulled “lightly”; they are punished by being ordered to stay in the bathrooms or upright next to the wall in the rooms/ corridors. BHC witnessed this disparaging attitude by one member of staff who commented about a child that there was no point in speaking to him because he was Roma and could barely write and speak. The staff member’s expression was extremely ironic and sneering.

...

According to children from the Asen Zlatarov HCDPC, educators use physical aggression towards the children, but this depends “on the child”, when “the child goes too far and does not know how to behave, it gets hit”. The children report about physical violence and at the same time exculpate the staff: “They hit and insult the children when they deserve it and when they go too far”.

...

Older children in Olga Skobeleva HCDPC report that the staff calls them “morons, simpletons”, but “without hitting” them, while the smaller ones get “slapped on the bottom”. The staff calls a boy with disabilities – “frog”, and the other children copy them.

...

In the Maria Luiza HCDPC, a member of staff uses physical violence towards the children. A child who is hard of hearing and speaking is a frequent victim of such acts.

The social isolation and prolonged institutionalisation put the boys and girls from HCDPCs at **high risk of sexual violence and exploitation**. In 2012, the State Agency for Child Protection established ten cases of sexual violence – five by outsiders, four by other children placed in the institution, and one – by a member of staff.¹ In 2014, children reported to BHC researchers that sexual violence exists in the institution, but refused to disclose any details because they “are afraid” and “do not feel like speaking about this”. Interviewed children from all five

¹ *Ibid.*

institutions gave reports about sexual violence between the children. In the words of staff and children from HCDPCs, many girls are lured into prostitution. There is no systemic control from the responsible institutions and effective work with children towards prevention.

Many of the children report that they **cannot voice their opinion** freely before institution staff because they are afraid of the consequences. They prefer to keep quiet or to conceal their opinions.

Thefts are frequent in HCDPCs. The most frequently stolen items are money, followed by clothes, personal belongings and toys. Most of the children have absolutely no possibility to preserve their possessions. Many conflicts between children arise regarding loans that the children fail to return. Children frequently take clothes they like without asking for permission and either do not return them, or return them in bad condition. Items that are frequently stolen are girls' underwear and boys' sports shoes and other belongings. In case of damage to institution property or stolen items, children are punished with reducing their monthly allowance to cover the costs of the broken/ stolen property. Physically and mentally stronger children usually acquire, one way or another, the items they desire.

Some of the older children placed in institutions **work illegally** with the tacit approval of the personnel. This is the case with children from the Olga Skobeleva and P. R. Slaveykov HCDPC. Children claim they do so to pay their telephone bills, to be able to afford "normal" clothes and shoes and go out with friends. These children's outer appearance is markedly different from the rest. Their rooms are furnished in a much more elaborate manner and they possess many more personal belongings. According to the children, sometimes they have to work during study periods and their grades have fallen substantially.

1.11. Inspections

In spite of the many inspections and established violations of the rights of children in HCDPCs, the BHC findings demonstrate that these problems continue to exist.

The State Agency for Child Protection is the main state body that supervises the rights of children placed in institutions for children deprived of parental care. SACP has carried out many inspections – in the period January 2012 – July 2014 it carried out a total of 130 inspections.¹ The SACP's conclusions usually include elimination of irregularities in connection with the institution's documentation. This approach is formalistic and ineffective. In 2012, the Chief Directorate for Control of the Rights of the Child at SACP carried out a planned inspection of all existing HCDPCs regarding "the effective forms of work and overcoming violence against children". It issued a series of conclusions regarding violations connected to violence between children, by staff against children, from individuals outside the institution against those placed inside and, last but not least, that the institution staff frequently conceal many of these cases.² Two years later violence in

HCDPC continues. A greater cause for concern is that in 2012 the Ombudsman of the Republic of Bulgaria, in his capacity of the National Preventive Mechanism, visited 19 HCDPC, but failed to report any cases of violence.³

1 This number includes also visits to HCDPCs for children aged three to seven. Information provided from the State Agency for Child Protection under APIA with Ref. No. 05-00-6 from 31 July 2014.

2 State Agency for Child Protection (2012), "Thematic inspection carried out by the State Agency for Child Protection establishes 46 cases of abuse in institutions for children deprived of parental care" (press release), 27 July 2012.

3 Ombudsman of the Republic of Bulgaria (2012), *Report of the Ombudsman of Bulgaria on his activities in 2012 as National Preventative Mechanism*.

2. SHELTERS FOR NEGLECTED CHILDREN

The operation and organisation of shelters for neglected children lacks a clear legislative framework. These services often receive not only neglected children but all other categories of children at risk as well as children who have committed status offences. The BHC has identified cases of placement in shelters of excessively long duration and numerous second placements of children which often lead to long-term institutionalisation.

Children in shelters have no right to appeal against their placement or request revision of the court measure at a later stage. Most shelters have limited physical space which results in overcrowded premises. Not all children have access to education. Although they are provided with access to “a community-based service”, the children have very limited contacts with the outside world.

Violence and aggressive behaviour among children, as well as between children and staff, are not limited to exceptional cases. In the course of the project the team has identified cases of suicide attempts and self-harm. In 2013, there was one death in a shelter.

The number of staff is insufficient while institutional control over the shelters is practically absent.

2.1. General information

The existence of shelters for neglected children has initially been conceived as part of the juvenile delinquency system.¹ According to this legislative framework, the objective of placement in a shelter is to ensure social, medical and everyday care and psychological aid to the children until the point at which “they are taken back by their parents or by the persons who exercise parental duties over them or are placed in a suitable health, social, correctional or educational institution”.² Following the adoption of the term “child at risk”³, shelters have been reconsidered as short-term social services which should be adapted to the new principles and standards for child protection as well as to the new placement procedures and duration of placement.⁴ However, the contradictory nature of the two legislative frameworks has created an obstacle to reforming the service and guaranteeing the observation of the best interests of the child.

1 Juvenile Delinquency Act (1958), Chapter 7.

2 Ministry of Labour and Social Policy (1999), Rules for the organisation and operation of the shelters for neglected children, Art. 1.

3 Child Protection Act (2000), Supplementary provisions, §11.

4 Juvenile Delinquency Act (1958), Art. 39a(1). In 2004, the procedure for placement in shelter was amended and should be implemented pursuant to the Child Protection Act. For more information, see 2.2. Placement.

According to data provided by the Social Assistance Agency, as of September 2014 in Bulgaria there are four operating shelters for children (in the cities of Varna, Dobrich, Pernik and Ruse) with a total capacity of 60 places (see Table 16).¹ The country has a fifth shelter in Sofia which, however, is not a state-delegated activity and, as such, is not registered as a social service provider.²

Three of the shelters are managed by non-governmental organisations. These organisations are the Bulgarian Red Cross (the Ruse Shelter), Gavroche Association (the Varna Shelter) and Concordia Foundation (the Sofia Shelter). The other two shelters – Dobrich Shelter and Pernik Shelter – are maintained by the corresponding municipalities.

Table 16: Shelter capacity and number of placed children (2012-2013)

Year	Number of shelters:	Full capacity:	Total placements:
2012	5	90	141
2013	6	100	185

Source: SACP

2.2. Placement

Pursuant to the existing legislative framework, shelters receive neglected children, that is, persons below the age of 18 who are deprived of the care of their parents or the persons exercising parental duties.³ For many children the shelter functions as a transitional stage between the family and the institution, between one long-term social service and another. Shelters, however, house not only children whose parents, or those close to them, have entered into temporary or permanent inability to provide care to them, but also children from all other categories of “children at risk”. These other categories include children victims of violence, children with no access to adequate social and domestic living conditions, children who have committed “status violations” – children involved in begging, vagrancy and prostitution. These structures are also used for the placement of children for up to 48 hours as a measure of police protection.⁴ Official data have also confirmed that the two main reasons for placement in a shelter are “poverty” and “violence in the family” rather than actual neglect.⁵ In reality, the reason for housing children whose profile is unsuitable for placement in a shelter is often the absence of an alternative residential service in the same residential area (this applies mainly to the shelters in Varna and Dobrich). In the past few years, alongside other categories of people, the shelter in Ruse has also hosted children and adult women who are foreign citizens detained during their attempt to cross the national border illegally.⁶ In their case, the shelter performs the function of a detention facility.

Shelters house children under the age of 18 with no clearly defined minimum age (Table 17). Nearly 50% of all children in shelters in 2012 and 2013 are of Roma ethnicity (Table 18).

1 Social Assistance Agency (2014), Information on shelters for children as of 30 September 2014, available on: www.asp.government.bg/ASP_Files/APP/PRIJUT.xls; Information received from the State Agency for Child Protection under APIA with Ref. No. 05-00-6 from 31 July 2014.

2 This research is based on visits by the BHC team to the shelters in Varna, Dobrich, Ruse and Pernik.

3 Juvenile Delinquency Act (1958), Supplementary provisions, Art. 49a(3).

4 Child Protection Act (2000), Art. 37-41.

5 Information received from the State Agency for Child Protection under APIA with Ref. No. 05-00-6 from 31 July 2014.

6 In interviews with the directors of the Border Police Department and the Detention Centre in Ruse it became clear that in cases of detention of families with minor children who have attempted to cross the border illegally, the fathers are detained under the measure for detention on remand while the mothers and the children are placed in the shelter with a decision of the prosecutor. The duration of placement expires when the father is released, which according to information provided by the shelter in Ruse is for up to three months.

In the period 2012-2013, less than half of the children who left the shelters were reintegrated back into their families.

Table 17: Distribution of children according to their age (2012-2013)

Age	Number:
Up to 7 years	65
From 8 to 14 years	196
From 15 to 17 years	64
Above 18 years	1

Source: SACP

Table 18: Ethnicity of the children in shelters (2012-2013)

Ethnic identity	Number
Bulgarian	125
Roma	161
Turkish	23
Other (foreign citizens – Syrian, Afghan, Russian)	17

Source: SACP

The Bulgarian legislative framework provides for two different procedures for the placement of neglected children in shelters. The Juvenile Delinquency Act, Article 39a(1) specifically refers to Article 26 of the Child Protection Act which provides for the placement of children outside the family following a proposal by their parents, a prosecutor or the Social Assistance Directorate. The placement proposal is considered in a court proceeding, and, until the court reaches a decision, the Social Assistance Directorate may issue an order for temporary administrative placement of the child. On the other hand, the Rules for organisation and operation of the shelters for neglected children allow for placement without a court decision, only based on an order from the Social Assistance Directorate or “a motivated proposal” by a prosecutor, a Local Commission for Combatting Juvenile Delinquency, the Ministry of the Interior or another state authority.¹ As provided for by a legal act of a higher order, placement in a shelter should be conducted by applying the regulations set by the Juvenile Delinquency Act.² Furthermore, since the Child Protection Act is a special law and concerns all children at risk and all situations they become part of, then the principle of judicial review for any placement outside the family is the leading one.

Nevertheless, the BHC has observed the **parallel application of both legislative acts which results in cases of unlawful placement**. Thus, for example, in 2013, 11 children were placed in a shelter only on the basis of an act issued by a prosecutor.³ During the same year there were also two cases of children placed after a decision of the management of the shelter, which, in principle, is inadmissible.⁴ Apart from these hypotheses, another poor practice observed in all shelters is the excessive delay of the court proceeding for placement or the total lack of such a proceeding.⁵

1 Ministry of Labour and Social Policy (1999), Rules for the organisation and operation of the shelters for neglected children, Art. 8(1) and (2).

2 According to the Law on Normative Acts, “Should ordinances, rules, regulations or directives be contrary to superior normative acts, the judicial bodies shall apply the superior normative act.” Law on Normative Acts (1973) Art. 1(3).

3 Information received from the State Agency for Child Protection under APIA with Ref. No. 05-00-6 from 31 July 2014.

4 *Ibid.*

5 For a more in-depth analysis of these issues, see *mutatis mutandis* 3.2. Placement of subchapter Crisis Centres.

The maximum duration of placement is also defined in a way, which allows for a contradictory practice applied by the court. Placement in a shelter shall not exceed three months and only in exceptional circumstances may the Social Assistance Directorate prolong this duration to an overall period of up to six months.¹ At the same time, the definition of “shelter” included in the Rules for the implementation of the Social Assistance Act fixes the longest duration of placement at three months without the possibility for extension.² According to the Social Assistance Agency, “the longest duration of placement in a shelter is three months. This may be prolonged, however, following revision of the protection measure and evaluation of all circumstances concerning the case” in which situation the duration of placement “shall not exceed a period of six months”.³ In practice, in most of the researched decisions for placement, the court

determines the duration of the stay in the shelter – normally, up to six months⁴ – but there are also cases of up to five years.⁵ Moreover, in certain cases, the court, arbitrarily and regardless of the short-term nature of the service, has placed children “until reaching legal age”⁶, “until completion of basic education (8th grade)”⁷ or “until the emergence of circumstances leading up to the termination of the placement or to the revision of the protection measure”.⁸ There are even cases, where courts demonstrate ignorance of the legislative framework by naming the “shelter” social service a “special institution”.⁹ A further problem is encountered in view of determining the starting point of the placement duration. The court frequently identifies it as the moment when the decision will come into force rather than the date when the child actually started residing in the shelter.¹⁰ Delay in the work of the social services, while looking for an alternative placement, is yet another reason for extension of the duration of the stay in the shelter or for a second placement. In view of the identified prolonged duration of stay of the children in shelters, one can only conclude that the purpose of the service is being modified and in many cases it results in long-term institutionalisation.

2.3. Judicial review and legal aid

In the course of its research, the BHC found that children are not informed about their right to legal aid. They neither receive a copy of the administrative order which determines their protection measure, nor do they get access to other relevant information concerning the upcoming court proceeding. In cases of unlawful placement with a decision of a prosecutor there is no judicial review of the placement. The court summons the parents but their participation in the court proceeding is not obligatory. A study of the jurisprudence has identified some cases where children were represented in court proceedings by a special representative.¹¹

1 Ministry of Labour and Social Policy (1999), Rules for the organisation and operation of the shelters for neglected children, Art. 9(1).

2 Rules for the Implementation of the Social Assistance Act (1998), Supplementary provisions, § 1(1)(34).

3 Information received from the Social Assistance Agency under APIA with Ref. No. 92-759 from 5 September 2014.

4 Dobrich District Court (2013), Decision (unknown number) from 13 May 2013 on Civil Case No. 1069/2013; Dobrich District Court (2013), Decision (unknown number) from 18 January 2013 on Civil Case No. 4046/2012; Byala District Court (2010), Decision No. 7 from 3 August 2010 on Civil Case No. 396/2010.

5 Dobrich District Court (2011), Decision (unknown number) from 14 February 2011 on Civil Case No. 5247/2010.

6 Dobrich District Court (2014), Decision (unknown number) from 3 April 2014 on Civil Case No. 255/2014.

7 Ruse District Court (2012), Decision No. 1878 from 7 November 2012 on Civil Case No. 6528/2012.

8 Balchik District Court (2013), Decision No. 92 from 28 June 2013 on Civil Case No. 296/2013.

9 Byala District Court (2011), Decision No. 75 from 22 July 2011 on Civil Case No. 508/2011, Byala District Court (2010), Decision No. 7 from 3 August 2010 on Civil Case No. 396/2010.

10 Ruse District Court (2011), Decision (unknown number) from 13 September 2011 on Civil Case No. 6496/2011, Sofia District Court, Decision (unknown number) from 7 May 2014 on Civil Case No. 21057/2013.

11 Ruse District Court (2013), Decision No. 2203 from 27 December 2013 on Civil Case No. 5372/2013, Byala District Court (2011), Decision No. 75 from 22 July 2011 on Civil Case No. 508/2011, Byala District Court (2010) Decision No. 7 from 3 August 2010 on Civil Case No. 396/2010. On the role of the special representative, see 6.3 Judicial review and

In some cases the court decides on the merits of the placement without hearing the child, without the participation of the parents and without allowing the participation of another representative or defender of the placed child – but solely based on evidence presented by the claimant.¹ The absence of professional legal aid considerably lowers the ability of the child to actively participate in the proceedings and is often a prerequisite for the allowing of placements for arbitrarily long periods. Even in cases when a special representative is actually appointed, the protection of the rights and interests of the child is not always guaranteed. In all researched cases where a special representative participated in the proceeding for placement, their position was in support of the request of the Social Assistance Directorate for placement in a specialised social service. Moreover, an employee at Ruse Shelter explained that in those cases where a special representative (a lawyer) is assigned, their role in the placement procedure is only formal and they do not efficiently defend the child's interests.

In order to define the protection measure, the court also takes into consideration the opinion of the shelter's management concerning the necessity and adequacy of the measure. The management in most cases is also in favour of the placement. The study of existing jurisprudence has identified only one case² where the court rejected the request for child placement in a shelter.³

2.4. Material conditions

The shelters for neglected children are located in the central areas of five cities that are regional administrative centres, with the exception of the shelter in Pernik, which is in a neighbourhood far from the city centre. Each shelter is in a separate and independent building and they are all part of "set of social services" (together with a day centre, a community support centre, etc.) and are visited by more children during the day. An exception is the shelter in Dobrich which shares a building with residential services for elderly people with mental and physical disabilities. During the monitoring visit, BHC's team witnessed patients' cries from the lower floors of the complex and the children explained that they hear them on a daily basis as they walk down the stairs to go out or stay in the courtyard.

The material conditions are good, but the area and number of the premises in these buildings is insufficient in view of the number of children who receive services there, and as a result the centres are **overcrowded**. Many children are placed in small rooms (with the exception of the Dobrich Shelter). The shelter in Varna, for example, has five bunk beds placed in a small and narrow room, which means that there are 10 children who share a few square metres. There is an insufficient number of wardrobes and there are no other types of furniture. The only free area in the room is the narrow space between the beds.

Employees explain that there are cases when children are placed in a shelter, even if the overall capacity of the shelter has already been reached. Due to the insufficient space, the children watch television, prepare their homework and eat in the same space (shelters in Ruse, Varna and Pernik). **The sanitary premises** are insufficient and in some cases difficult to access. For example, in the Pernik Shelter, the sanitary premises are located in the basement, and for 10 children two toilets are provided, one of which is locked and used only by staff members. The sanitary premises at the shelter in Varna are very small and narrow.

Legal Aid of subchapter on C.1. Homes for children deprived of parental care..

1 Sofia District Court (2014), Decision No. III-84 from 30 September 2014 on Civil Case No. 9275/2014.

2 Sofia District Court, Decision (unknown number) from 14 February 2014 on Civil Case No. 18563/2014.

3 In relation to the right of each child to appeal the measure for placement in a shelter and demand its termination, see *mutatis mutandis* 1.3. Judicial review and legal aid of subchapter C.1. Homes for children deprived of parental care.

No adequate conditions exist for children with physical disabilities placed in shelters. An example is a visually impaired child at the shelter in Dobrich who resided there for five years in a physical environment not suitable for the child's specific needs. The child attended a school for visually impaired children and stayed at the school's boarding house but returns to the shelter during holidays.

In reality, efficient separation of the children does not exist. Girls and boys are placed in different rooms but on the same floor and within close proximity (with the exception of the Shelter in Ruse). In shelters, children of different ages live in the same room. In the shelters in Dobrich and Ruse, for example, children younger than seven and adolescents under the age of 18 live in the same room.

Girls and boys own very **few personal belongings**. Most have virtually nothing and those with possessions lack space to keep them. They wear their own clothes but the shelter provides clothing for those who do not have such, together with shoes and linen.¹ The children wear old but well-preserved clothes and shoes and linen are in good condition. Clothes and shoes for the children are also available through donations, which do not always get distributed. For example, a child at the shelter in Varna explained that some members of staff sift through the donated clothes and keep some of them. Remaining items are then distributed among the children. The child claimed that all children are aware of this but no one dares to complain to the director because they fear the consequences.

The children's personal space is seriously limited. They have no privacy. To keep them from others, the children hide their valuable belongings under their pillows or at other "secret places". The children complained that their personal belongings are missing or disappear and this creates conflicts. Theft among the children in shelters occurs daily. The bedrooms are close to the common rooms which the children from the shelter and those from the daily centre share, and access to them is unrestricted (the Varna Shelter).

Food at the shelters is provided by an external supplier and is insufficient according to both children and staff. Often, the children simply eat more bread to feel full. In the evenings they get hungry but have no access to food outside meal times. They receive additional portions if such are available but only during scheduled meals. Sometimes the food served is cold.

2.5. Health care

The BHC research team established that children suffering from various ailments are placed in shelters, including numerous cases of children with serious medical conditions.² For example, a boy with a heart condition is placed in the Pernik Shelter; in the Varna Shelter there are two children with mental disabilities, one of whom is aggressive. A child with epilepsy is placed in the Dobrich Shelter after having been moved from a correctional boarding school because of the condition. **No clear legislative framework exists regarding the provision of medical services** in shelters even though they accommodate children who need medical care and in spite of the fact that the definition of the "shelter" social service includes the provision of healthcare.³ Thus, according to the Rules of organisation and operation of shelters for neglected children from 1999, the shelters are legally bound to open two positions for medical

1 Ministry of Labour and Social Policy (1999), Rules for the organisation and operation of the shelters for neglected children.) Appendix No. 3 to Art. 14(1).

2 This information is confirmed by the State Agency for Child Protection, according to which, in 2013 in all shelters visited by the BHC, resided three children with infectious disease, 47 children with acute cold diseases, four children with mental disorders and seven children with gastroenteritis and enterocolitis. Information received from the State Agency for Child Protection under the APIA with Ref. No. 05-00-7 from 18 August 2014.

3 Regulations for the Implementation of the Social Assistance Act (1998), Supplementary provisions, § 1(1)(35).

nurse/ physician assistant.¹ At the same time, the Methodology for determining the positions of staff in specialised institutions and social services in the community drafted by the Ministry of Labour and Social Policy only recommends the presence of a medical specialist in the shelter team.² As a result of this discrepancy, the availability of medical services depends on the specificity of each shelter. The Varna Shelter shares the position of medical specialist with other social services provided in the same complex.³ The Dobrich Shelter does not employ such staff, and, hence, provides no internal medical service.

External medical services are provided by personal general practitioners and personal dentists. In view of the regime established in shelters, **access to medical care is possible at the discretion of staff members** who are not specially trained to recognise medical conditions. Access to a medical practitioner or hospital care is further obstructed by the insufficient numbers of staff who must accompany the children during their hospitalisation or other form of hospital care. Consequently, **the children are hospitalised unaccompanied**⁴ or accompanied by an off-duty member of staff.⁵

In 2013, the Sofia Shelter recorded the death of one child in its custody.⁶ Even though the BHC explicitly requested information from the State Agency for Child Protection concerning the circumstances of this case, such details were not provided because the agency did not have such at its disposal.⁷

A common problem concerning all shelters is that children are often placed there without accompanying medical records containing their medical history. The Varna Shelter does not perform a medical examination at the beginning of the placement and instead relies on the documentation provided to the shelter by the Child Protection Department.

The children placed in the shelters often need special psychological care. Although such is generally available, staff members admit that sometimes they are unable to provide appropriate protection for the children. For example, according to staff members at the Varna Shelter personnel finds it extremely difficult to handle the aggressive behaviour of a girl placed there who puts in danger her own safety and that of other residents and staff. Children residing in shelters are provided with the opportunity to receive additional psychological care during and after their placement. According to staff members at the Ruse Shelter, after leaving the shelter, the children attend for a year the Daily Centre for Street Children, located in the same building. The children from the Pernik Shelter visit the Centre for Community Support in the same building. The children placed in the Dobrich Shelter and the Varna Shelter also have the possibility to use social services based in the same building. However, despite these possibilities, the BHC established several suicide attempts or instances of self-harm by the children. A child at the shelter in Varna self-harms and causes throat injuries with a razor. According to staff, the child self-harms to escape punishments at the shelter. The actual psychological reason has not been identified. According to the staff in the Ruse Shelter, there have been two

1 Ministry of Labour and Social Policy (1999), Rules for the organisation and operation of the shelters for neglected children, Appendix No. 1 to Art. 5(2).

2 Ministry of Labour and Social Policy (2012), Methodology for determining the positions of staff in specialised institutions and social services in the community, Appendix No. 9.

3 According to information provided by the management of Varna Shelter, shelter's personnel includes a medical nurse position which corresponds to 0.375 of any full-time position at the shelter (in terms of working hours, remuneration, etc.).

4 The BHC has received information of at least one case in which a child from the Dobrich Shelter was taken to the hospital unaccompanied by a member of staff at the shelter.

5 All shelters.

6 Information received from the State Agency for Child Protection under APIA with Ref. No. 05-00-7 from 18 August 2014.

7 Information received from the State Agency for Child Protection under APIA with Ref. No. 14-00-101 from 28 October 2014.

suicide attempts. One of these suicide attempts resulted from parental neglect. In another case at the Dobrich Shelter, a child jumped from the third floor to run away from the institution. The child has serious health problems and is a victim of trafficking.

In some cases, the shelter's director¹ gives permission for the provision of special medical intervention despite the legal requirement to request the opinion of the Social Assistance Directorate in all cases when it is impossible to immediately receive the informed consent of a parent or custodian.²

2.6. Activities and education

Most **spare time activities** for the children in the shelter are organised by volunteers. Due to the diverse profile, age and duration of stay among the children, it is difficult to provide them with activities which suit their individual needs. Hence, this to a large extent explains why **many children describe their daily life as boring and monotonous**. A child at the shelter in Dobrich reported that he likes the place very much, that he has never lived in better conditions and has never been treated so well. At the same time, however, the child explained that he feels bored all the time. To make the day more interesting, the child regularly cleans his room. Another child placed in the shelter in Varna shared that there are several different activities but none corresponds to her age or interest. The only activity she would consider is colouring pictures, alongside other children 10 years younger, just because this is a chance to practise her favourite activity – painting. Children explained that they often fight because there is nothing else to do. The lack of other activities leaves them feeling miserable; they say they feel sad, do nothing and spend the time thinking about their problems.

Access to the **internet** is controlled and is further restricted if children violate the order in the shelter. In most cases, for the older children this is the only way to stay in contact with the outside world. It is possible to watch television. Yet all children, regardless of their preferences or age, have to watch the same programme because there is only one television set available for everyone.

Watching television is the children's main activity inside the shelter. As the BHC has observed, gathering many children in the same room for a long time leads to tension and conflict.

The shelters' courtyards are equipped with children's playgrounds but only the younger children are interested in using them. Older children explain they are reluctant to stay in the courtyard and would rather go out and meet their peers. The stories told by the children reveal that **they spend most of their time inside the building**. Many of the children refuse to participate in activities organised at the shelter. Not all the children are included in the activities organised outside the institution. The reason for this is either because of insufficiency of personnel, the fact that some children have been banned from leaving the centre as a punishment or because the participation of all children has not been financially secured.

Older children are allowed to take walks outside the shelter for a set period – several hours a day – unless they have been punished. The younger ones may leave the shelter, accompanied by a mentor, most likely not venturing too far in order to minimise transport expenses. **Not**

1 The Dobrich Shelter.

2 Health Act (2005), Art. 87(5) (New – SG, Issue 41 from 2009, effective from 2 June 2009): If an adolescent or minor placed outside their family pursuant to court decision, the consent of a parent, guardian or custodian under paragraph 2 and 4 cannot be received in due time, the informed consent should be obtained from the person appointed to look after the child upon affirmative opinion by the Social Assistance Directorate; and paragraph 6 (New – – SG, Issue 41 from 2009, effective from 02 June 2009): When the adolescent or minor has temporary placement pursuant to administrative measure under Article 27 of the Child Protection Act, the informed consent under Article 5 should be provided by the Social Assistance Directorate.

all children take part in walks outside. The participation depends on their number, their behaviour and willingness to join. Sometimes walks do not take place at all.

The main reason for the constant stay of the children in the shelter is the lack of funds necessary to organise trips and holidays. Due to the short-term nature of this social service, the shelter budgets include **no funds for holidays** and these are only organised thanks to donations.¹ The children in the Pernik Shelter have never been to the theatre or the cinema exactly for this reason. In the Ruse Shelter children attend a summer camp but, according to the social worker, the cost of transportation to and from the camp is nearly the same as the cost of their stay at the camp. This obstructs the entire organisational process and leads to fewer trips.

Usually, only the children who stay at the shelter for a longer period of time attend **school**. Sometimes finding a school is a lengthy and difficult process. Children are frequently placed in the shelters when the school year has already started which further challenges their access to education. Often the child's level of education is lower than her corresponding age, often stuck at the primary school level. The admission process is further impeded by the short duration of placement, the delay in receiving necessary documentation, the unwillingness of the child to attend or the refusal of the schools to accept the child. A large number of the placed children are barely literate, have never attended school or have dropped out at a very early stage.

Cases of nonattendance or skipping classes are quite common among the children. They share that the reasons to not attend classes include the fact that they feel uncomfortable at the new school; they do not know anyone and often feel neglected. Children at the shelters in Dobrich and Varna explain that they skip classes because they feel ashamed that their assigned class is for children younger than themselves and also because they lack basic knowledge.

Where there is a primary school close to the shelter, and if the relationship of the school with the director of the shelter is positive, as is the case in Ruse, access to education for a large number of the children placed in the shelter is provided. Regardless of differences in age, talents and interests of the children, **most of them are enrolled in the same school**.

2.7. Contacts with the outside world

The entrances of most of the shelters are kept locked at all times and the **movement of the children is restricted**. They are allowed to leave the building for a set period and often only with a previously signed declaration.² These restrictions are mainly to reduce the number of escapes. However, despite security measures and cameras installed in the common premises and courtyard space, **children continue to run away**. The BHC identified a case of a child who ran away by jumping off the third floor of the building of the Dobrich Shelter. The child is a victim of trafficking and has serious health problems. Her continuing attempts to escape from the shelter can be attributed to her ongoing engagement in prostitution. All shelters report missing children who ran away and are sought by the police. Some of them return voluntarily (the Varna Shelter) while others remain missing for months (the Pernik Shelter).

The shelters place no limitations on the number of visits, which may be frequent, or even daily, but **the children rarely receive visits from their families**. According to the director of the Pernik Shelter, only two of the eight children placed in the shelter at the time of the monitoring were receiving visitors. Many of the children do not return home during the holidays. Sometimes, as is the case in the Dobrich Shelter, parents visit their children not to spend time

1 Interviews with the directors of the shelters in Pernik and Ruse.

2 The Pernik Shelter.

with them but to extract money from them attempting to force their children into prostitution. The cases where children return home each weekend are exceptional. Most children stay in the shelter for the complete duration of the placement and have **rare contacts with their parents and relatives** through the telephone of the shelter or with friends on the Internet. According to the members of the personnel, the successful reintegration of children into their biological family, and working with the parents towards this aim, are difficult to achieve.

Children in shelters have a **limited circle of people with whom they communicate**. They mostly interact with children and staff members at the institution, the volunteers who visit them and their teachers and classmates at school. There are only exceptional cases of children who communicate with people who are not their relatives but who care about them and support them.¹

Most children placed in shelters communicate with people who, according to the personnel of the shelters, have a bad influence on them by urging the children to commit delinquent acts and run away. These people include their peers, relatives and other individuals – mostly of legal age – who jeopardise the children's life and health. Attempts to limit such contacts – by means of restricting the children's movement outside the shelter, or conversations with staff members, topical discussions, etc. – appear to be futile. Some of the older children placed in shelters use going to school or a walk as a pretext to **run away** or are persuaded to escape by other people.

2.8. Disciplinary practices, use of force and complaints

Shelters lack an official disciplinary practice and the BHC team did not receive any information concerning the procedures used to impose punishments. Conversations with the children helped establish that, informally, the following punishments are applied: cleaning the courtyard, the stairs and the bathroom as well as restriction on the access to walks, telephone, TV and food. **A girl at the shelter in Pernik complained that in order to maintain the discipline one of the educators sometimes used physical force or threatened the children with injections.** At the same shelter, the researchers were disturbed by the presence of a room for medical isolation in the basement and the existence of a leather belt in it. Although, according to the personnel, the isolator was not in use, it remained unclear whether and for what purpose it existed.

The shelter in Pernik has developed a Procedure for expressing opinion and filing complaints – the document is displayed in a conspicuous place. The document provides for the opportunity to submit a complaint to the members of the staff about the quality of the service and to appeal the response before the director of the shelter. However, no information is provided about other state institutions or non-governmental organisations to which the children may turn for help and support. Some children explain that when they wanted to make a complaint, they turn to their social workers.

Created as short-term social services, shelters are not equipped to educate and raise the children placed in them. The longer the placement is, the greater the children's distress and anxiety and the greater the likelihood that they will break rules and run away. Rather than terminate placement in a shelter, however, in certain cases what follows is to impose a correctional measure and consequent placement in a correctional boarding school (CBS) or social pedagogical boarding school (SBS).² A nationwide search for the child is launched if they run away from the institution or stay out beyond the curfew.³

1 Shelters in Dobrich and Ruse.

2 Pernik District Court (2014), Decision (unknown number) from 15 May 2014 on Private Criminal Case No. 508/2014

3 At some shelters, the curfew is at a very early hour. For example, in Shelter – Pernik it is 17:30 CET.

2.9. Personnel

The number of personnel at the shelters is insufficient. This becomes obvious when a child needs to be taken to the hospital in a case of emergency. When a staff member leaves their job at the shelter, or comes off duty, the management tries to fill the position as quickly as possible **without performing a real selection of staff.**¹ Shelter employees confirm that their numbers are insufficient. Shelters house children in severe emotional and psychological distress, resulting in conflict between them and staff members who confirm that some cases are unmanageable. For example, a highly aggressive child with a mental disability is placed in the Varna Shelter. Staff complained that their numbers are very limited and they find such situations hard to manage.

The legislative framework is not consistent in its prescriptions for the type and number of employed personnel at the shelters for children. Thus, according to the Rules for organisation and operation of the shelters for neglected children, a shelter with a capacity of 20 places needs 15 people for a full contingent, including two social workers, two pedagogues, one psychologist, two medical nurses/ physician assistants and eight people as supporting staff including for maintaining security.² However, according to the Methodology for determining the positions of personnel in specialised institutions and social services in the community, security staff is not envisioned and the employment of medical staff and educators at the shelter is only recommended.³

Only one of the shelters had a system for external supervision,⁴ an important prerequisite for the provision of quality psychological and social care. The excessive workload, low pay and lack of supervision lower staff motivation and results in emotional overload.

All four shelters visited during the research have predominantly female staff. The absence of male employees leads to enacting stereotypes about the roles of men and women in providing care to the children.

2.10. Violence and violations of other fundamental rights

According to the children, they have been forced to communicate and co-exist with fellow residents who are complete strangers to them and often much older or younger, with no similar interests, and with a very different personal character, habits and problems. Hence, the overall atmosphere can be perceived as tense. Staff explained that conflicts of leadership arise between newcomer and children who have been in the shelter for a longer period. The older or stronger children control the rest through threats and violence.

At the shelters in Varna, Ruse and Pernik, children reported about **violence among the residents.** It consists mostly of insults of various types, threats and physical abuse such as pushing, punching, slapping and pulling hair. In Ruse, a child complained of sexual violence in the form of groping by another child placed in the same shelter. In Varna, a child admitted to hitting the other children on a daily basis because of feeling superior and “because [she] can”. The child believed this is the way “to maintain order in the shelter”. The child admitted that she was aggressive but she said she finds it difficult to control her emotions. The same child experiences and witnesses violence at home. At the same time, support and efficient therapy are not available to children placed in shelters.

1 Interview with the director of Shelter – Dobrich.

2 Ministry of Labour and Social Policy (1999), Rules for the organisation and operation of the shelters for neglected children, Appendix No. 1 to Art. 5(2).

3 Ministry of Labour and Social Policy (2012), Methodology for determining the positions of staff in specialised institutions and social services in the community, Appendix No. 9.

4 The Pernik Shelter.

Due to the diverse profile of placed children, **revictimisation** is common upon placement in the shelter. According to the personnel of the shelters, some children victims of violence have serious psychological problems and are hostile towards both staff and the other children.¹ They create conflicts daily and often **attempt self-harm**, witnessed by the other children residing in the shelter.² This creates a tense atmosphere and most other children become aggressive as a result. Younger children **copy** the behaviour of older residents and often become progressively more **aggressive** after placement in the shelter. The personnel try to limit violence by talking to the children, curtailing their time outside the shelter and making the children clean the premises. These measures have proved inefficient and violence continues. A professional approach and an effective way to defuse child aggression are absent.

Many children placed in shelters become involved in **vagrancy** and **truancy** during the time for walks outside the shelter or after running away from the institution. Girls who are **victims of trafficking** often leave the shelter without permission, prompting a formal search. Such is the case with a child from the shelter in Dobrich who has been missing for several months and who also has serious health problems. Shelters lack therapy specially designed to prevent and decrease the number of runaways.

All children interviewed explained that they are not allowed to state their opinion freely. They do not trust staff members, often hide their problems and find it difficult to share them with the shelter's employees. **The lack of dialogue and trust** between children and adults clearly reveals insufficient care. Communication between residents and personnel is filled with tension. Staff communicate by imposing threats, warnings and restrictions on children placed in their care. The boys and girls would prefer to confide in their peers but rarely do so because their relations with most other children at the shelter are not sufficiently friendly.

2.11. Inspections

The shelters are subject to inspection from various institutions, including the State Agency for Child Protection, the Inspectorate at the Executive director of the Social Assistance Agency, the Regional Health Inspections, and the Local Commissions for Combatting Juvenile Delinquency. Over the period from January 2012 to July 2014, the State Agency for Child Protection undertook six inspections at shelters in the country following filed signals while over the same period no planned inspections took place.³ The BHC identified various issues, including overcrowding beyond permitted numbers, repeated placement and problems associated with the children's health. All this renders children residing in shelters highly vulnerable. The State Agency for Child Protection, however, fails to recognise this vulnerability despite collecting annual information from all shelters in the country.

The Inspectorate at the Executive director of the Social Assistance Agency "performs specialised control on the lawful implementation of legislative acts in the social assistance area".⁴ At the same time, the legislative framework providing for the operation of shelters remains contradictory. Moreover, the shelter in Sofia is not registered at the Social Assistance Agency as a social service provider. In addition, it remains unclear whether the Inspectorate conducted inspections in shelters in the period 2011-2013.⁵

1 The shelters in Varna and Ruse.

2 The shelters in Varna, Ruse and Dobrich.

3 Information received from the State Agency for Child Protection under APIA with Ref. No. 05-00-6 from 31 July 2014.

4 Social Assistance Agency (2014), *Activity report of the Social Assistance Agency for 2013*, p. 52, available on: www.asp.government.bg/ASP_Files/APP/GODISHEN%20OTCHET%20ASP%20-%202013-.pdf.

5 Social Assistance Agency (2012), *Activity report of the Social Assistance Agency for 2011*, available on: www.asp.government.bg/ASP_Files/APP/img389.tif; Social Assistance Agency (2013), *Activity report of the Social Assistance Agency for 2012*, available on: www.asp.government.bg/ASP_Files/APP/GODISHEN%20OTCHET%20ASP%20-%202012.pdf; Social

Local Commissions for Combatting Juvenile Delinquency should also be overseeing the shelters within the territory of the respective municipality.¹ Nevertheless, the activity reports of the Central Commission for Combatting Juvenile Delinquency for the period 2010-2013 contain no information whatsoever about such supervision.²

Actual control by the state institutions is absent. Even if some inspections are conducted, their conclusions remain unknown to the public which excludes the possibility for society to exercise civic control on the operation of shelters for children in the country.

Assistance Agency (2014), *Activity report of the Social Assistance Agency for 2013*, available on: www.asp.government.bg/ASP_Files/APP/GODISHEN%20OTCHET%20ASP%20-%202013-.pdf.

1 Juvenile Delinquency Act (1958), Art. 10(1)(i).

2 Central Commission for Combatting Juvenile Delinquency (2012, 2013, 2014), *Reports on the state of affairs and trends in crime and delinquent acts among minors and adolescents. Crimes against them. Activities of the Central and Local Commissions for Combatting Juvenile Delinquency in 2011, 2012 and 2013*.

3. CRISIS CENTRES

In 2014, most crisis centres remained unspecialised. This means that child victims of violence and trafficking and child perpetrators of delinquent acts are still placed together. Placement procedures in crisis centres are not always observed, so a child may be placed even for the maximum period of six months without a court sanction, a practice, which should be banned. Children are usually unfamiliar with their right to legal aid and are often not heard in court because the requirement to hear the case immediately is not observed. Most crisis centres have had individual cases of placement for a period of eight/ nine months followed, at times, even by a second six-month placement in the same centre due to unsuccessful reintegration. A prolonged stay at a crisis centre, which is a closed institution, has proved to have a negative effect on children's psychological development.

3.1. General information

According to the Social Assistance Agency as of September 2014, Bulgaria operates 15 crisis centres for child victims of violence or child victims of trafficking with a total capacity of 155 places.¹ As laid out in the Rules for the Implementation of the Social Assistance Act, the crisis centre is a residential social service.² The beneficiaries of this service are individuals who are victims of violence, trafficking or other forms of exploitation, and who are placed in a crisis centre for a period of up to six months. All residential social services share the same legislative background, which means that **there are no legal provisions governing specifically crisis centres**, apart from the legal definition of the term “crisis centre”.³

Moreover, a crisis centre is defined as a type of social service that has to meet the “daily needs [of the client]”⁴, which inaccurately substitutes its purpose of a place for crisis intervention. Due to the lack of social services that provide for the meeting of the “daily needs [of the children]”, **crisis centres (as well as shelters for neglected children) house not only**

1 Social Assistance Agency (2014), List of crisis centres in Bulgaria for children victims of violence or victims of trafficking as of 30 September 2014, available on: www.asp.government.bg/ASP_Files/APP/KC%20za%20deca.xls. Regarding the number of crisis centres in the country, the Social Assistance Agency and the State Agency for Child Protection provide different figures. Outside the current project, BHC researchers visited 14 crisis centres between July and November 2013.

2 Rules for the Implementation of the Social Assistance Act (1998), Art. 36(2).

3 “Crisis centre” is “a set of social services for persons who are victims of violence, trafficking or other forms of exploitation, whose services are provided for a period of up to six months and are aimed at providing individual support, satisfying daily needs and ensuring legal consultation to the beneficiaries or social and psychological support in cases of emergency intervention including by means of mobile teams for crisis intervention”. *Ibid*, Supplementary provisions, § 1(1)(25).

4 *Ibid*.

victims of violence but also other children merely due to their social status. It appears that placement in a crisis centre, in fact, may not necessarily proceed from a crisis situation or as a consequence of a potential considerable risk for the child. Hence, the specialisation of the institution is ignored and children are placed in a crisis centre simply because they have nowhere else to go.

The lack of crisis centre specialisation, and/ or failure to observe it where there is such, prevents the actual separation of child victims from children who are in conflict with the law. In March 2012, the State Agency for Child Protection and the Social Assistance Agency adopted a Methodology Handbook for the provision of the “crisis centre” social service (hereinafter: Methodology Handbook)¹, which was an attempt to establish the requirements for setting up and operating crisis centres and defining their specialisation for :

- child victims of domestic violence;
- child victims of trafficking in human beings;
- children with deviant behaviour, children involved in begging and children in conflict with the law.

Despite the good practices described in it, the Methodology Handbook cannot be implemented in reality. In the few cases where centre specialisation has actually been undertaken, the Social Assistance Directorates (hereinafter: SAD), judges and district courts have no obligation to observe this specialisation and, as a result, children of the aforementioned three categories are still being placed in the same institution.

3.2. Placement

Administrative placement

According to the State Agency for Child Protection, in 2013 a total of 312 children were placed in crisis centres by the SAD or with a measure of police protection.² In 2013, 72% of the overall capacity of the crisis centres was filled. The figure represents an increase of 11% compared to 2011.³ According to the Child Protection Act, placement of children outside the family is done by the court.⁴ Until the court issues a decision, the SAD undertakes temporary administrative placement of the child according to her current address with an order from the director of the Directorate. In the event of a direct threat to the health and life of the child, administrative placement in a crisis centre may be conducted in accordance with the procedure for emergency placement outside the family. In these cases, the protection measure takes immediate effect.⁵ In all other cases the general administrative procedure should be applied according to which placement may only occur after the order of the Social Assistance Directorate comes into force. Placement in crisis centres may also be initiated by the specialised bodies of the Ministry of Interior as a measure of police protection.⁶ Police protection is provided for a period of up to 48 hours accompanied by immediate notification of the Social Assistance Directorate responsible for the area in which the protection has been undertaken.

1 Social Assistance Agency and State Agency for Child Protection, (2012), Methodology Handbook for the provision of the “crisis centre” social service, available on: <http://stopech.sacp.government.bg/file.php?fid=341>.

2 Information received from the State Agency for Child Protection under APIA with Ref. No. RD-12-28 from 11 September 2014.

3 Bulgarian Helsinki Committee (2013), *Crisis Centres in Bulgaria in 2013*, pp. 6-7.

4 Child Protection Act (2000), Art. 25.

5 Rules for the Implementation of the Child Protection Act (2003).

6 “Police protection” is an emergency measure undertaken when the child is: the object of crime or in imminent danger for her life or health, or likely to be involved in crime; lost or in a helpless state; neglected. Child Protection Act (2000), Art. 38.

Within a month from the date of the issue of the order, the Social Assistance Directorate files a petition for placement with the district court.¹ Although the Social Assistance Directorate has no right to determine the duration of placement, many placement orders define this duration. Moreover, the Social Assistance Directorate fails to observe consistently the one-month period within which it is obliged to file a petition with the court, and sometimes fails to file the petition altogether. In response to a letter by the BHC regarding cases where the court is not petitioned, the social workers at the Child Protection Department reveal that the child has received a measure for short-term placement² and that this placement will be terminated before the case is heard in court.³ A factor which further seriously impedes the drafting of such petitions is that Child Protection Departments lack a designated legal expert to prepare these documents. Another observation deserving attention is that where Social Assistance Directorates do file petitions, they often do so at the end of the one-month deadline, which is an impediment to the district court to consider the placement within the shortest possible timeframe from the start of the ongoing placement of the child in the crisis centre. All in all, placement procedures in crisis centres are not always observed and a child may even be placed for the maximum duration without a court decision, a practice which should be banned.

Some of the few specialised centres require a social report to be sent in in advance in order to evaluate whether the child fits the centre's specialisation. However, this evaluation is rarely taken into consideration. Employees at most centres state that they cannot afford to refuse placement when free places are available. Even in cases where crisis centres strongly oppose a placement, they often find themselves forced to house the child for different reasons. The social report⁴ and the action plan are "obligatory documents" for placement. Nevertheless, in some cases the child is sent to the crisis centre without a social report or the report lacks important information such as details about the health status of the child.⁵ Sometimes the Social Assistance Directorate fails to inform the crisis centre whether and when a petition for placement of the child has been filed with the court. In addition, the Social Assistance Directorate is not obliged to make placements in a crisis centre near the child's place of residence. Sometimes, the remotest crisis centre is chosen so as to ensure the child's detachment from their environment in favour of better protection, but no clear rules determine the choice of crisis centre.

Court placement

The court may place a child in a crisis centre for a particular period. It may terminate placement or enforce another, more suitable protection measure.⁶ The court should also address the petition of the Social Assistance Directorate immediately⁷ in an open hearing and issue a decision within one month. According to information provided by employees of crisis centres and Child Protection Departments, in no cases has the requirement for immediate consideration of the petition for placement been observed. The timeline within which cases are heard varies between one and three to four months (in Sofia District Court) from the actual

1 *Ibid.*, Art. 27.

2 "Short-term services" are services provided for a period up to 3 months. Rules for the Implementation of the Social Assistance Act (1998), Supplementary provisions § 1(1)(46).

3 Bulgarian Helsinki Committee (2013), *Crisis Centres in Bulgaria in 2013*, p. 23.

4 The order for placement in a crisis centre should be accompanied by a social report and an action plan. The social report should contain "an assessment of the risk; [information about the] needs of the client; available resources in the cases where placement is not urgent". Methodology Handbook for the provision of the "crisis centre" social service (2012).

5 Bulgarian Helsinki Committee (2013), *Crisis Centres in Bulgaria in 2013*, p. 19.

6 *Ibid.*, p. 23.

7 Child Protection Act (2000), Art. 28(4).

placement of the child with most cases scheduled a month and a half or two months after the placement. The common practice is for court decisions to confirm the preceding administrative orders.

Grounds for placement

The data provided by the State Agency for Child Protection¹ concerning the grounds for the placement of children in crisis centres are shown in Figure 4 below. **The main ground for placement is violence in the family, predominantly physical or psychological** (see Figure 5). The share of child victims of trafficking, including also child victims of “internal trafficking”, continues to decline.²

At the same time, a considerable number of children are placed for reasons which seem unclear although the grounds for the placement of children outside the family are exhaustively described in the Child Protection Act.³ **A considerable increase in numbers is observed in the “Other grounds” category (about 21 % in 2013).**⁴ According to a report of the State Agency for Child Protection, the “Other grounds” category most often refer to “lack of attention and care or neglect”.⁵ This group includes also neglected children, children involved in vagrancy and victims of a dysfunctional family structure characterised by the lack of capacity of parents to exercise control over their children. The orders contain general grounds for placement such as “insufficient parental capacity” or, where particular cases are referred to, they are defined as “inapplicable” to the grounds listed in the Child Protection Act. In such cases, placement in a crisis centre actually contributes to resolving a family issue by detachment from the family environment, although such children should be placed in a Family-type Placement Centre rather than in a crisis centre.⁶

The information provided by the State Agency for Child Protection does not list “deviant behaviour and conflict with the law” among the reasons for placement. According to research conducted by the BHC in 2011, 5% of children in crisis centres were placed there predominantly for having committed delinquent acts.⁷ Naturally, in most cases the reasons for placement are complex and the children are at the same time victims of violence and victims of exploitation which often results from neglect at the hands of their parents.

Duration

According to the Rules for the Implementation of the Social Assistance Act, placement in a crisis centre is a long-term service but should not exceed six months. The Methodology Hand-

1 Information received from the State Agency for Child Protection under APIA with Ref. No. RD-12-28 from 11 September 2014.

2 Bulgarian Helsinki Committee (2013), *Crisis Centres in Bulgaria in 2013*, p. 21.

3 Child Protection Act (2000), Art. 25: A child may be placed to live out of his or her family in cases where :

1. the parents have passed away, are unknown or have their parental rights deprived or limited;
2. the parents, guardians or trustees without a valid reason continuously do not provide care for the child;
3. the parents, guardians or trustees are in a position of permanent inability to rear the child;
4. the child is a victim of violence in the family and is in danger of her/his physical, mental, moral, intellectual and social development;
5. in the cases under Article 11 of the 1996 Convention.

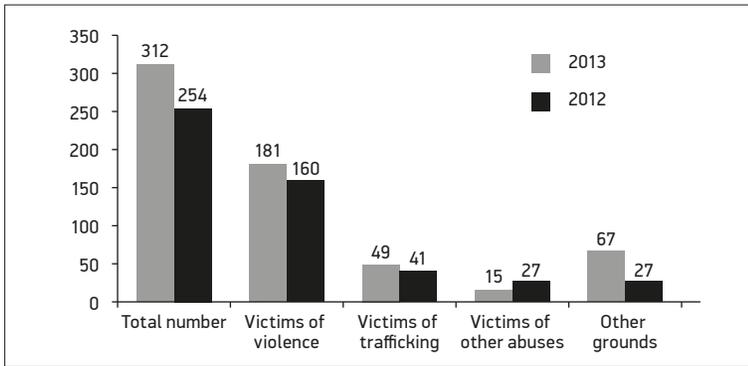
4 Information received from the State Agency for Child Protection under APIA with Ref. No. RD-12-28 from 11 September 2014.

5 State Agency for Child Protection (2011), *Analysis of the results from a planned thematic inspection of the operation of crisis centres, their contacts and collaboration with Social Assistance Directorates*, pp. 4-5, available on: http://sacp.government.bg/media/cms_page_media/22/1_KC_ANALIZ-short.doc.

6 Bulgarian Helsinki Committee (2013), *Crisis Centres in Bulgaria in 2013*, p. 21.

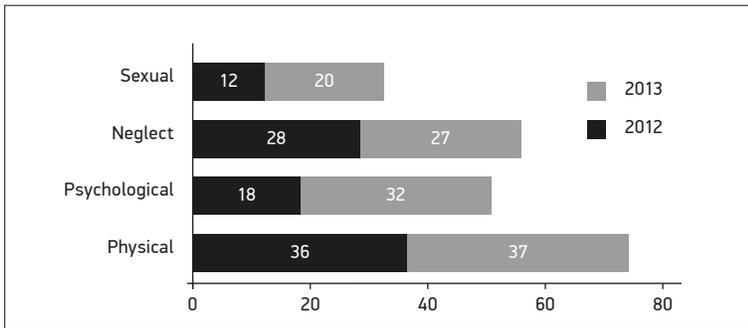
7 *Ibid*, p. 22.

Figure 4: Number of placed children and grounds for placement



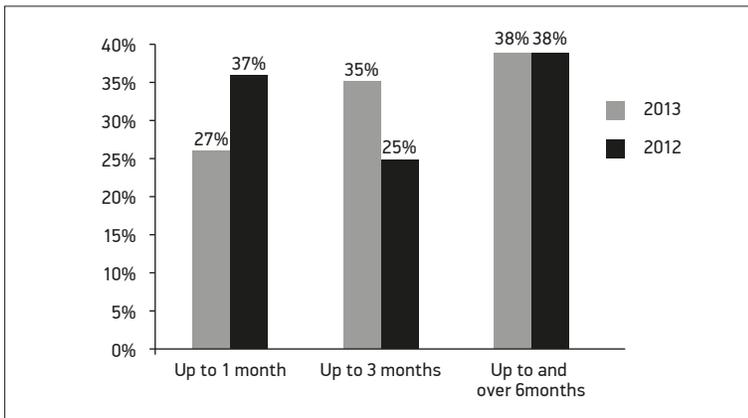
Source: SACP

Figure 5: Types of violence



Source: SACP

Figure 6: Duration of placement in crisis centres



Source: BHC Reports 2011, 2013

book, however, states that “regardless of the legally determined duration of placement in the “crisis centre” service (up to six months), the recommended duration for which it is provided, due to its character, goal and philosophy, is three months”.¹

Most existing court decisions for placement in crisis centres determine the longest possible duration allowed by the law – six months (see Figure 6). Only some of them take into consideration the fact that in most cases the child has already spent time in the crisis centre, which may vary from one to two or three months, and they order placement “for the duration of six months as of the administrative placement [of the child]”.²

Others, however, rule the six-month duration to commence from the entry into force of the court decision. Most crisis centres have had individual placements of eight to nine months and even second placements for another six months in the same centre following unsuccessful reintegration of the child into the family. In other cases, upon the completion of the six-month duration, the child is sent to another crisis centre for a further six months.³

The children are normally told that their stay at the crisis centre is limited to up to six months, so they have difficulties accepting the news that in reality they will have to stay more than six months – a consequence which has necessitated the introduction of special psychological consultations. A prolonged stay at a crisis centre, which is a closed institution, has proved to have a negative effect on children’s psychological development.⁴

3.3. Judicial review and legal aid

Access to legal aid

The BHC researchers have found that no children were informed about their right to legal aid. If the court so decides, a special representative (a lawyer) may be assigned to the child. Despite that, the children usually arrive in court accompanied only by employees of the Child Protection Department and the crisis centre.⁵

Court hearings

A child aged 10 or above should always be heard in court unless this would be against her interests.⁶ The procedure for placement by the court is slowest in the city of Sofia. Unlike all other centres, where the children state that they have been heard in court, at Crisis Centre “Vyara, Nadezhda, i Luybov” in Sofia none of the children⁷ (some of them with a stay beyond four or five months) reported that they had attended a court hearing where their placement in a crisis centre was discussed.⁸ Moreover, none of the personal files of the children contained a court decision. Frequently, the children’s stay in the crisis centre ends before the case is heard in court and almost always before a court decision is issued, which accounts for the non-attendance at court hearings.

1 *Ibid.*, p. 28.

2 Vidin District Court (2013), Decision No. 404 from 26 July 2013 on Civil Case No. 1199/2013.

3 Bulgarian Helsinki Committee (2011), *Crisis Centres for Children in Bulgaria – between a social service and an institution*, p. 21.

4 Bulgarian Helsinki Committee (2013), *Crisis Centres in Bulgaria in 2013*, p. 30. The case of the 14-year-old girl D.L. from Pleven.

5 Bulgarian Helsinki Committee (2011), *Crisis Centres for Children in Bulgaria – between a social service and an institution*, p. 20.

6 For more information, see Chapter 1. Analysis of the national legal framework.

7 Interviews with children placed in the centre conducted at the time of the visit by the BHC researchers on 1 November 2013.

8 Bulgarian Helsinki Committee (2013), *Crisis Centres in Bulgaria in 2013*, p. 26.

Early termination

In individual cases, where the court decision fixes the duration of the placement at six months, the possibility still exists that following a change in circumstances the duration may be terminated in advance.¹ Early termination by the Social Assistance Directorate may take effect temporarily until a court ruling is issued. However, most Social Assistance Directorates consider the expiration of the maximum six-month period allowed by law as a legal ground for termination of the placement in a crisis centre. **Only in very few cases would a Social Assistance Directorate take the children out of the crisis centre by means of early termination of their stay.** Finally, children themselves are not allowed to initiate the revision of the placement measure.

Appeal

Placement orders of the Social Assistance Directorate are issued and appealed according to the common procedure described in the Administrative Procedure Code.² The Administrative Procedure Code provides for “electivity of the procedure for contestation” and further elaborates that “[a]n administrative act may be contested before the court even if the possibility for administrative contestation of the said act has not been exhausted”.³ The orders for placement in a crisis centre, however, normally read that they are subject to appeal before the Regional Social Assistance Directorates, which constitutes incompleteness. The placement order may be contested within 14 days from the date it is communicated to the concerned persons⁴ and until this term expires, the order cannot be enforced. In case of urgent placement outside the family, the parents have the right to appeal both the placement measure and its immediate effect.

Many of the Social Assistance Directorates’ placement orders accessed by the researchers revealed a lack of grounds for the preliminary placement as well as no indication of the term of appeal of the order. The order which allows preliminary entry into force is subject to appeal before the administrative court within three days from the date it is communicated. Cases where administrative orders for placement have been appealed are very rare. Only one case of appeal made in 2012 has become known to the BHC.

Although existing legislation provides the opportunity to appeal the first-instance decision for placement before a regional court within seven days, the BHC has found no examples of such appeals. **The speed at which the Bulgarian judiciary operates prevents it from efficiently sanctioning the placement of children in crisis centres.** Moreover, it is also disturbing that even when the court seriously violates the law, examples of which are the cases of placement in crisis centres for a period exceeding the legally defined maximum, its decisions are not appealed.

3.4. Material conditions⁵

According to research conducted by the BHC in 2011, the material conditions in all crisis centres are good and in some of them they may even be considered excellent (Peshtera, Varna, Plovdiv). The bedrooms are spacious and in most cases each of them houses two to

1 Regardless of whether they are included in the placement decision or not, the grounds for early termination of the placement as listed in Art. 29 of the Child Protection Act allow the early termination of placement if any of those grounds are present.

2 Child Protection Act (2000), Art. 27(6).

3 Administrative Procedure Code (2006), Art. 148.

4 *Ibid.*, Art. 84(1).

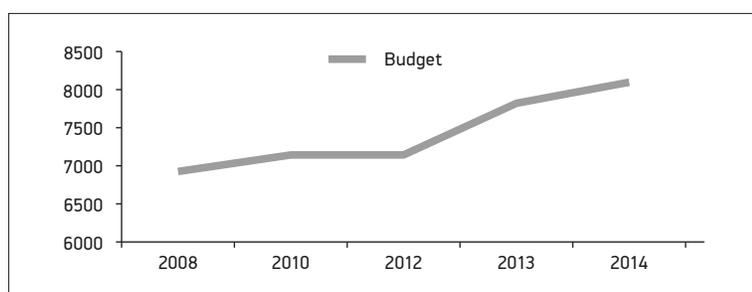
5 Bulgarian Helsinki Committee (2011), *Crisis Centres for Children in Bulgaria – between a social service and an institution*, p. 34.

three children. Apart from beds, the rooms also have wardrobes, cabinets and desks. Only the crisis centre in Silistra has one common bedroom with seven beds but each bed has a chest and a small wardrobe which form a personal space. In “Vyara, Nadezhda i Lyubov” Crisis Centre in Sofia the large bedrooms are divided by aluminium profiled screens which form relatively separate bedrooms within the common space, each accommodating two children.

Most crisis centres have signed contracts following tenders with the municipal social patronage service for the provision of food or with other local public services for the provision of food.

The cost of the daily allowance in 2011 varied between BGN 3.00 (EUR 1.53) (Plovdiv) and BGN 6.00-7.00 (EUR 3.07-3.58) (Peshtera). The “crisis centre” social services, which are under state auspices, are funded from the state budget through the municipal budget of the corresponding municipality. The standard annual allowance for a single place in the crisis centres in 2014 amounts to BGN 8,251 (EUR 4,219).¹

Figure 7: Budget (in BGN) based on standard maintenance of one place in a crisis centre (2008-2014)



Source: SACP

3.5. Health care

The location of crisis centres in areas far away from the children’s permanent place of residence has an impact on the quality of the medical services provided there. **Most crisis centres do not employ medical staff** although children placed there often do not need only psychological and social work to overcome emotional crises and past trauma. If the crisis centre has not signed a civil contract with a medical doctor, the child’s address registration needs to be changed and a general practitioner temporarily selected.² **Not all residential areas where the crisis centres are located have 24-hour access to a medical doctor.** If needed, emergency medical service intervention is sought from the closest town.

The entry medical examination upon placement in the crisis centre is obligatory and includes blood tests. The necessary tests are determined according to the needs of each individual case. **Crisis centres may sometimes turn into facilities housing children with serious health problems.** This situation requires specific material conditions and staff not available at the crisis centres. Over the years, there have been cases of children with infectious diseases such as hepatitis B and syphilis, children suffering from drug addiction, as well as pregnant girls. At some centres, until blood test results arrive, the newcomer spends the nights isolated from the other children.

¹ Information received from the State Agency for Child Protection under APIA with Ref. No. RD-12-28 from 11 September 2014.

² Bulgarian Helsinki Committee (2011), *Crisis Centres for Children in Bulgaria – between a social service and an institution*, p. 18.

The availability of dental care at most crisis centres is a particularly problematic area. In most cases dentists provide their services on a pro-bono basis. However, no one provides intricate and expensive services (for example, a girl placed in Crisis Centre – Dragoman had her front teeth missing but no one was willing to cover the expenses for inserting tooth implants).

3.6. Activities and education

According to the decision in *A. and others v. Bulgaria*, placement in a crisis centre is deprivation of liberty for the purpose of educational/ correctional supervision under Article 5.1(d) of the European Convention of Human Rights. Most importantly, such deprivation of liberty may be considered lawful only if the child receives access to education or, at least, if the detention suggests the child's imminent transfer to an institution where access to education will be provided.

The Ordinance on the criteria and standards for social services provided to children obliges the provider of the residential social service to ensure, among other conditions, "the participation of the child in the education process and to support their daily preparation for school". **Many children placed in crisis centres have previously never attended schools or, if they have, their certified level of schooling does not correspond to their actual level of knowledge.** In crisis centres in Bulgaria, most of the children are enrolled and attend activities at kindergartens or schools fulltime. In case school attendance is not feasible, the children subscribe to the alternative option of individual or non-attendance form of schooling, a method which has been applied with respect to pregnant girls and girls who are victims of violence or other vulnerable persons. Nevertheless, this type of schooling is considerably less efficient than the regular one and, hence, should only be resorted to where absolutely necessary.

In many cases, however, **children subject to compulsory education do not attend school.** At the end of November 2013, 29 children were not attending school, corresponding to one third of all resident children at the time of the research.¹ A report of the State Agency for Child Protection on a planned thematic inspection of the operation of crisis centres in the period from March until June 2011 observed that 61 children placed in 32 crisis centres attend school or kindergarten. At the same time another 29 children, which is almost half of all children, were not enrolled or have discontinued their enrolment.² The report further points out that children who have not previously attended an educational institution, as well as those placed after the start of the school year, do not attend school.

The psychological and social work with the children placed in crisis centres is of key importance to their recovery and the ability to overcome the crisis situation. Upon their placement, a multidisciplinary team performs an assessment of the needs of the child, which together with the social report and the action plan prepared by the Social Assistance Directorate is used to draft a crisis plan listing all urgent actions that need to be undertaken in view of each child's individual case history. Some crisis centres experience systemic difficulties due to the lack of information that should be submitted by the Social Assistance Directorates to the personnel of the crisis centre. As a result, **experts working with the children remain unaware of the psychological, social and legal status of some of the children placed in their institution.** They receive no access to the respective social reports and are unfamiliar with the duration of the child's stay in the crisis centre or whether the Social Assistance Directorate has filed a claim with the court so that they can plan their work with each child according to each individual case history.

1 Bulgarian Helsinki Committee (2013), *Crisis Centres in Bulgaria in 2013*, p. 33.

2 *Ibid.*, p. 36.

3.7. Contacts with the outside world

Crisis centres have a restricted regime. The front door is nearly always locked and the windows are either barred or cannot be opened. Children are not allowed to leave by themselves. Exceptions are sometimes made, if considered appropriate, for students who have built enough trust to be allowed to travel on their own to the school building and back. In some of these cases the children need to receive permission in advance and sign in every time they leave the centre. Apart from attending school activities, children also leave the centre to go for organised walks or to attend cultural events and celebrations. Leaving the crisis centre without permission is considered an attempt to run away. However, the fact that there are runaways in nearly all crisis centres indicates that the crisis centre service is failing to meet fully the residents' need to maintain contacts with the outside. Those children who attend school have the most active contacts with the outside world.

Telephone calls, as well as visits, always take place in the presence of a social worker who keeps a record of the conversation/ meeting. Whether the child may contact a parent or another close relative or friend is decided by the social workers. The children have no internet access, although in some crisis centres internet access is available and used as an incentive.

Due to the uneven distribution of crisis centres throughout the country, child protection bodies sometimes place children in crisis centres far from their normal living environment. **Consequently, parents and other family members who live far away often cannot reach their children easily.** According to the thematic analysis by the State Agency for Child Protection, only 52% of the children stay in touch with their parents.

3.8. Disciplinary practices, use of force and complaints

According to the Havana Rules, children should not be subjected to punishment unless under the strict observation of the provision of the law.¹ Regarding children placed outside their family environment, the Child Protection Act and supplementary legislation contain no provision allowing disciplinary punishment. According to the Social Assistance Agency, the disciplinary practice and the procedure for filing complaints and signals by children placed in crisis centres are provided for in the Ordinance on the criteria and standards for social services provided to children. The service provider should ensure free and unimpeded submission of complaints and signals by children as well as develop a procedure for protection from violence, misconduct and discrimination. Furthermore, the provider exercises internal control on the work of the staff and the quality of the care provided.² **Thus, for example, each crisis centre has developed and adopted their own set of rules for disciplinary practices.³ This contravenes international standards.**

Running away and breaking the rules of the crisis centre are the severest types of misconduct (although breaking rules may be a sign or a symptom of crisis). The limitations imposed

1 Bulgarian Helsinki Committee (2013), *Crisis Centres in Bulgaria in 2013*, p. 38.

2 Information received from the Social Assistance Agency under APIA with Ref. No. RD-04-109 from 05 September 2014.

3 Methodology for the organisation of work in the provision of social services adopted by Crisis Centre "Vyara, Nadezhda, i Lyubov" – Sofia, Art. 18 – 18.1: 18. Every member of the personnel of the Centre encourages socially acceptable behaviour of the child. Where behaviour is deemed unacceptable, staff members shall undertake measures in accordance with the Guidelines for Incentives and Punishments document approved by the director. 18.1. In the application of the Guidelines for Incentives and Punishments, personnel at the crisis centre shall observe the following basic principles: (a) individual approach to determine and apply incentives and punishments at the crisis centre in accordance with the age, ability to understand and the individual needs of the child; (b) respect for the personality of the child and consideration for their dignity; (c) punishments shall not contain physical force or inflict pain or injury; (d) respect for the opinion of the child and inclusion of the child in the process of determining the level of the incentive or punishment; (e) common action by members of the personnel at the centre in determining incentives, the level, duration and cancellation of the punishment; (f) publicity of the incentives and punishments.

after establishing a violation of the rules often deprive the children of the opportunity to participate in activities in the crisis centre or in another outside event, or of access to television. Different types of measures may be imposed: 1) punishment through labour (the child is additionally included to the timetable for cleaning the common and sleeping premises), 2) punishment through solitary confinement (the child is forbidden to leave their space in the bedroom), 3) punishment through school non-attendance, 4) banned access to television. However, according to the Ordinance on the criteria and standards for social services provided to children, any physical restriction of the child should only be done to prevent possible risk to the child's life or health. There are isolated cases of other imposed punishments. For example, for leaving the crisis centre in the town of Shumen without permission a resident child was punished by having to copy a text from a textbook. No information has been found about the use of force or direct coercive measures against children in any of the centres.

3.9. Personnel

According to data provided by the State Agency for Child Protection, in 2013 the number of staff per crisis centre varies between four people (in Varna) and 21 members (in Sofia).¹ All crisis centres have a psychologist (sometimes employed only part-time). Only one crisis centre has employed a full-time medical doctor.² The analysis of the State Agency for Child Protection concludes that in the sphere of social services work highly qualified teams of professionals with the necessary education and qualifications and additional external experts are employed.³ Nonetheless, the centres often house children who do not correspond to the profile of the service and staff members experience difficulties trying to meet their needs.

The overall impression created by the Social Assistance Directorates and the Child Protection Departments is that they are "overloaded with work" and that the number of their employees engaged in issues related to the children is highly insufficient. Moreover, the lack of adequate material motivation (low remuneration) leads to frequent staff turnover in the Child Protection Departments. As a result, these services have grown incapable of handling the full workload of inspecting the situation of the children and preparing the necessary body of documentation. Similarly, they fail to work with parents and close relatives and friends in order to ensure the successful return of the child into the family environment. In some cases, upon the child's placement in a crisis centre located in another area, the Social Assistance Directorate considers the case closed. Consequently, the chances for successful reintegration of the child deteriorate significantly and the real effect of placement in a crisis centre is that it opens the way for the child's institutionalisation.

3.10. Inspections

All crisis centres have developed procedures for conducting internal control. External inspections are conducted by representatives of the employer of the crisis centre, i.e. the mayor of the municipality, as well as by the Social Assistance Agency and the State Agency for Child Protection (Chief Directorate for Control on the Rights of the Child) who primarily supervise the body and flow of documentation and are concerned with placement procedures and duration. Nearly all crisis centres have been issued recommendations in this area. At one crisis centre, the State Agency for Child Protection observes inefficient collaboration with the Child Protection Department and recommends improving coordination between the institutions.⁴

1 Information received from the Social Assistance Agency under APIA with Ref. No. RD-04-109 from 5 September 2014.

2 Bulgarian Helsinki Committee (2011), *Crisis Centres for Children in Bulgaria – between a social service and an institution*, p. 38.

3 State Agency for Child Protection (2011), *Analysis of the results from a planned thematic inspection of the operation of crisis centres, their contacts and collaboration with Social Assistance Directorates*.

4 Bulgarian Helsinki Committee (2011), *Crisis Centres for Children in Bulgaria – between a social service and an institution*, p. 38.

According to the Ordinance on the criteria and standards for social services for children, the service provider conducts regular internal control over the work of the personnel and on the quality of the care provided, whereas overall control over the provision of the service should be conducted by the State Agency for Child Protection.¹ The State Agency for Child Protection reports that no inspection of the operation of crisis centres has been conducted since 2011.²

1 Information received from the Social Assistance Agency under APIA with Ref. No. RD-04-109 from 5 September 2014.

2 Information received from the State Agency for Child Protection under APIA with Ref. No. RD-12-28 from 11 September 2014.

D. Institutions for refugees,
asylum seekers and migrants

1. SPECIAL HOMES FOR TEMPORARY PLACEMENT OF FOREIGNERS

Over the studied period from 2012 to 2014 (first half), children of foreign origin were often placed in closed centres. This was not always a measure of last resort for the shortest possible period. The placement has very adverse repercussions on a child's normal physical, mental, moral and social development. The Law on Foreigners in the Republic of Bulgaria was amended in March 2013 to explicitly prohibit the coercive placement (detention) of unaccompanied children of foreign origin in special homes for temporary placement of foreigners (SHTPF). However, such children are still being placed in SHTPFs by circumventing the law through various mechanisms such as purposefully registering the child above 18, as well as the earlier practice of "including" the children in the placement orders of adults to whom they are not related. In violation of international standards, children seeking asylum were also placed in closed centres in the period from 2012 through 2014.

In a positive development, the number of such placements dropped significantly after the expansion of the capacity of the State Agency for Refugees (SAR) at the end of 2013. The legal assistance provided by the National Legal Aid Bureau (NLAB) is insufficient and is not provided to individuals held at SHTPF, including asylum seekers, who rely completely on non-governmental organisations or private lawyers. There is no automatic judicial review of the lawfulness of the deprivation of liberty of accompanied children placed for the maximum three-month period. The homes do not provide educational activities or vocational training. The children in SHTPF are not regarded as vulnerable by state institutions, and the Social Assistance Agency (SAA) and the State Agency for Child Protection (SACP) do not exercise institutional supervision over the functioning of the SHTPF despite the large number of children placed in them before 2014. There are no standards on working with children or coordination mechanisms between the SAA and the Social Assistance Directorate (SAD) and the Migration Directorate of Border Police Directorate General (BPDG) of the Ministry of Interior, especially after the increase in the number of asylum-seeking refugees and migrants in the country.

1.1. General information

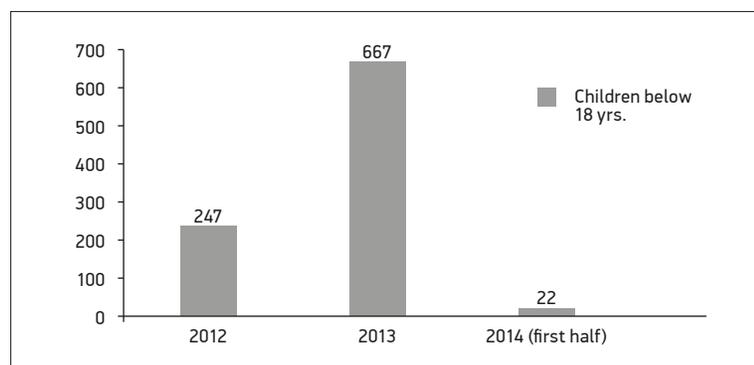
The special homes for temporary placement of foreigners are facilities under the Migration Directorate of the Ministry of Interior (MoI). There are two centres, in Sofia's Busmantsi neighbourhood and in the town of Lyubimets, which were visited in August and September 2013. When, subsequently, the Bulgarian Helsinki Committee's (BHC) Monitoring and

Research Programme attempted to re-visit them to evaluate conditions in the aftermath of the mid-2013 refugee crisis, access was refused (for more information, see the chapter on Research methodology).

The SHTPF in Lyubimets has a capacity of 300. During the 2013 visit, it accommodated 349 foreigners, of whom 263 (75%) were asylum seekers. Approximately 16% of the population were children asylum seekers, most of them of Syrian origin. The SHTPF in Busmantsi has capacity for 400. In September 2013 it, too, was running over capacity, with more than 60% of the population being asylum seekers. At the time of the visit, it accommodated between 20 and 30 children.

The exceeded capacity of the SHTPF during visits resulted from the refugee crisis and the lack of capacity of the SAR's facilities to accommodate asylum seekers. From 2012 until the first half of 2014, almost 1,000 children had through the detention centres.¹ The number of the newly placed minors and adolescents dropped significantly in 2014 (see Figure 7), upon the increase of SAR's capacity.

Figure 7: Number of newly placed minors and adolescents (2012 - 2014)



Source: MoI

A so-called Distribution Centre was established in the town of Elhovo on 25 September 2013, by order of the minister of interior addressed to MoI's Migration Directorate.² With capacity for 300, the facility is subordinated to the MoI's Migration Directorate (as of 1 July 2014,³ Migration Directorate of the DGBP, MoI). The goal is to secure the short-term detention (up to seven days) of foreigners caught by border police in the section of the Bulgarian-Turkish border used most often for illegal entry. During this time, the foreigners placed in the Elhovo facility are questioned to establish the cause of their entry in Bulgaria. Those who state that they seek asylum and protection are then transferred to the refugee centres of the State Refugee Agency. The distribution centre in Elhovo is, in fact, an administrative detention facility for foreigners but its existence is not based on an explicit text in a law⁴ as required by national legislation.⁵ **At the same time, the detention of asylum seekers in the centre in Elhovo**

1 According to a Human Rights Watch report published in late April 2014, the Ministry of Interior has provided the organisation with information stating that 912 minors and adolescents were detained in the SHTPF in Lyubimets in 2013. This indicates a significant discrepancy with data provided to the Bulgarian Helsinki Committee (486 children in the SHTPF in Lyubimets) and is extremely worrisome. Human Rights Watch (2014), *Containment Plan*, p. 48.

2 Ministry of Interior (2013), Order 1z-1887 from 25 September 2013.

3 Ministry of Interior Act (2014).

4 Similar, for example, to Art. 44(7) of the Law on Foreigners in the Republic of Bulgaria regarding the creation of the special homes for temporary accommodation of foreigners (SHTPF).

5 Law on Legislative Acts (1973), Art. 1(a).

and the restriction of their liberty also violates the adopted regulations.¹ Despite the short stay of the asylum seekers in the distribution centre and their relatively fast transfer and placement in SAR facilities, the detention of asylum seekers in the centre under the above-mentioned conditions constitutes deprivation of liberty and a direct violation of Article 5(f) of the European Convention on the Protection of Human Rights and Fundamental Freedoms (ECHR). Such detention also constitutes a violation of existing national legislation in the field of asylum and international protection,² according to which the detention of persons seeking protection is not permitted or allowed under any circumstances.

1.2. Placement

Detention in SHTPF is imposed on migrants with administrative coercion measures: deportation or expulsion. Deportation³ is imposed on migrants with irregular status, while expulsion is imposed on foreigners who may reside legally or illegally in the country but who are deemed a risk to national security or public order (for more information, see Chapter 1. Analysis of the national legal framework).

Many of the foreigners detained at SHTPF have attempted to illegally enter or leave the country, with forged documents or without documents, or not through the places established for that purpose, so a coercive administrative measure (CAM) is imposed on them by the border police upon their detention. Under the Ministry of Interior Act,⁴ once a CAM order is issued, an order for involuntary placement in SHTPF may also be issued, as a protective measure when the identity of the foreigner is unknown, he is obstructing the execution of the order or there is a risk that he might abscond. Placement is most often ordered on the grounds of unknown identity or risk of abscondment.

According to an interviewer at the SHTPF in Lyubimets, the border police informs foreigners about the CAM order and the placement in SHTPF in the presence of an interpreter. However, interviews with families with children and unaccompanied children⁵ reveal that **an interpreter is not always present when the CAM order is imposed**, and that, even if there is an interpreter, the information about the measure and its consequences is not always presented in a comprehensible manner.

According to a BHC report, in 2013 the BPDG encountered difficulties in providing immediate and adequate interpretation during the registration of asylum seeker protection applications. This was mostly due to the lack of interpreter positions available at border police structures and the use of external contractual interpreting services, which makes the registration significantly more difficult and expensive.⁶

Foreigners receive a copy of the CAM order and the placement order. During visits to the two centres, communication between the detainees and the staff was **seriously hindered by the language barrier due to the lack of full-time interpreters**. Other detainees fluent in Bulgarian or Western European languages are often used as interpreters. However, this does not ensure reliable communication because there may be a conflict of interest between

1 Ordinance on the responsibility and the coordination between state bodies (2007), Art. 16.

2 *Ibid.*, Art. 16.

3 Coercive escort to the border of the Republic of Bulgaria shall be imposed when the foreigner cannot prove that they have entered the country legally; when the foreigner has not left the country within the permitted stay or within the timelines under Art. 39(b); when it is established that the foreigner has entered and is staying in the country with false or forged travel or substituting documents.

4 Ministry of Interior Act (2014), Art. 80.

5 A total of eight interviews were conducted during two visits to the SHTPF in Lyubimets and Busmantsi (for more information, see Research methodology).

6 Bulgarian Helsinki Committee (2014), Human Rights in Bulgaria in 2013: Annual Report, p. 66.

the detainees. According to information obtained under the Access to Public Information Act (APIA), contracts have already been signed to cover the SHTPF interpretation needs.¹ In reality, however, interpretation is only used and provided at the Distribution Centre in Elhovo within the Migration Directorate of the MoI's Border Police Directorate General.

The registration of the children placed in the home is carried out in accordance with the Havana Rules.² First of all, the existence and the regularity of all necessary documents is verified and attested in an acceptance protocol. The children are placed on the basis of an official act issued within the statutory deadlines. The internal rules of the SHTPF require that the person be searched for prohibited items and that all seized items be listed in an inventory. Every new arrival passes through the sanitary premises before being accommodated. An interviewer informs the person of the general regime and the internal rules governing the facility. These are available in nine languages and are usually handed out to groups because they are quite large. The internal rules are also posted in visible locations throughout the homes.

Detention of asylum seekers

It was found on multiple occasions, including in the course of the project, that asylum seekers are placed in closed centres in violation of international standards. In August and September 2013, BHC found many cases of asylum seekers, mostly Syrian citizens, including children, who were placed in SHTPF and, due to delayed registration and processing, remained detained at SHTPF together with migrants with irregular status. Directive 2005/85/EC on the minimum standards on procedures in Member States for granting and withdrawing refugee status³ and the Asylum and Refugees Law⁴ stipulate that a foreigner who has entered the Republic of Bulgaria seeking asylum may not be returned to a territory where their life or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group, political opinion, or where they would face risk of torture or other forms of cruel, inhuman or degrading treatment or punishment (principle of non-refoulement).⁵ This is a central provision, which provides a supreme guarantee to a refugee's right to protection in Bulgaria from the moment of the submission of their asylum application. This means that coercive administrative measures, such as expulsion or deportation, cannot be imposed on asylum seekers. These measures cannot be carried out until the refugee procedure is completed.⁶ Therefore, the administrative detention of asylum seekers by the police under Article 70(5) of the Ministry of Interior Act or Article 44(6) of the Law on Foreigners in the Republic of Bulgaria loses its legally provided purpose and should not be used.

In addition, the secondary legislation was amended at the end of 2011 to repeal the automatic detention at SHTPF of asylum seekers applying for protection at the national borders.⁷ According to the BHC 2012 annual report, this has led to a decrease in the protection applications registered at the border by the bodies of MoI's BPDG.⁸ The main objective reason behind this decrease was SAR's extremely insufficient capacity to receive and accommodate newly arrived refugees. By law, the Border Police is not allowed to detain individuals for more than

1 Information obtained from the Border Police Directorate General under APIA by Decision No. 812100-13286 from 4 September 2014.

2 Havana Rules, Rule 21.

3 Council Directive 2005/85/EO of 1 December 2005 laying down minimum standards for procedures for granting and withdrawing refugee status OJ 2005 L 326.

4 Asylum and Refugees Law (2002).

5 *Ibid.*, Art. 4(3).

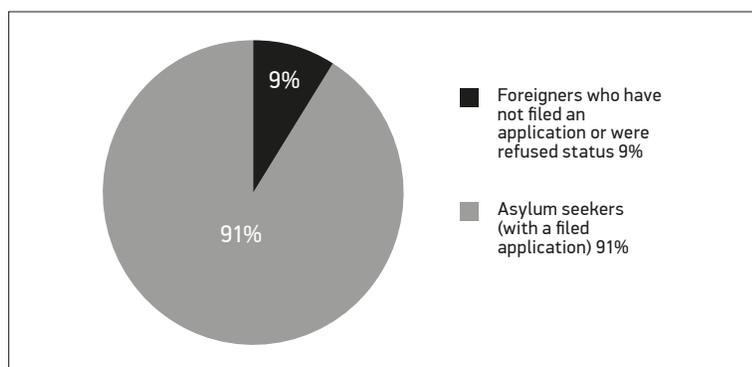
6 *Ibid.*, Art. 67(1).

7 Bulgarian Helsinki Committee (2013), *Human Rights in Bulgaria in 2012: Annual Report*, p. 43, available on: http://www.bghelsinki.org/media/uploads/annual_reports/2012_bg.pdf.

8 *Ibid.*

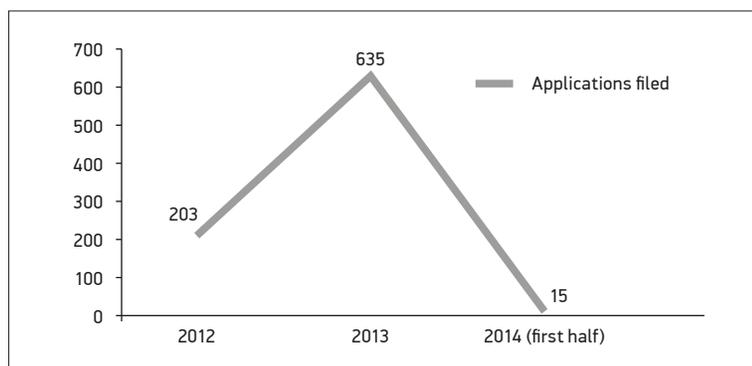
24 hours. Once they have expired, the BPDG bodies must refer the asylum seekers to another competent body – the SAR. Since 1999, however, the SAR has refused to receive an unlimited number of asylum seekers at the border due to its very limited capacity. This issue became extremely pressing in mid-2013. Following the legislative amendments at the end of 2011, the border police faced a choice: either to violate the non-refoulement requirement for asylum seekers or to find an alternative way of detaining them in SHTPF by avoiding their formal registration as asylum seekers. Once in SHTPF, the foreigners have the opportunity, albeit with a delay, to file a protection application with the SAR via the Migration Directorate’s administration. During the visits in August and September 2013, some foreigners in SHTPF stated that they had filed asylum applications at the border but were forced to withdraw them.¹ Others said that they were denied the opportunity to file for asylum at the border and that they were unable to do so until they were placed in SHTPF.

Figure 8: Profile of children in SHTPF (2012 - first half of 2014)



Source: SACP

Figure 9: Minors and adolescents with filed asylum applications



Source: SACP

¹ A total of eight interviews held during two visits to the SHTPF in Lyubimets and Busmantsi (for more information, see Research methodology).

In the wake of the refugee crisis in Bulgaria, a bill¹ to amend and supplement the Asylum and Thus, the SHTPF becomes a sort of a “waiting room” until the asylum seekers are transferred to the SAR’s refugee centres. During visits to the two homes, asylum seekers accounted for 60% of all detainees. A total of 5,464 asylum seekers have filed their applications from SHTPF (including the distribution centre in Elhovo) in 2013.² A total of 5,353, or 98% of these applications, were submitted in SHTPF by people transferred directly from the border. **Between January 2012 and June 2014 (first half), 91% of the children placed in SHTPF were asylum seekers.** In 2012, prior to the refugee crisis, their share was 82%. In 2013, it was 95%. The opening of new SAR centres at the end of 2013 resulted in a significant decrease (by almost 100%) during the first half of 2014 in the number of newly placed minor and adolescent asylum seekers. **Nevertheless, there were still several cases of asylum seeking children placed in SHTPF in 2014.**

Refugees Law was proposed in November 2013; in April 2014, it was adopted at first reading by Parliament. **In essence, the proposals were aimed at establishing a general detention regime for all categories of asylum seekers,** regardless of their individual characteristics, vulnerability, age, health status, special needs or other relevant circumstances, and regardless of the stage of their procedures under the Asylum and Refugees Law.³ If adopted at second reading, the act would introduce universal and unconditional detention in closed centres of all asylum seekers as a rule, while placement in open centres would be carried out on an exceptional basis.⁴ The provision of Article 8(1) of Directive 2013/32/EU, which stipulates that the member states do not have the right to detain a person merely on account of the individual concerned having applied for international protection, is thus neglected. The approach proposed in the bill is in essence an almost identical copy of the regime established under Section I, Chapter V of the Law on Foreigners in the Republic of Bulgaria, and namely, **administrative coercion measures imposed on migrants with irregular status subject to removal from the country’s territory.** The placement can have an extremely adverse effect on a child’s normal physical, mental, moral and social development, especially given the fact that **children have no access to education during their detention.** The bill violates the principle of placing asylum seekers in closed institutions only as a last resort and when less stringent measures cannot be effectively imposed. The deprivation of freedom of movement and the detention of children in closed centres violates the basic legal standards on child protection, as enshrined in the Child Protection Act⁵ and the Convention on the Rights of the Child.⁶

Detention of unaccompanied children

Under the Convention on the Rights of the Child, detention of a child “shall be used only as a measure of last resort”.⁷ The United Nations Committee on the Rights of the Child explicitly affirms that unaccompanied migrant children must not be detained.⁸ The adoption in March 2013 of an amendment to the national legislation introducing an explicit prohibition of the

1 Bill Amending and Supplementing the Asylum and Refugees Law (designation 302-01-42), deposited in the National Assembly on 19 November 2013, available on: <http://parliament.bg/bills/42/302-01-42.pdf>.

2 Bulgarian Helsinki Committee (2014), *Human Rights in Bulgaria in 2013: Annual Report*, p. 68.

3 Bulgarian Helsinki Committee (2013), “BHC Comments on the Bill Amending and Supplementing the Asylum and Refugees Act”, Press release, 28 November 2013, available on: <http://www.bghelsinki.org/bg/novini/press/single/komentar-na-bhk-po-zakonoproekta-za-izmenenie-i-doplnenie-na-zakona-za-ubezhisheto-i-bezhancite/>.

4 Bill Amending and Supplementing the Asylum and Refugees Act (2013), Art. 45(c)(2).

5 Child Protection Act (2000), Art. 10(3).

6 Convention on the Rights of the Child, Art. 37(b).

7 *Ibid.*

8 CRC (2012), Report of the 2012 Day of General Discussion, *The Rights of All Children in the Context of International Migration*, p. 18, available on: <http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/ReportDGDChildrenAndMigration2012.pdf>.

coercive placement (detention) in SHTPF of unaccompanied foreign children¹ was a positive step towards the protection of children's rights. Under the Law on Foreigners in the Republic of Bulgaria, an order for coercive placement of children in a special home is issued by exception, and only with regard to *accompanied* minors or adolescents. The above-mentioned bill, however, would allow detention and placement in closed homes of unaccompanied children seeking asylum (Article 45(f)(3)). This is absolutely inadmissible because it would create a less favourable legal standard than that established by Article 44(9) of the Law on Foreigners in the Republic of Bulgaria with regard to the unaccompanied migrant children with irregular status whose detention is explicitly and unconditionally prohibited by law. There is no legal or factual justification or grounds for such less favourable treatment of unaccompanied children seeking asylum, who by definition should be subject to more favourable measures and treatment standards than migrants with irregular status.²

Under the current legislation, in the case of an unaccompanied child, the body issuing the CAM order notifies the respective Social Assistance Directorate (SAD), which in turn issues a protection measure under the Child Protection Act.³ Most of the unaccompanied children that the directorates have been working with are children asylum seekers or children who have been granted asylum.⁴ The Social Assistance Agency, however, only began collecting data on unaccompanied foreign children in March 2014,⁵ despite the fact that it has worked with foreign children before that date. The information on foreign children is not differentiated in terms of their status in Bulgaria, that is, whether they are asylum seekers, have been granted asylum or are migrants with regular or irregular status. Also, it is not clear how many unaccompanied children, both asylum seekers and migrants with irregular status, have been referred to the Social Assistance Directorate by the border police, despite the fact that the SAA states in an opinion that "the Law on Foreigners in the Republic of Bulgaria and the Asylum and Refugees Law assign the Social Assistance Directorates specific obligations with regard to the target group of children under review."⁶ Similarly, it does not become clear what protection measures were actually undertaken with regard to children asylum seekers or migrant children upon referral by the border police.

During the period under review (2012 through the first half of 2014), a total of three children from the SHTPF in Busmantsi were placed in homes for children deprived of parental care. Fifteen letters to Social Assistance Directorates were drafted since the beginning of 2014 at the SHTPF in Lyubimets; however, information for the whole period between 2012 and the first half of 2014 was not provided.⁷ Data show that more than 100 unaccompanied children were placed in SHTPF between 2012 and the first half of 2014. According to BHC's 2013 annual report, a total of 173 unaccompanied children seeking protection were detained in the SHTPF in Busmantsi and Lyubimets and, since the end of October 2013, in the distribution centre in Elhovo. The numbers provided by the Border Police Directorate General are much lower (see Figure 10).⁸ The lower number of unaccompanied children is probably due to avoiding their registration as such.

1 Bulgarian Helsinki Committee (2014), *Human Rights in Bulgaria in 2013: Annual Report*, p. 69.

2 Bulgarian Helsinki Committee (2013), "BHC Comments on the Bill Amending and Supplementing the Asylum and Refugees Act", Press release, 28 November 2013.

3 Law on Foreigners in the Republic of Bulgaria (1999), Art. 44(9).

4 Information obtained from Social Assistance Agency under APIA with Ref. No. RD014-141 from 21 November 2014.

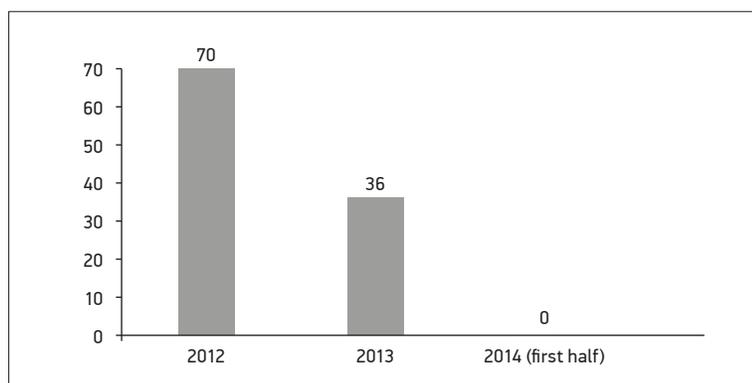
5 *Ibid.*

6 Information obtained by the Social Assistance Agency under APIA by Decision No. 92-1068 from 4 December 2014.

7 Information obtained from Border Police Directorate General under APIA by Decision No. 812100-25324 from 9 December 2014.

8 *Ibid.*

Figure 10: Number of unaccompanied children in SHTPF and in the Distribution Centre in Elhovo



Source: Mol

Information provided by the BPGD indicates that the SAD at the place of residence is immediately notified about cases of unaccompanied minors and adolescents, in order to undertake measures under the Child Protection Act.¹ Nevertheless, in visits to border police departments (for more information, see Research methodology) in 2014, the BHC found that some border police departments (BPDs) are not aware of the procedure of notifying SAD, and that in some cases the regional SAD did not know what measures to apply. For example, the Bregovo BPD has had cases of unaccompanied children and temporarily unaccompanied children, whose relatives have committed criminal violations, and have been detained by an order from the respective prosecutor's office for an initial 24 hours and for up to 72 hours at a later stage.² The minors and adolescents need competent and timely social protection and assistance in such cases.³ Although some regions have established an informal coordination mechanism between the BPD and the SAD, this is not a common practice. **There is a need for a formal coordination mechanism and guidelines on providing support to unaccompanied minors and adolescents**, who are not involved in proceedings under the Asylum and Refugees Law, as well as to children in an asylum procedure who have diverged from the SAR's registration and reception centres. It should also be possible for the police authorities to initiate emergency protection measures, so that the children are properly accommodated instead of being detained at SHTPF.

The children are placed in SHTPF by an official act issued within the statutory deadlines. **Following the 2013 legislative changes, which prohibited the coercive placement of unaccompanied children, in the course of 2013 such children were often included in the CAM orders or the SHTPF placement orders of adults, including total strangers, in order to allow for their detention in SHTPF.** Staff at the SHTPF in Lyubimets confirmed this practice off the record and referred to a striking case in which a Syrian adolescent was assigned to an Iraqi citizen, who was a total stranger to the child. By September 2013, the respective authorities (SACP, SAA, and SAR) had not been informed about this practice.

1 *Ibid.*

2 Letter from the Bregovo BPD chief to SACP, obtained by BHC during the visit to the BPD in Bregovo.

3 European Parliament, Committee on Civil Liberties, Justice and Home Affairs (2013), *Report on the situation of unaccompanied minors in the EU (2012/2263(INI))*, 26 August 2013, available on: <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2013-0251+0+DOC+XML+V0//EN>.

Also, BHC's Legal protection of refugees and migrants programme found **worrying cases in 2014, in which the age of the unaccompanied adolescents was increased** in order to have them registered as adults and placed in SHTPF. Contesting the CAM order, and therefore, assessing the actual age of the child, is possible if the CAM order is appealed within fourteen days of the actual detention. This is often impossible, especially given the lack of free legal aid accessible at SHTPFs. In addition, the government has not established a fair and legally regulated age assessment procedure.¹

According to a European Parliament report on the situation of minors in the EU, **doubts about the child's age during assessment must always be settled in favour of the minor, and it should be possible to appeal the results of the assessment.**² After the introduction in 2013 of the prohibition to place unaccompanied minors in SHTPF and due to the lack of adequate cooperation with SAD, especially in cases of unaccompanied minors who have not filed an asylum application or who have been refused asylum status, the border police used these methods to place unaccompanied minors in SHTPF after the expiration of the initial 24-hour police detention at the border. The main reasons for this are the lack of national coordination mechanisms with SAA/ SAD and State Agency for Child Protection and possibilities to place the children in specialised child care institutions. These circumvention methods used to detain children in SHTPFs explain to some extent the lower numbers of newly placed unaccompanied children.

As to the legal representation of unaccompanied children, the SHTPF staff were unaware of the procedure of appointing a guardian (legal representative) or a trustee to unaccompanied children seeking asylum or without an asylum application. According to the 2014 Human Rights Watch report, adult detainees are randomly selected to take care of minors and adolescents in SHTPF.³ The European Parliament report calls on member states to guarantee the appointment of a guardian or a responsible person to accompany, assist and represent, in all procedures, the minor or the adolescent in order to allow them to exercise their rights in all procedures, from the arrival in the respective member state until a lasting solution is found.⁴ The lack of a guardian or trustee not only undermines the validity of the CAM orders and SHTPF placement orders but also makes it impossible for these children to exercise some of their rights, such as to appeal the CAM order and the placement order, due to the lack of a legally valid will to initiate legal actions in the institutions and in court.

Duration of stay

Adults may be placed for a period of six months until the circumstances under the Law on Foreigners in the Republic of Bulgaria are no longer valid. Exceptionally, the placement may be extended to 18 months.⁵ The stay of accompanied minors cannot exceed three months.

The placement of families with children or of accompanied children in SHTPF is a dramatically disproportionate measure. By law, less restrictive measures, such as an order to appear at a police station once a week, may be imposed if the foreigners declare an address; otherwise, the foreigners are placed in SHTPF.

1 Human Rights Watch (2014), *Containment Plan*, p. 61.

2 European Parliament, Committee on Civil Liberties, Justice and Home Affairs (2013), *Report on the situation of unaccompanied minors in the EU (2012/2263(INI))*.

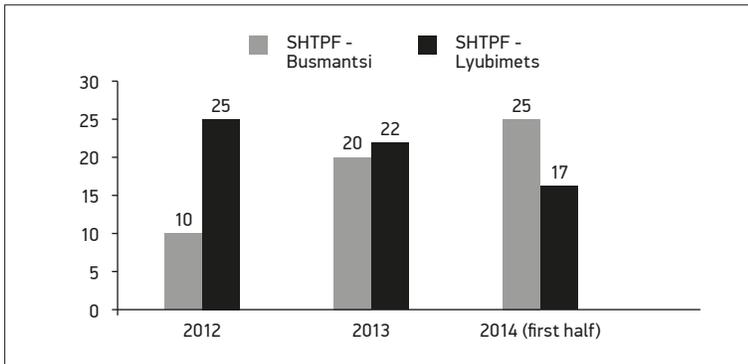
3 Human Rights Watch (2014), *Containment Plan*, p. 63.

4 European Parliament, Committee on Civil Liberties, Justice and Home Affairs (2013), *Report on the situation of unaccompanied minors in the EU (2012/2263(INI))*.

5 Law on Foreigners in the Republic of Bulgaria (1999), Art. 44(6).

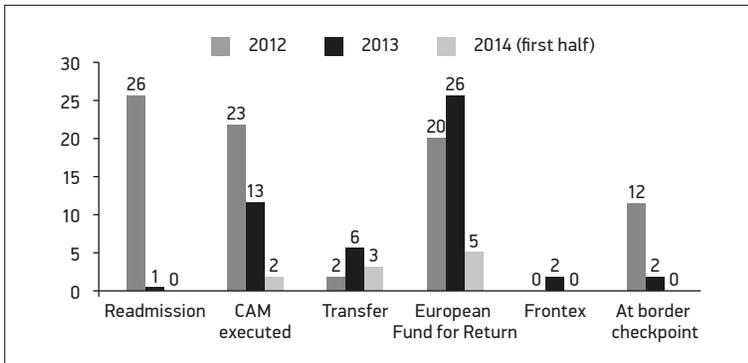
The total average duration of the detention of foreigners placed in 2013 was 20 days in the SHTPF in Busmantsi and 22 days in the SHTPF in Lyubimets. For the SHTPF in Busmantsi, it went up in 2014 (see Figure 11). The duration of the detention of minor and adolescent asylum seekers constitutes a violation of the European legal standards,¹ which establish a deadline for registration of six working days from the date the asylum application is submitted, in the event that the application is filed with other authorities, which can receive asylum applications but are not competent for the registration under national law.

Figure 11: Average stay of detainees (in days)



Source: MoI

Figure 12: Exit of children placed in SHTPF



Source: MoI

Most of the children asylum seekers have exited the homes and have been referred to the SAR (approximately 85%). Of the rest of the children who had not submitted asylum applications or were refused status, 36%² took part in programmes of the European Return Fund, which encourages the voluntary return of third-country nationals residing illegally in the Republic of Bulgaria. Most children who took part in the programme were accompanied. Every returning foreigner receives EUR 150 in cash and EUR 1,000 in kind for reintegration in the country of origin, which could cover potential medical expenses, access to education, repairs, etc. For

1 European Parliament and Council Directive 2013/32/EU of 26 June 2013 laying down common procedures for granting and withdrawing international protection (recast) OJ L 180, Art. 6(1).

2 Information obtained from Border Police Directorate General under APIA with Ref. No. 812100-13286 from 4 September 2014.

unaccompanied children, the International Organisation for Migration (IOM) attempts to contact the family in the country of origin and makes an assessment whether the situation is safe and appropriate for the child. IOM reported cases of unaccompanied Afghan children who were not returned because their parents refused to take them back.¹ In another 36% of cases, the CAM orders were executed. This includes involuntary transportation to the border of the Republic of Bulgaria² as there are no cases of expelled children for the period between 2012 and the first half of 2014.³ The MoI police authorities escort the minor and adolescent foreign nationals to/ from another country in case of expulsion, deportation and/ or repatriation.⁴ According to the Law for Foreigners in the Republic of Bulgaria, the execution of a CAM is subject to monitoring by the Ombudsman of the Republic of Bulgaria or by authorised officers of the administration.⁵ However, such independent monitoring is still not carried out and is set to begin in 2015.

According to BHC's Legal Aid for of Refugees and Migrants Programme, when CAM orders are executed, the persons are most often escorted to the border with Turkey or Greece. SAD's territorial units do not have the functional powers to monitor the execution of CAM orders imposed on children.⁶

When BPDG was asked again to clarify some issues concerning the execution of CAM orders, the MoI did not provide a firm answer whether unaccompanied children have been deported (coercively transported to the border). Despite the initially provided data on deportations, the additional information provided by the BPDG states: "Until now, the Migration Directorate has not deported children".⁷

Approximately 19% of the children have been returned under readmission agreements, signed between Bulgaria and other EU member states and third countries. In 2012, three minors were returned for subsequent readmission to the competent border authorities of the Republic of Greece,⁸ despite the fact that in 2012 the conditions of receiving migrants and asylum seekers in Greek detention places did not meet international standards. This is reported in critical reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and in many ECtHR decisions convicting Greece of inhuman and degrading conditions.⁹ The data for the same year indicate that another 23 minors have been returned for readmission but no information was provided on the countries to which they were returned or whether they were unaccompanied. Foreigners were most often returned to Greece, Turkey, Romania or Serbia.

1 Telephone interview with Radoslav Stamenkov, head of the mission of the International Organisation for Migration in Bulgaria on 17 December 2014.

2 Information obtained from Border Police Directorate General under APIA by Decision No. 812100-13286 from 4 September 2014.

3 Information obtained from Border Police Directorate General under APIA by Decision No. 812100- 25324 from 9 December 2014.

4 Instruction No. Iz-2019 of 9 November 2006 on the organisation and the procedures of having minors and adolescents escorted by the bodies of the MoI (hereinafter: Instruction No. Iz-2019) (2006), Art. 5.

5 Law on Foreigners in the Republic of Bulgaria (1999), Art. 39(a)(2).

6 Information obtained from the Social Assistance Agency under APIA by Decision No. RD014-141 from 21 November 2014.

7 Information obtained from Border Police Directorate General under APIA with Ref. No. 812100- 25324 from 9 December 2014.

8 *Ibid.*

9 Greek Council for Refugees (2013), Detention Conditions, available on: <http://www.asylumineurope.org/reports/country/greece/detention-asylum-seekers/detention-conditions>.

Suspended sentences

The principle of non-punishment under Article 31 of the 1951 Convention relating to the Status of Refugees was massively violated in 2013 by the prosecution and the criminal courts. Under Article 279 of the Criminal Code, illegal entry in the country is punishable. However, Article 279(5), which introduces a non-punishment rule similar to that of Article 31 of the Convention, exonerates the individuals who have crossed the border illegally in search of asylum. Until the beginning of 2013, the prosecutors from the judicial districts whose jurisdiction covered the Bulgarian-Turkish border, gradually increased the number of the criminal proceedings for illegal entry under Article 279(1) initiated against individuals who had submitted asylum applications, in a clear violation of paragraph 5 of the same legal provision.¹ This practice was encountered for the first time by the BHC in 2010.

When foreigners are detained at the border for attempted illegal crossing, they are charged under Article 279(1) of the Criminal Code. In such cases, most trials result in convictions because the crime under Article 279(1) is easy to prove from a formal point of view. The centres did not keep copies of sentences or terminated cases. The interviewed foreigners did not have copies of subpoenas or judicial papers and most of them had not appeared in court. In some cases, it was found that the convicting sentence was handed down with the complicity of the court-appointed lawyers who had accepted plea bargains by admitting guilt without duly notifying the asylum seekers they were supposed to protect. The foreigners found that they were convicted at a later stage of the procedure for granting status and international protection.²

Of all the people interviewed at SHTPF, only the father of a Syrian family explained that he had a copy of the court decision but said that he had not appeared before a court. He also did not know that he could have appealed the decision. Some of the interviewed families were represented by a lawyer but an interpreter was not always appointed.³ In 2013, the BHC did not have information regarding pre-trial proceedings initiated against children in SHTPF for illegal entry. According to information from BHC's Legal protection of refugees and migrants programme, there was one case in 2014 of a convicted unaccompanied child seeking asylum.

According to the BHC annual report on human rights in Bulgaria, during the first half of 2013, the share of refugees convicted of illegal entry in violation of Article 31 of the Convention and Article 279(5) of the Criminal Code had reached 48% of all registered cases.⁴ In October 2013, the Union of Judges and the Association of Prosecutors in Bulgaria held a conference on the proper application of Article 31 of the Convention and Article 279(5) of the Criminal Code. This had a positive effect on the case law of the prosecutor's offices and the courts. In early 2014, however, asylum seekers began to more frequently report that this vicious practice has been reinstated, this time by the prosecutor's office and the court in Petrich.

1.3. Judicial review and legal assistance

All foreigners are placed in SHTPF with a CAM order and a coercive placement order. The Law on Foreigners in the Republic of Bulgaria requires that every six months the head of the SHTPF send the administrative court in the location of the home a list of the individuals who have spent more than six months in the respective SHTPF.⁵ **Thus, in violation of the law, no**

1 Bulgarian Helsinki Committee (2014), *Human Rights in Bulgaria in 2013: Annual Report*, p. 67.

2 *Ibid.*, p. 67.

3 Criminal Procedure Code, Art. 21(2) stipulates the appointment of an interpreter. With regard to an individual who is not fluent in Bulgarian, the Criminal Procedural Code foresees compulsory translation and interpreting in a language known by him during the proceedings.

4 Bulgarian Helsinki Committee (2014), *Human Rights in Bulgaria in 2013: Annual Report*, p. 68.

5 Law on Foreigners in the Republic of Bulgaria (1999), Art. 46(a)(3).

periodical judicial review is foreseen for the families with children who may be placed for a maximum of three months.

The residents are not aware that they have the right to appeal the orders. The foreigners are also not informed of their right to free legal aid. Under the Legal Aid Act, a legal consultation aimed at reaching an agreement prior to the beginning of a trial or for initiating legal action is free and is provided to individuals seeking international protection under the Asylum and Refugees Law.¹ This holds true for both foreigners who have been imposed a CAM order and foreigners placed in a SHTPF under the Law on Foreigners in the Republic of Bulgaria, who wish to use a lawyer but cannot afford it.

In reality, however, legal aid is not accessible and is not provided to the individuals placed in SHTPF, including the asylum seekers. This is due mostly to the fact that no funds have been planned for this category of people in the 2013 budget of the National Legal Assistance Bureau.² The centres are also visited by private lawyers who are hired by the detainees for services, such as writing applications, seeking an external address (a house or a hotel), often for exorbitant fees. The price is set by the lawyer according to the financial capabilities of the client. **The lack of information about the procedures often results in the abuse of detainees' vulnerable position.**

Possibility of appeal

Under the Law on Foreigners in the Republic of Bulgaria, all CAM orders may be appealed under the Administrative Proceedings Code within 14 days.³ The appeal of an expulsion order does not stop its execution. In addition, the appeal of a CAM order does not prevent the issuance of an order for coercive placement in SHTPF until the barriers before the execution of the CAM order have been removed (Article 44(6) of the Law on Foreigners in the Republic of Bulgaria). There are no explicit statutory grounds⁴ for coercive placement, which is allowed on the discretion of the body issuing the deportation or expulsion order if there are obstacles to the execution of the CAM.

Article 46(a) of the Law on Foreigners in the Republic of Bulgaria stipulates that **the order for coercive placement in a special home** may be appealed within 14 days from the date of the actual placement, under the rules and procedures of the Administrative Proceedings Code. The appeal, however, does not stop the execution of the order. The court reviews the appeal in an open hearing and rules within one month of the date the case was lodged. The individual is not required to appear in court. The decision of the court of first instance may be appealed in the Supreme Administrative Court, which rules within two months.

No appeals of CAM and coercive placement orders have been registered in either the SHTPF in Busmantsi or the SHTPF in Lyubimets. The private lawyers contacted by researchers at the SHTPF in Lyubimets claimed that the appeals would not be successful because the CAM orders and the subsequent placement in SHTPF were lawful, even though most were asylum seekers. The interviewed foreigners were also unaware of the possibility to appeal the orders. The unaccompanied children included in the papers of adults also do not have the possibility to appeal their placement. Data provided by the BPDG indicates that no placement/ CAM involving children in the SHTPF in Busmantsi and Lyubimets has been appealed.⁵

1 Legal Aid Act (2006), Art. 21(1) and (2) and Art. 22(1)(8) and (9).

2 Bulgarian Helsinki Committee (2014), *Human Rights in Bulgaria in 2013: Annual Report*, p. 68.

3 Law on Foreigners in the Republic of Bulgaria (1999), Art. 46(1).

4 *Ibid.*, Art. 44(6).

5 Information obtained from Border Police Directorate General under APIA with Ref. No. 812100-13286 from 4 September 2014.

1.4. Material conditions

The buildings of the SHTPF in Lyubimets were in a considerably better condition than those in Busmantsi because the centre was opened in 2011.¹ Both centres had two separate wards for women and families and for single men.

In September 2013, the BHC established overcrowding in both centres due to the increased flow of refugees and migrants. Overcrowding in the centres resulted in transforming some recreational rooms into dormitories. In some premises, the families slept on mattresses on the floor. The average size of the rooms for families with children and single women was 20-35 square metres and the number of residents exceeded the number of beds available, forcing the children to share a bed with their parents. Often several families had to share a single room with no personal space. They used bed linen or blankets to separate part of the room for private space. More than ten families were accommodated in the bigger bedrooms (40-50 square metres). The rooms for men were usually bigger and equipped with double bunks. On average, they housed 20 to 30 residents which created additional tension between the foreigners.

Due to the exceeded capacity, the sanitary facilities, especially those in the men's ward, were not well-maintained despite the fact that both the cleaning staff and the residents maintained hygiene. Toilets were insufficient on some floors in both centres where more people were accommodated. The sanitary facilities were not ventilated well and the humidity had resulted in mould and mildew on the walls. The toilets were used to wash dishes and clothes. In some bathrooms, there were broken, and hence, unusable, taps, showers or urinals. The bathrooms in the men's ward had no separation walls, further depriving the residents of personal space. **A second assessment of the facilities could not be performed because in May 2014 BHC's Monitoring and research programme was refused access to SHTPF.**

Until July 2014, the food at the SHTPF in Lyubimets was cooked in a kitchen in the home and was consistent with the ethnic preferences and the age specifics of the minor detainees. Since then the food has been provided by a catering company and there is no special menu for minors.

1.5. Health care

Health care for detainees is provided by the medical units of MoI's Medical Institute in the homes. The medical units are open 24 hours and are staffed with a doctor, a feldsher and a nurse. During the 2013 visits, most detainees were examined in the centre's medical unit. In case of complications or when specialist examinations are needed, the foreigners are referred to the Medical Institute, an outside hospital or the emergency medical service. For the SHTPF in Lyubimets all necessary tests were conducted in the multi-profile hospital in Svilengrad, and for the SHTPF in Busmantsi - in the MoI hospital.²

The regulations require that the foreigners undergo a general medical examination at the time of their arrival at the SHTPF. Asthma, epilepsy and diabetes were common diseases among the residents in 2012 and 2013. Various cases requiring special attention have also been registered: pneumonia, swollen broken hand and pregnancy. A total of ten children at the SHTPF in Busmantsi were diagnosed with serious diseases in 2012, eight in 2013, and

1 Dnevnik (2011), "New refugee centre opened in Lyubimets", 15 March 2011, available on: http://www.dnevnik.bg/bulgaria/2011/03/15/1059251_otkriva_se_nov_centur_za_bejanci_v_ljubimec/.

2 Information obtained from Border Police Directorate General under APIA with Ref. No. 812100-25324 from 9 December 2014.

seven in the first half of 2014.¹ Cases of foreigners infected with hepatitis B and C and HIV were also observed.

The medical units had barred medical isolation rooms, and once placed, the detainees were not allowed to walk freely in the hallways. The home in Lyubimets had two medical isolation rooms. During the visits, they were occupied by 10 to 15 individuals suffering from infectious diseases or mental disorders. The psychologists at the SHTPF in Busmantsi said that there is a trend towards an increase in the number of people with mental disorders such as schizophrenia or depersonalisation. The people with mental disorders do not receive adequate care at the homes and should be referred to specialists. When someone is diagnosed with an infectious disease, they are transported to the infectious ward of the multi-profile hospital in Haskovo.

The language barrier was identified as the main obstacle to providing quality medical care.² Foreign volunteers usually act as interpreters. About 70 residents are examined daily and the examination is slowed by the language barrier. The medical unit has had difficulties in dealing with cases of scabies, lice and bedbugs, which plagued the detainees. Providing dental care to detainees is extremely difficult. The psychologist at the SHTPF in Busmantsi also said that there were cases of self-inflicted injuries but no suicide attempts. Hunger strikes were organised in 2013 to protest against the conditions.

While the medical unit receives its supplies from the Medical Institute, both the staff and the foreigners were **worried by the lack of medicines**. Detainees also complained that the medical staff **did not pay enough attention** to their complaints.³ **The lack of medical documents for foreigners** suffering from chronic diseases such as diabetes was a serious obstacle to adequate treatment. People suffering from chronic diseases were often required to buy their own medicines as these were not provided. The National Preventive Mechanism (NPM) also found a problem with the immunisation status of the detained children.⁴

BHC's Legal protection of refugees and migrants programme has on multiple occasions found a temporal discrepancy between the registration of the asylum application and the personal registration of the asylum seeker. Due to this delay many asylum seekers placed in SHTPF, including children, had no access to social assistance and health insurance. Article 29 of the Asylum and Refugees Law stipulates that during the procedure the foreigner has the right to stay in Bulgaria, the right to shelter and food, social assistance, health insurance, psychological assistance, a registration card and an interpreter. **This means that the rights of families with children, or of unaccompanied children, have not been guaranteed due to limited access to the asylum procedure.**

The psychological assistance to detainees is insufficient. Two psychologists consult about 100 to 150 individuals daily. This raises questions about the quality and the efficiency of the assistance provided. The psychologists assess the actual status and the risky behaviour of the foreigner. All this is noted in the foreigner's survey card. Psychologists at the SHTPF in Busmantsi also said that the main problem with the detainees is that they are not informed about the placement, the duration of the stay and the exit. The language barrier is often insurmountable despite the fact that the detainees have selected interpreters from amongst themselves.

1 An information request was sent regarding the types of diseases but data was provided only regarding one child, who had a heart disease. Information obtained from the Border Police Directorate General under APIA by Decision No. 812100-25324 from 09 December 2014.

2 Ombudsman of the Republic of Bulgaria (2014), *2013 Annual Report of the Ombudsman of the Republic of Bulgaria for His Activities as a National Preventive Mechanism*, p. 16.

3 Also established by the National Preventive Mechanism. *Ibid.*

4 *Ibid.*

In the psychologists' opinion, the placement of children in SHTPF burdens the system and the staff because they are unable to deal with minors or adolescents who require specialised support. These children have often experienced severe trauma and violence and need specialised support. The detention further augments the adverse effect on their development.

1.6. Activities and education

Ordinance No. I-13 of 29 January 2004 on the procedures for temporary placement of foreigners, the organisation and the functioning of the special homes for temporary placement of foreigners does not regulate the issue of access to education. Respectively, **the homes do not offer educational activities or vocational training. Bulgarian language courses are also not provided** at the homes. Under Article 26 of the Asylum and Refugees Law, minor and adolescent asylum seekers (i.e., most of the children placed in SHTPF in 2012-2014) have the right to education and vocational training under the same conditions as Bulgarian citizens. Generally, minors and adolescents need to be given immediate access to education, vocational training and social and educational consultation regardless of their status and should be immediately provided an opportunity to enrol in a school and be given effective access to Bulgarian language courses.

The homes have recreation rooms with TV sets, as well as two prayer rooms for Christian and Muslim believers. Only the SHTPF in Lyubimets has a computer room but without Internet access. This makes it impossible for the foreigners to communicate with their relatives or inform themselves about their rights. Some residents have radios. The homes have two field courts but no playground. The children placed in closed institutions must have playgrounds and access to different activities, which is currently not the situation in the SHTPF in Busmantsi and Lyubimets.¹ Due to the shortcomings of the child protection system, there are no social workers at the homes.

1.7. Contacts with the outside world

Foreigners placed in SHTPF have the right to be visited twice a week. Visitors are required to announce their visit in advance.² Visitors most often include relatives or friends who have left the detention facility earlier. The detainees can call their family or relatives. Everyone has a phone without camera provided by the facility. The foreigners can also use a public phone in the facility operated by phone cards, bought with the help of staff.

The detainees have the right to meet a lawyer or representatives of the consular services. The homes are visited by private lawyers almost daily. Contact with the consular services is arranged on request by the foreigner. The homes are also visited by non-governmental organisations such as the Bulgarian Red Cross, the UNHCR and the BHC but the access of other organisations is hindered. No contact information is provided about organisations or institutions other than the BHC, the UNHCR or the Bulgarian Red Cross, to which the child and his family could address their complaints.

1.8. Disciplinary practices

The disciplinary measures foreseen in the Regulation on the Internal Rules at the Special Homes for Temporary Placement of Foreigners include oral reprimand³ and confinement in a

1 *Ibid.*

2 Migration Directorate (2012), Ordinance on the internal rules governing the special homes for temporary placement of foreigners at the SHTPF Department, Migration Directorate, MoI (hereinafter: Ordinance on the internal rules for SHTPF).

3 *Ibid.*, Art. 50(5): Oral reprimand shall be imposed by an interviewer, platoon commander, squad commander, assistant interviewer or the duty officer at the operative duty unit of the Migration Directorate.

secure single room.¹ In reality, the oral reprimand is never used in the SHTPF and the lack of a wider spectrum of disciplinary measures (from less severe to more severe) consistent with various offences might result in abuse of confinement in a secure single room, which should only be used as a last resort. Confinement in a secure single room is usually used in incidents, involving clashes between the police and the detainees or in other crisis situations, such as strikes and self-inflicted injuries. BHC did not find such cases involving children. There is no information regarding disciplinary measures imposed on minors and adolescents in SHTPF.²

The SHTPF in Busmantsi has seven disciplinary cells; two are single, the others have four beds each. The single rooms are equipped only with a mattress on the floor and a blanket. Every room has a small barred window, which lets in sunlight. During the 2013 visit, one of the single rooms was occupied by an adult foreigner. The SHTPF in Lyubimets has three disciplinary cells: a larger one of approximately ten square metres and two smaller ones of approximately five square metres each. The rooms are windowless and natural light does not get in. There was a mattress in only one of them. According to the staff, mattresses are placed when someone is confined.

Upon imposing the single room confinement measure, a protocol is prepared and a log is completed for the placement and duration. The protocol contains the name of the person confined, the reason for the confinement and the signature of the head or the officer who has authorised the confinement. The duration of the stay is not defined in advance. The maximum stay is 15 days. **Minors and adolescents cannot be confined except for transit purposes.** There was a case where a group of children had spent no more than six hours in confinement before being transferred to another location (the case was not registered in the log book).

The termination of the measure is proposed by an administrative activity specialist, a psychologist, an interviewer or a police inspector. After their confinement, the foreigners are visited daily by interviewers or psychologists, who determine the duration.

The ordinance on the internal rules defines the behaviour that constitutes a disciplinary offence, the type and the duration of the punishment that can be imposed and the bodies competent to impose such punishment. **However, there are no procedures for the detainees to appeal their confinement or stay in the secure single room, which constitutes a violation of Rule 68(b) and (d) of the Havana Rules.**³ According to the Havana Rules, there should be bodies, where detainees can lodge an appeal. The foreigners are also not provided a written copy of the decision to impose the punishment.

According to staff and the information provided by the Migration Directorate, **no restraint was used against children at the SHTPF in Lyubimets and Busmantsi.** No SHTPF staff have been subject to disciplinary measures for abuse and mistreatment of children.

1.9. Personnel

The 152 staff of the SHTPF in Lyubimets and the 145 of the SHTPF in Busmantsi are divided in shifts so as to provide 24-hour coverage.⁴ Police security officers account for most of the staff. The homes also employ psychologists, medical personnel, interviewers, general workers, etc. There are no employees specialised in working with children, such as social workers.

1 *Ibid.*, Art. 50(4): Confinement in a secure single cell shall be imposed by the head of section SHTPF or an officer designated by him or by the duty officer at the operative duty unit of the Migration Directorate.

2 Information obtained from the Border Police Directorate General under APIA with Ref. No. 812100-13286 from 4 September 2014.

3 Havana Rules, Rule 68.

4 Information obtained from the Border Police Directorate General under APIA with Ref. No. 812100-25324 from 9 December 2014.

Some of the employees at the SHTPF in Busmantsi and Lyubimets have undergone trainings, which were provided by NGOs. The topics of the trainings were on early identification of traumatised people and victims of torture, professional burnout (FICE Bulgaria), challenges in working with foreigners in need of international protection and language training (BHC and UNHCR). Training sessions for the staff of the Migration Directorate are organised more often.

1.10. Inspections

The special homes are subject to control, including inspections by the Medical Institute and by external, independent organisations. According to information provided by the Sofia regional health inspectorate, the Medical Institute of the Ministry of Interior conducts a hygienic and epidemiological inspection, aimed at controlling the living, sanitary and hygienic conditions and includes:

- examining samples of food provided to the foreigners in the last 24 to 72 hours;
- inspections of canteens, bathrooms, toilets, etc.;
- daily hygienic inspections in the foreigner ward.

Between 2012 and the first half of 2014, the State Health Control Section of the MoI has conducted 39 inspections at the SHTPF in Busmantsi (which ended with five instructions). The review of the instructions showed that no violations had been found regarding the hygienic conditions, which was somewhat surprising given that upon the monitoring of the physical conditions of the men's ward, and more specifically its toilets and shower rooms, huge amounts of mould could be seen on the walls and ceilings. There is no information about the inspections conducted at the SHTPF in Lyubimets. According to data provided by the Medical Institute, the hygiene and the disinfection are assigned to cleaning staff.¹ **The results and the findings of the inspections and checks conducted by MoI units are not announced publicly.** Thus, even if violations were found, the public would not learn about them and would not be in a position to require their elimination.

In terms of external inspections, the SHTPF in Lyubimets was inspected in 2013 by the Ombudsman of the Republic of Bulgaria in his capacity of National Preventive Mechanism. In the 2012-2014 period, the CPT has visited only the SHTPF in Busmantsi. In 2010, the CPT issued special recommendations and findings about special homes for temporary placement of foreigners.² The recommendations included the following: the asylum seekers should be deprived of liberty only as a last resort and, if detained at SHTPF, should be separated from the migrants with irregular status to prevent violence between the detainees; the homes should exert more vigilance to prevent violence between the detainees; to guarantee a minimum living space of four square metres per person; to restore the broken furniture and to maintain the sanitary facilities; to provide sufficient funds for repairs; to guarantee access to the sanitary facilities at any time of day or night; to provide sanitary materials for maintaining the personal hygiene of the detained; to observe/ guarantee the feeding habits/ needs of the detained; to include the detained in preparing the menu; to provide varied leisure time activities, more books, newspapers in different languages; to repair the broken TV sets and allow the detainees access to TV programmes in other languages; to provide shelter for the outdoor exercise facilities; to provide opportunities for physical activity; to provide sufficient medical staff; to guarantee the right of the detained to an unlimited and relatively fast access to a doctor and to external specialists, including dental care; to provide interpretation when

1 Information obtained from the Ministry of Interior, Medical Institute under APIAwith Ref. No. 812100-12939 from 2 September 2014.

2 CPT (2012), *Report to the Bulgarian Government on the visit to Bulgaria carried out from 18 to 29 October 2010*, p. 24.

the medical personnel is unable to communicate with the foreigners, in order to be completely informed about medical interventions; to strengthen the provision of psychological assistance at SHTPF; to develop additional specialised training for SHTPF staff; to improve the communication channels between the SAR and the SHTPF in order to better inform the detained foreigners about their situation; to provide access to qualified interpreters; to guarantee effective legal assistance to the residents, including those facing deportation/expulsion, as well as judicial review of the lawfulness of detention, including an oral hearing with legal assistance.¹

The children in SHTPF are not recognised as vulnerable by the state institutions. The SAA and the SACP do not exercise institutional control over the functioning of the SHTPF, the conditions in them and the treatment of minors and adolescents. In reality this means that there are no inspecting bodies exercising constant and timely control over respect for children's rights in SHTPF.² This, unfortunately, paves the way for violations and abuse. According to the SACP annual report, the agency has monitored since 2012 the protection of unaccompanied children asylum seekers from third countries but not of children migrants who are also detained in SHTPF.³ Directive 2013/33/EU⁴ stipulates that children can be detained only as a last resort, when other, less restrictive measures have been examined, and for the shortest time possible. Social measures should be applied to minor or adolescent foreigners. The European Parliament's Committee on Civil Liberties, Justice and Home Affairs recommends that every member state be held responsible to identify the unaccompanied minors and adolescents and to refer them to specialised institutions, such as social and educational institutions, immediately after their arrival.

The State Agency for Child Protection needs to play a greater role in the independent monitoring of the detention, duration and the receiving conditions of minors and adolescents, including unaccompanied ones. Also, the role of the social activities in closed institutions is of paramount importance for minimising the negative psychological effects of the detention.

1 *Ibid.*, pp. 24-30.

2 The Minister of Interior does not have any special functions with regard to ensuring respect for the rights of the children. Under the Child Protection Act, the minister's responsibilities in his capacity of a protective body are to: „a) provide police protection to a child through the specialised bodies of the Ministry of Interior; b) participate in providing specialised protection of children in public places and in exercising control thereof; c) exercise control on the crossing of the Bulgarian state borders by children“. Child Protection Act (2000), Art. 6(a)(4)(2)

3 State Agency for Child Protection (2013), *SACP 2012 Annual Report*, p. 18, available on: http://sacp.government.bg/media/cms_page_media/22/LASTT_DOKLAD-DAZD-2012godina_1.doc

4 European Parliament and Council Directive 2013/32/EU of 26 June 2013 laying down common procedures for granting and withdrawing international protection (recast) OJ L 180, Art. 11(2).

2. TRANSIT CENTRES AND REGISTRATION AND RECEPTION CENTRES

The facilities in which unaccompanied and accompanied children asylum seekers are held in the country are, in most cases, utterly deplorable. They are plagued by overcrowding, ineffective separation of boys and girls, and lack of adequate care. The facilities for the placement of unaccompanied children are not appropriate and there is no possibility for integration. Until now, no coordination mechanism on working with unaccompanied children has been established and, apart from data collected by the Automated Information System (AIS) for Refugees for the purpose of refugee asylum procedures, there is no integrated database of unaccompanied children. Since the establishment of the Bulgarian national refugee system in 1993, unaccompanied children asylum seekers are not appointed legal guardians or trustees to take care of their interests, in direct violation of legislation. Unaccompanied children are not represented by a lawyer during the procedures, which are held only in the presence of a social worker. The presence of social workers during the procedures is completely perfunctory, sometimes non-existent, and their training for working with such children is inadequate. The refugee centres do not provide access to education and meaningful activities for the social and cultural development of the children placed there. Contacts with the outside world are extremely limited. Medical services are not at the level required. Centres do not provide professional psychological and social support to the children and lack sufficient and properly trained personnel to work with such children.

2.1. General information

Accompanied and unaccompanied children asylum seekers are placed in transit centres (TC) and registration and reception centres (RRC). These centres are managed by the State Agency for Refugees (SAR). By 2014, more than 2,000 children who have sought, or received asylum, were living in Bulgaria.¹ Most of them are accompanied by their parents or relatives but some are unaccompanied, which place them at considerable risk and should be identified as an extremely vulnerable group. Their safety, especially during proceedings on the assessment of their asylum application or after they have been awarded status, is endangered and there is minimal respect for their rights.

European Union legislation recognises the need for heightened care and measures to ensure respect for children's rights. Under the UN Convention on the Rights of the Child, the Treaty on the EU and the EU Charter on fundamental rights, member states are obliged to protect the rights of all children on their territory and to ensure their physical and mental health and social wellbeing. The number of children seeking asylum in Bulgaria has increased over the past year. A total of 183 unaccompanied children had filed asylum applications by the end of

¹ Bulgarian Council on Refugees and Migrants (2014), *Advocacy guidelines, access to international protection of refugee children in the Republic of Bulgaria*.

December 2013.¹ In 2014, this number reached 940. The placement facilities of the SAR are open institutions but the persons placed in them are not allowed to leave the centres until they are issued or re-issued a refugee registration card.

2.2. Placement

At the time of placement, each child must be with their family, relatives or acquaintances as per law or custom, given that this does not violate his or her rights. Unaccompanied children seeking or receiving protection should be appointed a **representative who must ensure the provision of the necessary care and protection**. This representative must be specially trained; they should tutor, represent and assist the child to ensure access to their rights and perform their obligations. Under the new requirements, member states are required to make individual assessments to determine unaccompanied children's specific needs of placement.² **Nevertheless, the assessment of unaccompanied foreign children residing in Bulgaria does not take into account children's specific individual characteristics.**

Under European legislation, when all possible options of placement with relatives and next-of-kin have been exhausted, the children are placed in centres specialised in accommodating children or in other appropriate facilities. Children aged 16 or more **may be also placed in centres for adult asylum seekers** if this is not inconsistent with the child's specific interests. In any case, siblings must not be separated, if possible, and changes in the place of residence of unaccompanied children must be kept to a minimum. Bulgarian legislation stipulates that the initial placement must be carried out as a temporary administrative placement by order of the director of the Social Assistance Directorate at the child's current residence, regardless of whether the child is placed with a family, in foster care or a specialised institution. In this case, the child's current residence shall be the address of the SAR's local division where the unaccompanied child is registered.³ In Bulgaria, placement in institutions specialised in caring for children deprived of parental care is only applied to individual cases of younger foreign minors accompanied by next-of-kin or relatives. Such cases are an exception also because unaccompanied children in Bulgaria are mostly adolescents aged 14 to 17.

The registration and reception centre in the village of Banya is designated to accommodate **vulnerable persons and unaccompanied children asylum seekers**. The centre is in a far-flung and extremely isolated location, which makes it **completely inadequate to accommodate children**. It offers **no integration opportunities** to unaccompanied children and cases of **violence among them are growing**. This makes the children vulnerable to different risks, such as trafficking, exploitation and homelessness.⁴ By definition, **unaccompanied children are children at risk** under the Child Protection Act because they are in a country different from their country of origin, are not accompanied by their parents or other next-of-kin and relatives, do not speak the language of the host country, are placed in a foreign environment and have dropped out of the education system.⁵

On a national level, there is **no coordination mechanism on working with unaccompanied children**, despite the fact that the State Agency for Child Protection (SACP) established a

1 Bulgarian Helsinki Committee, Legal protection of refugees and migrants programme (2013), *Annual monitoring report on the international protection granting procedures in Bulgaria in 2013*.

2 In Directive 2011/95/EU, Directive 2013/33/EU and Directive 2013/32/EU, the European Commission proposes higher protection standards for unaccompanied children, paying special attention to the transposition of the respective provisions on unaccompanied children.

3 Asylum and Refugees Act, Art. 84(2).

4 Bulgarian Helsinki Committee, Legal protection of refugees and migrants programme (2014), *Annual monitoring report on the international protection granting procedures in Bulgaria in 2014*.

5 The provisions of the Child Protection Act stipulate that, when necessary, adequate protection measures and measures to ensure the safety of each child at risk within the Republic of Bulgaria shall be applied.

working group in 2014 appointed to this task. The State Agency for Refugees, the Migration Directorate and the Border Police Directorate General of the Ministry of Interior, the Social Assistance Agency of the Ministry of Labour and Social Policy and the State Agency for Child Protection do not have an integrated database of unaccompanied minors.

2.3. Representation of unaccompanied children

As stated in BHC's annual report,¹ 940 unaccompanied children have applied for asylum in Bulgaria in 2014. Compared to the previous year, this is an 80% increase. In 2014, **all the SAR procedures involving unaccompanied children were again held only in the presence of a social worker.**² In the administrative phase, legal aid to unaccompanied children seeking asylum was not provided; **unaccompanied children were not represented by a lawyer as a procedural representative in all of the monitored SAR procedures.** This is a violation of the **European minimum standards**³ on common procedures for granting and withdrawing international protection in EU member states.

Procedures involving unaccompanied children, and held even in the absence of a social worker, occurred more frequently in 2014; such were 5% (20 cases) of the procedures monitored.⁴ It was found that social workers did not provide any real assistance and did not intervene when necessary during the interview of the child. **Their presence in the procedures was entirely perfunctory.** In the first half of 2014, only one social worker was responsible for these activities at the RRC in Sofia, which resulted in an additional delay in carrying out interviews of unaccompanied children and procedural actions. In some cases, **the procedural actions were carried out in the absence of a social worker.** In procedures carried out at the RRC in Banya, where most of the unaccompanied children were placed in 2014, not a single procedure was held in the presence of a social worker. In other words, 100% of the procedures involving unaccompanied children at the RRC in Banya were carried out without even the perfunctory presence of a social worker, rendering them unlawful. The social workers responsible for the procedural actions **are not adequately trained.** The RRC in Harmanli and the TC in Pastrogor were provided social workers in 2014; however, they had not undergone preliminary training on the specificities of the asylum procedure and the specific problems of unaccompanied children asylum seekers. The interviews **are not held in an atmosphere of trust** and the children are not predisposed to tell their story in calm surroundings commensurate with their age. According to a BHC report,⁵ children have signed a handwritten protocol prepared by the social worker without being informed of its contents and purpose, and without it being translated into the respective language by the SAR interpreter present during the interview. In the RRC in Sofia, it was common practice to make the child sign, at the end of the interview, a handwritten protocol prepared by the social worker, certifying that the child was present during the interview; the contents of the protocol, however, were not read aloud or translated by an interpreter.

2.4. Material conditions

With the exception of the newly built TC in Pastrogor, the buildings housing the visited refugee centres are old, although subsequently reconstructed for living purposes, and in poor

1 Bulgarian Helsinki Committee, legal protection of refugees and migrants programme (2014), *Annual monitoring report on the international protection granting procedures in Bulgaria in 2014*.

2 Asylum and Refugees Act, Art. 25(5).

3 European Parliament and Council Directive 2013/32/EU of 26 June 2013 laying down common procedures for granting and withdrawing international protection (recast) OJ L 180.

4 Bulgarian Helsinki Committee, Legal protection of refugees and migrants programme (2014), *Annual monitoring report on the international protection granting procedures in Bulgaria in 2014*.

5 *Ibid.*

physical condition. In the RRC in Harmanli, children are accommodated with their parents and relatives in buildings or trailers designated for families, single mothers and women. The family building offers the best conditions but **overcrowding and lack of effective separation still exist**. Three, five and more family members share a space of several square metres. The families sleep, cook, eat, keep foodstuffs and personal items and co-habit in a single room. New-born and infant children are raised in small and overcrowded premises. The TC in Pastrogor and the RRC in Banya were also overcrowded at the time of the monitoring visit.

The residents maintain the hygiene of the dormitories and in some places it is very unsatisfactory. In the TC in Pastrogor, the sleeping area of a disabled single father with two children, located in the centre's medical isolator, was utterly unhygienic. Despite the good condition of the facility, the two small children and their father were accommodated in a room with chaotically dispersed objects and poor hygiene because their father was incapable of effectively cleaning the room. The rooms of the children at the RRC in Banya have wet and mouldy walls and there are insects and parasites. The mattresses are old and the linen worn. Overall, **hygiene at the refugee centres' premises is neglected**, especially in the facilities in Harmanli and Banya. Staff at the TC in Pastrogor claim that residents are given sanitary supplies (brush, shaving cream, sanitary napkins, toilet paper, soap and washing powder) at the time of reception and at regular intervals afterwards.

For most foreign citizens placed in the refugee centres **the sanitary facilities are shared and insufficient**. The only exceptions are the trailers at the RRC in Harmanli, the rooms for single mothers with children and the solitary confinement units transformed into family bedrooms at the TC in Pastrogor; all these have their own bathrooms and toilets.

The residents designate places for washing and drying clothes. Adolescents from the RRC in Banya say that washing machines are available in the facility but they are not allowed to use them to wash their own clothes. The washing machines are only used to wash linen. The children wash their clothes in the absence of appropriate conditions, which results in humidity and mould in the living premises and damage to walls and floors. The only exception is the TC in Pastrogor, which has a courtyard with laundry lines; and the residents have access to washing machines for personal items. The residents of the refugee centres **have their own clothes** but in most cases these are insufficient. The supply of new and used clothes is provided only through donations and not through the SAR. Families and single mothers complain about the **lack, or insufficiency, of children's clothes and diapers for new-born and small children**.

The bedrooms have access to natural light but **lack ventilation and cooling**. The residents obtain their own electric heaters and use them in the bedrooms in winter but say that the heating is inefficient and that they often get sick. Some bedroom windowpanes at the RRC in Banya are broken and there is no heating in the common areas and premises.

In most cases, the residents testify that **food quality is poor and its quantity is insufficient**. Children asylum seekers who were interviewed say that they are dissatisfied with the food. Most complaints come from the RRC in Banya. Unaccompanied minors placed there say that food quality is very poor and access to food is limited. Twice a day (at noon and at 16.00), from Monday to Friday, residents are given food cooked in the centre. Weekend rations are given to them at the end of the working week. According to a family with three children placed in the RRC in Harmanli, the food is diluted with water to allow for more portions. The family say that the staff at the Harmanli centre allow the residents to distribute the food. This creates tension due to its unequal allocation. The food for the centre is delivered from the TC in Pastrogor where it is cooked. Families interviewed at the TC in Pastrogor say the food they get is insufficient. Single mothers from the same centre complain of lack of sufficient and appropriate food for new-born and small children.

The residents, including families and unaccompanied children, have access to food beyond meal times.¹ It is provided by donations and/ or social assistance or residents buy it with their savings. Many asylum seekers cook their own food as, in their own words, the food provided is inappropriate or insufficient. **There are no adequate facilities for cooking and storing food.** Residents cook in the bedrooms or in the hallways, adapting and equipping areas with stoves. There are no refrigerators and adequate food cooking and storage facilities, which creates health risks. At the RRC in Banya, some of the resident unaccompanied minors store food in a broken, mouldy refrigerator. They use an old and dirty stove in a hallway and cook their food in very worn crockery.

Refugee centre residents say that they receive social assistance of BGN 65 per month (EUR 33.24) for the duration of the asylum procedure, until status is granted or denied. Should status be granted, the social assistance is terminated and residents have the right to stay in the centre for another six months. According to the SAR data, 850 persons who have been granted status are still living in the SAR's premises because **there is no programme for the initial integration of refugees; and the refugees have no means to sustain themselves or obtain accommodation.** Upon the expiration of the six months period, the refugees must register at an outside address and leave the centre. According to an employee at the TC in Pastrogor, the residents who have been granted status do not receive social assistance although they do receive free food regardless of their status. There is a lack of follow-up and integration services after status is granted, particularly after the expiration of the six months following status approval.²

2.5. Activities and education

The state must provide appropriate reception conditions so that children seeking or granted asylum have access to leisure activities, games and entertainment appropriate for their age, including open-air activities, at the placement centres.³

The refugee centres lack organised activities for children. A family with three children told interviewers that the centre does not organise activities for the children placed in the RRC in Harmanli. On the other hand, the Bulgarian Red Cross⁴ organises activities for children placed in the centre in Harmanli. An employee at the centre said that toys and other materials provided have disappeared. At the time of the visits to the refugee centres, the only option available to the children was to engage in free, unorganised games. **The refugees organise their own activities for the children.** The Harmanli centre houses an old open-air cinema in disrepair. It is used as a stage where the children, organised by the residents, celebrate Children's Day. Unaccompanied minors say that organised activities are not available at the RRC in Banya and that no one pays attention to them. According to the children, the centre's personnel do not attempt to communicate with them. Communication occurs "only if they [the staff] need something but not the other way around".⁵

1 In some cases, such as that of a family with small children placed in the RRC in Harmanli, the residents have spent their savings, do not receive social assistance and rely on cooked food provided to them by the centre.

2 Most of the foreign citizens have been granted humanitarian status for a period of three years and may not leave the country. The remainder have been granted refugee status for a period of five years and are free to travel in Europe. An employee at the Pastrogor centre claims that African citizens are denied status more often.

3 Bulgarian Helsinki Committee, Legal protection of refugees and migrants programme (2014), *Access to international protection of refugee children in the Republic of Bulgaria*.

4 The Bulgarian Red Cross is the only national organisation of the Red Cross in Bulgaria. It operates in line with Bulgarian legislation, the provisions of the Geneva Conventions of 12 August 1949, the Additional Protocols to them of 8 June 1977, and the basic Red Cross principles as established by the international conventions on the Red Cross.

5 Interview with unaccompanied children during a BHC team visit to the RRC in Banya on 4 June 2014.

The courtyards of the RRC in Harmanli are **inhospitable and dangerous for the large number of children placed in this centre**. There are no recreational installations, such as playgrounds and sports fields. Interviewed parents say that children get sick from the dust they breathe when playing outside. Courtyards are not cleaned and reptiles, such as snakes, dangerous to children, may be found in the grass. The condition of the areas surrounding the centre's buildings is very bad. The areas are overgrown with vegetation and littered with refuse and demolition debris, which pose a danger to the children's health and life. The residents have created a volleyball court where they exercise. At the TC in Pastrogor, the residents clean the courtyards, while the staff has created a duty roster for the removal of litter around the buildings. Only the refugee centres in Pastrogor and Banya have specifically designed playgrounds.

Bulgarian language courses are offered at the centres. This opportunity is provided by Caritas, a Sofia-based non-governmental organisation. Two Bulgarian volunteers are teaching Bulgarian at the RRC in Harmanli. An interviewed teacher said that the number of students was not fixed and was changing constantly. In her opinion, the most interested students were those planning to stay in the country. As of March 2014, there are four Bulgarian learning groups at the TC in Pastrogor. According to the Centre's employees, persons of African origin are most interested in education. The RRC in Banya offers Bulgarian language training but some interviewed minors say that they are not interested in learning the language because they do not plan to stay in the country. **Children placed in refugee centres have no access to community schools and their education is suspended**. The Syrian children at the RRC in Harmanli have the opportunity to be educated by volunteer Syrian teachers. No such opportunity is available to the children who speak languages other than Arabic, as well as the children placed in the other two centres. Interviewed parents say that their children suffer from a **lasting deprivation of access to education**. An Iranian family placed in the RRC in Harmanli complains that the centre does not provide educational opportunities for their two younger sons. There are no courses for small children, so they cannot learn Bulgarian or continue their education in Persian. The situation at the TC in Pastrogor is similar.

2.6. Contacts with the outside world

Contacts with the outside world are limited. They are carried out to a great extent through interpreters provided by the respective centre. Nevertheless, there is a tangible lack of interpreters from key languages at all refugee centres, with the situation being worse outside Sofia. The RRC in Harmanli has only interpreters from Arabic but none from Persian and Dari. There are more than 20 Persian speakers at the centre, who are not provided any interpretation. The centre in the village of Pastrogor lacks full-time interpreters. It holds online conference calls with interpreters from the RRC in Ovcha Kupel, Sofia. An interpreter from Arabic is a key employee at the RRC in Banya. The centre has insufficient interpreters from Farsi and Pashto. Interviews are held via online video calls with an interpreter. The staff say that as a result of the lack of interpreting services relatives are often separated from each other during their distribution in the centres.

Going outside the refugee centres is regulated. To travel outside the centres, refugees need to be issued a registration card by the SAR. However, if this is delayed due to the lack of an interpreter, the free movement of asylum seekers is in reality limited and they are not allowed to leave the centres. An Afghan family with a minor child testifies that they are not permitted to leave the RRC in Harmanli because they have lost their documents. When the family was being transferred from the special home for temporary placement of foreigners in Sofia's Busmantsi neighbourhood, to the RRC in Harmanli, they were not allowed to take their personal belongings, including the documents in their possession. The family has not left the centre for two months. Their only contact with the outside world is with teachers from the school, at-

tended by their son. The family has no money and the lack of documents means that they have no right to social assistance. They have no right to phone calls at the expense of the refugee centre.

For the remaining asylum seekers, the main problem is the difficult access to the adjacent towns and cities from the centre. The residents of the TC in Pastrogor have to walk more than a kilometre to reach the village. **No transportation is provided to either the village or any other community.** To travel to Svilengrad, more than 10 kilometres from the refugee centre, residents need to either call a taxi or walk. In interviews, they say that in emergencies, involving the transportation of sick people to the city polyclinic, they had to pay sums they cannot afford. In urgent cases, asylum seekers rely on the assistance of non-governmental organisations but only BHC and the Bulgarian Red Cross maintain a regular presence in remote centres such as those in Banya and Pastrogor.

2.7. Health care

The RRC in Harmanli **lacks medical staff.** An employee claims that a Syrian emigrant with a medical background will provide medical services to the centre's residents. The Syrian asylum seeker came recently to the country and is awaiting status. The medical office was not operating during the BHC team visit. Several people, including mothers with children, were waiting at its door but no one knew whether or when it would open. It was also expected that a nurse and a paramedic would arrive at some point. According to an employee at the centre, "local general practitioners do not wish to work with refugees."¹ They say that health care is provided to the residents by the Bulgarian Red Cross and the medical emergency services in town. Through a request, issued by the Bulgarian Red Cross, in which the persons state that they have received medicines and sign to this effect, they may receive free medicines from certain pharmacies in town. An Iranian family with three children residing at the centre

The case of A.

The four-year-old sick child, B., was taken by his parents to the medical office in the TC in Pastrogor. The doctor and the paramedic were on a leave so the only staff member present was the nurse. No interpreter was available at the centre at that time. The BHC research team's interpreter was able to translate. The child was almost unconscious. The thermometer used to measure his temperature did not function. His condition was getting worse. His parents, who had arrived at the centre two days ago, did not know the area and panicked. The nurse decided to call emergency medical services but help was delayed because there is only one ambulance on duty for the whole Svilengrad municipality. After a long wait, the emergency medical services team arrived, diagnosed the illness and discussed treatment. Then they changed their mind, saying that they could not define treatment without knowing the child's exact weight. They dictated the diagnosis to the nurse because, in their own words, "they were not paediatricians". They offered the parents to transport their child to town to be examined by a specialist. The parents did not have a vehicle and money and were unable to do anything. The nurse spoke to the emergency medical services team, trying to convince them to drive the child to the town's polyclinic. They expressed concern that this would not be possible because they had other emergencies to respond to. In the end, the emergency medical services team transported the child and his parents to Svilengrad. The father was holding a sheet of paper with his son's diagnosis but without designated treatment. The child remained semiconscious for more than an hour, without being provided any medical assistance.

¹ Employee interviewed during a BHC team visit to the RRC in Harmanli on 2 June 2014.

in Harmanli testifies that free medicines are indeed provided but only to children. In cases of illness, they have to buy their own. They had to call the emergency medical services on several occasions, which responded every time. The family says that this is the only way for them to get checked by a medical specialist.

The TC in Pastrogor has a medical office with a doctor, a nurse and a paramedic but **the medical services do not meet the required standards**. The actions of the personnel are inadequate and untimely. During its visit to the centre, the BHC team witnessed an emergency in which the life of a child was put at risk.

An employee at the centre testifies that asylum seekers are subjected to compulsory blood and intestinal tests upon their arrival at the centre. Once registered, the asylum seekers are medically insured until the final decision on their asylum application is taken. Individuals with health insurance are registered with a general practitioner in Svilengrad. The town also provides emergency medical services when necessary. **The residents have to pay for the prescribed medicines**. There is also a **medical isolation** ward consisting of several rooms but it is used mainly to accommodate people arriving at the centre on weekends. An isolation room adjacent to the medical office is used to accommodate a single father in a wheelchair who is taking care of his two small children.

An employee at the RRC in Banya claims that all residents, including the unaccompanied children, have **health insurance**. Care is provided by a team of general practitioners at the Hadzhi Dimitar Multi-profile Hospital for Active Treatment in Sliven and by other specialists at the hospitals on a needs basis. The centre's medical officer says that foreign citizens do not pay the examination fee when they are admitted to a hospital ward. A paramedic was appointed to the centre nearly from the start of the functioning of the centre. The paramedic conducts the initial examination and carries out the compulsory tests (Wassermann, HIV, malaria, faecal sample for parasites, microbiology). Children under 14 are not tested for HIV and Wassermann. There is a **shortage of medicines** prescribed by the specialist. Required medicines are provided by donations and kept in an emergency locker. There are three ways of procuring medicines. Some are completely or partially covered by the health insurance fund, others are paid by the patients, and some are provided by the Bulgarian Red Cross. According to the centre's paramedic, the National Revenue Agency (NRA)¹ delays the health insurance documents of newly arrived residents by about a month-and-a-half because foreign citizens placed in the RRC in Banya **are not included in the registry**. The centre has resolved this issue by providing asylum seekers assistance in obtaining the required certificate. This is then submitted to the NRA office in Sliven, which in turn issues a health insurance certificate.

When necessary, the paramedic drives the residents to the hospital in a centre vehicle. For emergencies after the end of his workday, the emergency medical services in Nova Zagora send an ambulance, which arrives within thirty minutes. Five or six years ago, an elderly man suffering from hypertonia died.

The refugee centres visited **do not provide any professional psychological and social support to children**. Yet the unaccompanied children need such care the most.

2.8. Personnel

The personnel at the refugee centres is insufficient. Employees at the RRC in Harmanli testify that it has 52 staff, including six persons cleaning staff, two social workers and one psychologist. The post of medical officer remains vacant. There are three interpreters. Ac-

¹ The National Revenue Agency is a state body responsible for the collection and administration of the republican taxes (income tax, patent tax, VAT, corporate taxes) and the compulsory insurance contributions (health insurance, retirement contributions, complementary retirement insurance contributions, etc.).

ording to employees interviewed, there are 36 staff members at the TC in Pastrogor, divided between two departments. The first department is responsible for procedures and accommodation; it carries out interviews and initiates the status procedure. The second department is responsible for reception, registration and administration. The centre's security is outsourced to a company, which employs 28 people. There is no psychologist because, as an employee at the centre explained, such a position is statutorily available only to centres with more than 500 residents. The RRC in Banya, designated to accommodate unaccompanied children, has one social worker, four interviewers, a paramedic, four kitchen staff (chef, assistant chef and two helpers) and one cleaning janitor.¹

The refugee centres **lack internal organisation and the staff are not always able to adequately meet residents' needs**. The residents are not well informed; they have no idea about what is happening with their case and how long they will stay in the centres. Interviews are rarely held; the reason for this is the lack of an interpreter with knowledge of a specific language, who can assist communication between the responsible employees and the resident asylum seekers.

2.9. Fundamental human rights and their protection

The safety of the children placed in refugee centres is not ensured. This is evident from interviews with both children asylum seekers and refugee centre employees.² An employee at the RRC in Harmanli says that supplies are chaotically distributed on arrival and that residents sometimes resort to violence to obtain the donations. Some individuals were unable to get the items and foodstuffs they were entitled to. Employees at the same centre speak of organised "combat groups", usually based on nationality, which exercise violence against other residents, often leading to "organised assault". At the same time, the SAR's management has not undertaken lasting measures to bring order and limit the possibilities for such conflicts in an overcrowded environment that is a melting pot of different nationalities and cultures.

There are many cases in which interviewed asylum seekers testify to being subjected to violence and ill treatment. A young family with a minor child complained of being **mistreated by police officers during their transfer to the RRC in Harmanli**. The family says that officers stormed into their room in the SHTAF in Sofia's Busmantsi neighbourhood, handcuffed the man and gave them no time to collect their belongings, including their documents. The whole family was then transported to the town of Harmanli in a police vehicle. The child was stressed because the officers acted without warning and because he saw his father being handcuffed. No one explained to them what was happening and why or where they were being taken. During their reception at the RRC in Harmanli, employees at the centre told them that they were "illegal" because they had arrived during the night.

A single father at the TC in Pastrogor did not permit his children to leave the building because they were subjected to **violence by other children in the centre** on several occasions. The father is in a wheelchair and has difficulties looking after his two children. To ensure their safety, he is constantly with them and they do not leave the building. Instead, they play with each other in the bedroom or in his presence. He says that many of the other children in the camp are uncontrollable, roaming around all day, without any supervision and exercising violence against the younger, more helpless ones.

Psychologists from the Centre for Torture Survivors and Centre Nadya, non-governmental organisations, define asylum seekers as people who have sustained a mental trauma as a result of threats to their lives and personal security in their countries of origin and during

1 Employee interviewed during a BHC monitoring visit to the RRC in Banya on 4 June 2014.

2 Quotes from interviews of employees at the RRC in Harmanli conducted on 2 June 2014.

their escape. In addition, they have arrived in a foreign country without knowing its language and remain in a state of constant insecurity until a decision is made regarding their asylum application. This is why they recommend psychological assistance and therapy to help them overcome the trauma, especially for the children, because otherwise, they may resort to violence as a way to compensate for their intense experiences. However, such measures have not been planned or implemented by the State Agency for Refugees.

An unaccompanied minor placed in the RRC in Banya testifies in an interview that he was subject to degrading treatment, psychological bullying and violence from staff against him and several other children, while they were residing at the Distribution Centre in Elhovo, a unit of the Ministry of Interior's Migration Directorate. Unaccompanied children residing in the centre asked an employee to give them water, to which he answered, "*to drink from the toilet*". They complained of inhuman treatment ("*We are Syrians and human beings*") to another employee of the police centre, who answered, "*OK, welcome to Bulgaria,*" and made an obscene gesture. The children went on a hunger strike. A girl attempted suicide, breaking a window in her room. An officer began hitting her with a baton. All residents who saw the incident tried to help the girl and keep the policeman aside. The child says that they were subjected to constant psychological abuse at the Distribution Centre in Elhovo. They asked to be put in contact with a non-governmental organisation to file complaints. No one helped them; on the contrary, everyone smiled mockingly and deprecatingly. They were shouted at, insulted with obscene words and constantly told to "*go back to Syria!*"¹

1 Quotes from an interview with an adolescent at the RRC in Banya held on 4 June 2014.

3. Key findings and recommendations

A. KEY FINDINGS

1. Overall Findings

- The type of institutions where children are deprived of their liberty (closed institutions) is very diverse. The number of institutions where children can be deprived of liberty is also high.
- Not all institutions visited during the framework of the project are considered by the Bulgarian state to be places where children are deprived of liberty. This significantly hinders the introduction of appropriate mechanisms and safeguards for the protection of children's rights.
- There is no coordination mechanism between stakeholder institutions, linking criminal justice institutions with juvenile justice and child protection institutions. Although the Road Map for the Implementation of the Concept of State Policy on Juvenile Justice (2013-2014) mentions juvenile justice institutions such as social-pedagogical boarding schools (SBSs) and correctional boarding schools (CBSs), it does not include or foresee reform of the penitentiary institutions. In this way, the approach, adopted by the Roadmap, is piecemeal, rather than integrated and comprehensive.
- The lack of a data collection policy regarding detention of children across institutions suggests that there are no clear indicators tracking the effectiveness of each system. In addition, the little data that is collected is often sparse and does not clarify, but rather further obscures, the overall picture.
- The Juvenile Delinquency Act does not clearly define what constitutes anti-social behaviour and this often leads to unlawful and arbitrary deprivation of liberty. The introduction of the child protection system in 2001 did not take into account the existence of the juvenile justice system. As a result, there are two parallel systems (the child protection system against the juvenile justice system), treating children either as children at risk or children in conflict with the law. Thus, children in conflict with the law are not officially recognised as children at risk under the Child Protection Act and the principle of the best interests of the child is not applied in their case. BHC's understanding of the principle of the best interests of the child takes into consideration General Comment No. 1 on Article 12: Equal recognition before the law by the Committee on the Rights of Persons with Disabilities. As an integral part of the principle, the child's interests and will should be taken into account.
- Existing national minimum quality standards applicable to child protection institutions and services are not applied to the penitentiary system and the Ministry of Interior structures.

- There are no alternative measures for support given to families and children in conflict with the law.
- Children often face institutionalised discrimination based on their ethnicity, social status, sexual orientation, mental health and/ or physical disability.
- Children from vulnerable groups are overrepresented in closed institutions - these are children from ethnic minorities (Roma), poor children and children with special needs.
- Children do not have sufficient understanding of the nature and purpose of the proceedings for institutional placement. They often do not have access to documentation regarding their case.
- Upon placement, children often do not receive a copy of the rules governing the institution.
- Children, placed in closed institutions, have inadequate individual care plans.
- Children deprived of their liberty are often placed in unacceptable material conditions (lack of, or insufficient, ventilation, hygiene, lighting, heating and hot water, sanitary facilities, etc.). Closed institutions are not suitable for placement of children with disabilities.
- There is a lack of effective separation by age and profile of the child in closed institutions. The personal preferences of the child are also not taken into account.
- Despite having a large capacity, the sleeping accommodation space for children in closed institutions is often overcrowded, leaving children with little personal space and privacy. Often children have few or no personal belongings.
- Children's access to food is restricted. Children also suffer from the low quality and quantity of the food provided.
- In some of the monitored institutions, children do not have access to education. In other institutions, education is offered within the institution but it is of very low quality. Furthermore, a disproportionate amount of children in closed institutions are illiterate, requiring special attention, which is often non-existent or insufficient to have a positive effect. Access to professional or vocational training is also limited.
- There is a lack of structured, organised activities during leisure time that meet a child's personal needs and interests. Adequate space, installations and equipment for leisure activities are lacking.
- Where available, remunerated work opportunities are scarce. Children often do work that is not officially regulated.
- There is a lack of aftercare services, including a system of tracking children leaving the criminal justice and juvenile delinquency institutions.
- Contacts with the wider community are limited, which leads to social isolation and no possibilities for integration and resocialisation. In addition, children also have limited contact with their families because visits and vacations are rare. Quality communication is further hindered by the lack of privacy of correspondence, telephone communication or received parcels.
- The opinion and wishes of the child are often not taken into account.
- There are no accessible, effective and independent complaint mechanisms in place for children deprived of liberty.
- Visits from non-governmental organisations are not frequent and neither is the possibility for non-governmental organisations to provide legal or social aid to children deprived of liberty.

- There is a frightening record of violence and abuse of children deprived of liberty. Children are reluctant to report cases of ill-treatment because of fear of reprisal and because they have no faith in the effectiveness of the system.
- Possible unlawful use of force is not effectively investigated.
- Many of the children are victims of psychological and physical abuse from employees at the institution. The level of abuse between children is also high. Several cases of sexual abuse between children were also registered.
- The lack of independent personnel makes independent reporting of violations within the institutions very difficult.
- Children in closed institutions do not have access to adequate health care. Most of the institutions do not have residential medical specialists and/ or medical specialists during the night and on holidays. Access to health care in most institutions is by discretion of the members of the staff who are not specifically trained. Often children are not informed about the aim and nature of the undertaken medical procedures or tests, as well as their results. Procedures for giving informed consent for medical examinations and treatment are not followed.
- No effective psychological care is provided to children in detention. This results in many cases of self-harm and suicide attempts.
- Inspections, carried out by independent authorities, outside the administration of the facilities for deprivation of liberty, are sporadic. The State Agency for Child Protection does not have the mandate to enforce the child's rights in reformatories, detention facilities, homes for temporary placement of minors and adolescents, police stations and special homes for temporary placement of foreigners. Internal inspections are often not made public, hindering civil society's ability to monitor and exercise control over public institutions.
- Personnel do not receive proper training in a manner that enables them to carry out their responsibilities effectively. Training related to child psychology, child welfare, international standards and norms of human rights and the rights of the child is missing or insufficient. Very often there are no possibilities for external personnel supervision.

2. Institutions belonging to the criminal justice system

Placement

- Children with imposed custodial measures are not placed close to their residential address and thus, cannot maintain regular contact with their families and relatives because there are only two prisons for adolescents - one for boys and one for girls.
- Often effective separation of children from adults is not respected in pre-trial detention and police custody facilities. This also applies to the reformatory for girls where they are placed together with adult women prisoners.
- Pre-trial detention of adolescents is not envisaged as a measure of last resort, applied for the shortest possible period.
- There is no regulated option to suspend the detention on remand measure or to temporarily leave the pre-trial detention facility.
- The maximum period of detention on remand for adolescents during the pre-trial investigation proceedings is 18 months - the same as for adults.

- There is no minimum age limit for the placement of children in police custody facilities, part of the Ministry of Interior.
- Bulgarian legislation does not clearly stipulate that police authorities are entitled to hold a child only in exceptional cases, the right of parents to be immediately notified of the arrest, the right of the detained child to remain silent and the right of the child to be informed of the nature of the detention and the possible exit and outcome.
- The Prosecutor's Office does not collect data on the number of measures on remand without deprivation of liberty and thus, cannot track the frequency and effectiveness of applying such measures.

Judicial review and access to legal aid

- There is no legal requirement to explain the charges and the essence of the trial to the child in an understandable language.
- The judicial review of the police custody measure is ex-post and violates the right of the detained and deprived of liberty child to appear before a competent body for a review of the legality of the deprivation of liberty measure (and the extension thereof) within 24 hours.
- The Bulgarian Ministry of Interior Act contains no guarantees for priority and accelerated review of child detention.
- Under the Criminal Code, unconditional early release is not applied with regard to children serving a punishment of deprivation of liberty. During the period 2011 – 2013, there was only one case of early release. The administrative body, proposing adolescents for early release, is vested with unsanctioned discretionary powers and the procedure followed does not comply with due process requirements.
- The number of pardon applications is very low since children are rarely informed of such a possibility.

Treatment in institutions

- In pre-trial detention facilities, there are no areas designated specifically for children. The physical environment and the regime are not in any way adjusted to the specific needs of the adolescent.
- The material conditions in most of the visited pre-trial detention facilities are not appropriate, and in some cases amount to inhuman and degrading treatment. Personal space in cells is sometimes less than the minimum four square metres. There is often lack of ventilation and access to natural light. Access to sanitary facilities is also restricted.
- In most cases, the design of the detention facilities does not allow for adolescents to spend time outside, nor to be engaged in any sort of physical exercise.
- Children in police custody are not always kept in safe and appropriate conditions. They are not provided with access to meaningful activities and time in the open.
- During police custody, children are questioned without the presence of a lawyer or a parent.
- Juvenile inmates' correspondence and other forms of communication are subject to automatic and unrestricted unlawful monitoring, which is illegal as well as being an unacceptable encroachment on the right to privacy and correspondence. In connection to the telephone tapping of conversations in the Boychinovtsi Reformatory, visits and phone calls in a language other than Bulgarian are prohibited.

- Juveniles in pre-trial detention facilities have no access to education, training, remunerated work or leisure activities.
- The number of remunerated work positions for adolescents in reformatories is absolutely insufficient. The penitentiary system also fails to provide continuous access to vocational training. Taken together, these two deficits seriously undermine one of the key purposes of the correctional institutions – to resocialise and prepare the young people for an independent life outside the institution.
- In the context of disciplinary proceedings, legal aid for defence and appeal is not provided to adolescent prisoners who are charged with violating the internal order of the institution. In this regard, the number of disciplinary punishments imposed on adolescents in the reformatory for boys between 2011 and 2013 was 353, none of which were appealed.
- Solitary confinement, the most severe disciplinary punishment, is overused in correctional facilities. The measure is imposed in conditions of solitary confinement which, according to international standards, is inadmissible in the case of children.
- Adolescent detainees testify to a very high level of violence and abuse by prison guards and police officers.

3. Institutions belonging to the juvenile delinquency system

Placement

- The lack of a clear definition of an ‘antisocial act’ allows for unlawful and arbitrary placement decisions.
- ‘Antisocial acts’, which result in placement in correctional boarding schools and social-pedagogical boarding schools, include running away from home or school, possessing an arrogant attitude, conflict with fellow students or teachers, vagrancy and inability to adapt to institutional care order. The placement of girls, recognised as victims of sexual violence and exploitation, is also a widely accepted practice.
- Placement proposals are abstract, unsubstantiated or uncertain in terms of the timing of facts and circumstances, lacking a clear motivation for the choice of the correctional measure.
- There is no requirement to have the child accommodated in a CBS or SBS close to their habitual residence.
- A large number of children at CBSs and SBSs are transferred from other state care institutions and residential services.
- Placement in CBSs and SBSs can be very prolonged – up to three or more years, which leads to the long-term institutionalisation of children.
- CBSs and SBSs are funded based on the number of resident children, which leads to harmful practices regarding the extension of a child’s stay in the institution. In some cases, for example, the school staff may motivate the child to voluntarily remain in the institution after the end of their placement.
- Detention in Homes for Temporary Placement of Minors and Adolescents (HTPMA) is entirely based upon decisions at the discretion of the authorities.

Judicial review and access to legal aid

- Judicial procedural rules for placement are unclear and do not provide the necessary guarantees for a fair trial, including the provision of information to the child in a language they understand, the provision of free legal aid and expedited proceedings.
- There are no legal guarantees or procedures for a periodic judicial review of the placement accessible to the child.
- The placement of children in HTPMAs is implemented by an administrative order without the possibility of any judicial review of the detention.
- The number of children placed in HTPMAs for a second or third time is high.

Treatment in institutions

- All institutions for placement of children with antisocial behaviour are socially, educationally, and culturally isolated from the wider community. Correctional boarding schools and social-pedagogical boarding schools are located in inaccessible villages and towns, thus, severely limiting a child's contacts with the outside world, access to quality health care and the ability to recruit qualified staff.
- Outdoor time in HTPMAs is limited. Children spend most of their time locked in a single room at HTPMAs without the possibility of participating in meaningful activities.
- Most children placed in CBSs and SBSs have very poor personal hygiene and lack decent clothing appropriate for their age. During detention at HTPMA, the children do not have the right to wear their own clothes.
- The approach to working with children placed in CBSs and SBSs is not individualised.
- The quality of education in CBSs and SBSs is low. Children attend schools that are internal to the institutions, where grade levels often are merged due to lack of a sufficient number of students. The school educational process is fragmented and often classes are not carried out. Education of children at boarding schools is of very poor quality. Most children are illiterate, including those who have stayed several years in institutions.
- The diplomas of students, completing an educational degree in CBSs and SBSs, distinctly mention the educational-correctional nature of the educational institution, which leads to stigmatisation and fewer chances of employment.
- Children placed at HTPMA lack access to education.
- Visits by parents, relatives, volunteer or other organisations are usually an exception.
- Despite the lack of access to constant medical care services and quality psychological care, children, requiring daily, specialised medical care, are placed in SBSs and CBSs, including children with epilepsy, mental and behavioural disorders, HIV/AIDS, drug addition, pregnancy, or recent mothers.
- BHC registered a number of cases of self-harm and suicide attempts at boarding schools.
- The method of determining the punishment for violating the internal order at the CBSs, SBSs or HTPMAs, is arbitrary. During disciplinary proceedings, children do not receive legal or any other aid from a trusted representative and do not have the right to appeal. Most punishments are not registered.
- Many of the imposed punishments are examples of cruel and degrading treatment of children: corporal punishment, solitary confinement, carrying out physical exercises such as push ups, squats or walking like a duck, dietary restrictions and collective punishments. HTPMAs have specially designated rooms for solitary confinement for up to three days.

- The number of complaints and other evidence regarding physical or psychological violence against children in CBSs and SBSs is very high. A large part of the complaints cite violations by boarding school employees, who beat the children with batons, sticks and other items. Other practices also include slapping, kicking children and shouting and insulting them on an ethnic basis.
- Cases of sexual violence between children, including group rape of a minor, have been documented in CBSs and SBSs.
- The number and qualifications of personnel are insufficient and do not meet the needs of detained children in CBSs and SBSs.

4. Institutions belonging to the child protection system

Placement

- The statutory distinction between the objectives of placement in a residential social service and a specialised social care institution for children is in fact very unclear.
- Placement in social care institutions and services is often not used as a measure of last resort. In many cases, children are placed in shelters or crisis centres due to the lack of adequate alternatives.
- Poverty remains one of the main reasons for placement of children in homes for children deprived of parental care. Only 2% of children in homes for children deprived of parental care in 2013 were orphans or half-orphans.
- There is no legal obligation for the authorities to place children according to the profile of the corresponding social care institution or to accommodate different categories of children separately. This results in the placement of children with varying profiles in the same shelters and crisis centres: neglected children, child victims of trafficking, domestic abuse or other types of violence alongside children who have committed offences, which from an objective standpoint are crimes.
- Bulgarian legislation does not meet the requirements of defining the duration of institutional placement for the shortest period possible and only when necessary. Furthermore, the law does not specify whether the placement period should be calculated from the moment of the judicial decision or from the moment of the administrative placement order.
- Currently, there are two parallel legal frameworks for the placement of children in shelters. They regulate the maximum duration of stay in a shelter in a different way – in one case three months, and in the other – up to six months.
- There are many cases of excessive duration of placement in shelters or crisis centres as well as consecutive placements, which lead to a de facto long-term institutionalisation of children in facilities, unsuitable for this aim.
- Very often children are placed in social care institutions without detailed information and documentation on their health, psychological, social and legal status.
- Some shelters and crisis centres function as illegal places for detention of foreigners. The police authorities and prosecutor's office place minors and adolescents in shelters or crisis centres, sometimes along with their mothers, detained while attempting to cross the border illegally. Often they are detained without any respect for the legal procedures or guarantees that the detainee has a right to.

Judicial review and access to legal aid

- The one-month period during which the social services should file an application with the court for a placement decision is too long and contravenes international law. But even this lengthy period is not observed. Court decisions often come months after administrative placement and, in many cases, children are placed in crisis centres and shelters solely on the grounds of an administrative order, with a court decision never being issued at all.
- Courts issue placement rulings without hearing the affected children and their parents, and without allowing the participation of other legal representatives of the child. Legislation does not regulate who, when, under what conditions and with what methods information should be conveyed to the child about their placement, so that they can consider the situation and express their opinion during the court hearings.
- Children are not allowed to initiate by themselves the termination of their placement in social services or social care institutions. The law also does not provide for a periodic judicial review of the placement measure.
- In many cases, children are not informed about the court decisions for their placement. Sometimes even the institutions themselves do not have copies of the court decisions.

Treatment in institutions

- Created as short-term social services, shelters and crisis centres are not prepared to function as providers of education or childcare. They do not have
- the capacity to provide for effective opportunities for everyday individual and group activities.
- HCDPCs, shelters and crisis centres do not have the capacity to provide adequate health care for children in need. Due to lack of personnel, in some cases, children are hospitalised without an adult companion.
- Almost half of the children placed in HCDPCs suffer from some form of illness or disability, but the homes are unable to meet all their needs and provide effective access to health care, psychological counselling or other support.
- About a third of the children in crisis centres do not attend school.
- Children and their families do not receive sufficient support to maintain regular contact with each other.

5. Institutions for refugees, asylum seekers and migrants

Placement

- Children and asylum seekers are arbitrarily placed alongside migrants with irregular status in detention facilities for deportation and expulsion.
- Unaccompanied minors are placed in detention facilities despite it being explicitly prohibited by the law.
- The mechanism for guardian appointment (as set out in the Family Code) is not functional and, in reality, unaccompanied asylum seeker, refugee and migrant children enter various administrative or criminal proceedings without legal representation.
- Migrant children are often not informed in a language that they understand of the reason for their detention, the nature of the process and the possibility to participate in it.

- Unaccompanied and accompanied foreign children are sometimes illegally detained by police authorities in hotels, social care institutions or the premises of police departments that are not designed for that purpose.
- Access to interpreting services during detention is very limited, which may lead to the violation of the basic rights of children in police departments, detention facilities and other institutions.

Judicial review and access to legal aid

- Legal aid in the form of advice or document preparation for a lawsuit is obligatory and free of charge to foreigners with a coercive administrative order and foreigners placed in detention facilities for migrants, “who do not have the necessary financial resources and request legal aid.” In 2013, however, legal aid was not accessible.
- No judicial review is envisioned throughout the three months, the period in which accompanied children are detained in migrant detention facilities.

Treatment in institutions

- The following children’s rights are not respected in detention facilities for migrants: the right to education or meaningful activities, the right to work and the right to submit a complaint. Psychological work is not carried out in the detention facilities, and there are no guarantees that the number and the qualifications of the staff are sufficient.
- With the increase of the number of migrant, refugee and asylum seeker children, there has been an increase in the number of detained migrant children in a wide range of closed institutions across the country. Often the children do not have proper access to translation in an understandable language, or access to social care services and the ability to establish contact with parents and relatives. The lack of an adequate reaction and approach to children from third countries by institutions places them in a very vulnerable position, and there are no guarantees in place to protect their rights.

B. RECOMMENDATIONS

1. Overall recommendations

Based on existing international standards and the findings of the project, the Bulgarian Helsinki Committee makes the following recommendations:

- The law should clearly prescribe that in all instances deprivation of liberty is applied only as a measure of last resort and for the shortest possible period.
- The principle of the “best interests of the child” has to be a guiding principle in all matters involving or affecting children, including children in conflict with the law.
- An adequate juvenile justice system needs to be established, including juvenile courts with specialised judges for children.
- Placement in institutions (deprivation of liberty) for punishment should be applied only to adolescents, only when absolutely necessary and for the shortest period.
- With respect to children in conflict with the law under the age of 14, only social protection measures should be applied.
- Children should not be deprived of liberty for the sole reason of being poor or socially disadvantaged. Instead, appropriate measures for protection and overall family support should be undertaken by the government.
- All forms of discriminatory practices, resulting in overrepresentation of certain vulnerable groups, such as Roma and children with special needs, in places of detention, have to be entirely eradicated.
- All children involved in judicial proceedings should be provided with free and professional legal aid.
- Guarantees for effective access to professional legal aid from the moment of detention should be introduced, including ensuring the child's right to meet privately with their lawyer.
- Children should be guaranteed the right to personally file an appeal to the court for the review and termination of the detention measure, as well as to appeal all administrative and judicial decisions concerning them.
- Children should be actively involved in the decision-making process regarding their own care arrangements. They should have access to their personal documentation.
- Competent authorities should undertake all necessary steps to ensure that children gain sufficient understanding of the nature and purpose of the proceedings in which they are involved.

- Competent authorities should immediately order an investigation when there is evidence of physical abuse of children by staff in the institutions. Investigations must be thorough, prompt and impartial, and the responsible parties should be punished with appropriate dissuasive punishments.
- Upon admission, children in detention should receive a copy of the rules and procedures regarding the internal order of the detention facility, as well as a copy of their rights and obligations in an understandable and accessible manner, including information on disciplinary procedures, complaint mechanisms and opportunities to obtain legal aid. For those children that are illiterate or cannot understand the language, in which the information is provided, the information should be presented in such a manner as to be fully comprehensible.
- All places of detention should be adapted for children with disabilities or with other special needs.
- All children should have access to good quality and sufficient amounts of food, specially geared towards a child's age and other dietary needs.
- In cases of long-term detention, access to education in schools in the wider community and professional training programmes should be ensured.
- Children who are illiterate or have cognitive or learning difficulties should have access to quality education in schools in the wider community and specialised support.
- Places for deprivation of liberty should provide a variety of organised leisure activities that meet a child's personal needs and interests. Enough outdoor time with possibilities for physical exercise and relaxation should also be provided.
- Children in closed institutions who are of a working age should be ensured paid work opportunities.
- Adequate individual care plans should be created with the participation of independent specialists and respect for a child's personal opinion.
- Children should have the opportunity to establish and maintain adequate and regular communication with the wider community. Social isolation should be avoided and instead possibilities for integration should be encouraged.
- The right to privacy of all children in institutions should be respected, including the inviolability of their correspondence, telephone communication and receiving parcels.
- Regular contact between children and their families should be encouraged, including by providing opportunities for more frequent visits and leave from the institution. In cases of long-term deprivation of liberty, the state should provide free accommodation and cover the travel expenses of the family or relatives who would like to visit the child.
- An effective system for tracking children leaving closed institutions should be introduced. Upon release from places of deprivation of liberty, access to a wide range of social services and programmes for support should be provided, which should include housing, financial support and educational and/ or career guidance.
- Solitary confinement and other forms of isolation as a disciplinary sanction should be prohibited.
- A reliable and child-friendly complaint system should be introduced. All complaints should be taken seriously and receive a written response, stating the outcome and motivation in a timely manner.

- Effective measures for prevention, identification and investigation of violence against children in detention should be developed. All closed institutions should be subject to regular inspection on the one hand from the Ombudsman and the National Preventive Mechanism and, on the other hand, from the State Agency for Child Protection.
- Health care should be provided in the wider community for all children in institutions. Furthermore, the 24-hour presence of a resident medical specialist should be secured. The resident medical specialist should be specifically trained to provide emergency medical help.
- A comprehensive data collection system that gathers reliable information on the situation of all children deprived of liberty should be developed. There should be regular and consistent reporting on all issues concerning children in detention.
- All competent authorities should make an effort to increase the visibility of their work and raise awareness about the situation of children in detention. In this respect, the available statistics, institutional reports and analysis should be made public through online publication and media communication.
- The State Agency for Child Protection's mandate should be strengthened and expanded to include monitoring and control of the rights of the child in all institutions for the deprivation of liberty. It is of utmost importance that the treatment of children in places for the deprivation of liberty be evaluated according to human rights and children's rights standards.
- Full access to the institutions accommodating children deprived of liberty should be given to non-governmental organisations (NGOs). NGOs should also have the possibility to interview, in private, all categories of children for the purposes of human rights monitoring and providing legal aid.
- The necessity to create a stand-alone office of the Ombudsman for children's rights or another independent body, charged with the protection of children's rights, should be considered.
- All staff members working with children should receive proper initial and on-going training, in a manner that enables them to carry out their responsibilities effectively. Training on topics such as children's rights and international standards, applicable to children in closed institutions, should be provided. External personnel supervision should also be available.

2. Institutions belonging to the criminal justice system

- Juvenile detention on remand should be foreseen as a measure of last resort for the shortest duration possible.
- The courts and investigative organs should give the highest priority to cases concerning children, which should include expeditious reviewing of the case from the beginning to ensure the shortest possible duration of detention during pre-trial and judicial proceedings.
- Every child should be provided the opportunity to appear before a competent body for a review of the legality of police detention within 24 hours. Regular review (every two weeks) of pre-trial detention should be introduced. If the conditional release of the child by applying alternative measures is not possible, the child should be formally charged with the alleged offences and be brought before a court or other competent, independent and impartial authority no later than 30 days following their pre-trial detention. The final determination of the charges should be taken no later than six months after filing them.

- Children should be accommodated separately from adults in facilities, specifically adapted for their needs.
- Adolescents serving a custodial sentence should be placed in institutions, which are in proximity to their regular residence and/ or family. In this regard, at least two additional small-scale reformatory institutions should be introduced in different places throughout the country.
- An adequate system of non-custodial measures, alternative to detention in remand, should be introduced.
- Children under the age of 14 should be detained in police custody for the shortest possible period and never overnight.
- Children detained in pre-trial detention facilities should have the right to access formal education, regardless of the duration of their detention.
- Adolescents serving a custodial sentence in reformatory institutions have to be duly informed in an appropriate manner about matters related to the execution of the sentence: possibilities to alleviate the conditions for executing the sentence, possibilities for early and conditional release and the possibility to apply for a presidential pardon.
- Open type facilities for detention on remand and serving a custodial sentence for adolescents should be foreseen. The prison administration should support the social reintegration of adolescents by providing sufficient opportunities for the use of home leave, extended visits and other forms of temporary leave from the institution and communication with the outside world.
- The Criminal Code should foresee various non-custodial measures such as day detention, night detention, weekend detention, detention in the form of house arrest. Such measures should be used as measures of last resort instead of the custodial measures for deprivation of liberty of children.
- The application of the possibility for early release for children should be extended. A child deprived of liberty should be able to initiate the procedure for early release, which should meet the fair trial requirements.

3. Institutions belonging to the juvenile delinquency system

- The Juvenile Delinquency Act should be repealed and the CBSs and SBSs should be closed down.
- HTPMAs should be transformed into places for short-term police custody only for children.
- Protective measures should be applied to children that are diverted from the criminal justice system, as well as to children with status offences such as vagrancy or running away from home. Measures should also be aimed at the root cause of such behaviour and provide effective support for parents and/ or guardians.
- Residential social care services should be provided as an alternative to long-term deprivation of liberty for the purpose of educational supervision, so that placement in such facilities is a measure of last resort for a limited period of time, with intense and personalised care. An obligation for automatic periodic judicial review once a month should also be introduced.
- Children in conflict with the law should be entitled to care and treatment within the child protection system through comprehensive programmes, including through the creation of new social services specifically designed to meet their needs and solve their problems.

4. Institutions belonging to the child protection system

- All remaining homes for children deprived of parental care should be closed as part of the deinstitutionalisation process and all children currently remaining in those institutions should be removed.
- Children should be placed in a residential social care service only as a measure of last resort and only for the purpose of a crisis intervention for a limited period of time.
- A new, shorter period for automatic judicial review of the administrative placement in social care institutions and services should be introduced. The courts should respect the principle of prompt judicial review of the placement measure. The placement decision should also be subject to automatic periodic judicial review of its necessity and proportionality every month.
- Children placed in shelters and crisis centres should be able to initiate a judicial review of their placement measure and should benefit from free legal aid for this purpose.
- Court hearings for cases involving children should be conducted entirely in a child-friendly environment. Legal aid should be provided, as well as the possibility for children to promptly familiarise themselves with the nature of the placement measure and to express their own informed opinion about it.
- Placement in crisis centres and shelters should be consistent with the aim and profile of the respective social service.
- A new legislative framework should be adopted for the structure and operation of shelters.
- Necessary arrangements should be undertaken so that all children have access to education during their stay in the institution.
- Shelters and crisis centres should be able to provide adequate daily activities for children placed in them, as well other recreational activities inside and outside the institution.

5. Institutions for refugees, asylum seekers and migrants

- Consistent and equal standards for the protection of unaccompanied minors should be ensured in order to provide them with adequate protection, irrespective of their status and under the same conditions as children who are nationals of the host country.
- As soon as an unaccompanied minor arrives within the country and until a durable solution has been found, the minor should be ensured the appointment of a guardian or a person responsible for accompanying, assisting and representing the minor in all procedures and for enabling them to benefit from all their rights in all procedures.
- All procedures must be adapted to minors, with due regard for their age, degree of maturity and level of understanding, and be sensitive to the needs of children. The views of the minor should be listened to and taken into account in all steps of the procedures, in cooperation with skilled and trained persons, such as psychologists, social assistants and cultural mediators.
- Children who are foreigners should never be detained by police illegally in hotels, social care institutions or services or other premises.
- Access to appropriate accommodation should be provided: regardless of their status, child foreigners should not be placed in closed centres. The initial placement should be in a specialised centre for the reception of unaccompanied minors. This first phase should be followed by more stable accommodation. Unaccompanied minors should always be

separated from adults. If a child is placed in a specialised centre, it should meet the child's needs and have suitable facilities. The accommodation with host families or with other children – relatives or friends, should be encouraged when it is appropriate and in accordance with the child's wishes.

- Adequate material, legal and psychological support must be provided to unaccompanied children from the moment they are identified.
- Children who are foreigners should be guaranteed the right to education, vocational training, language courses and socio-educational advice.
- All children who are foreigners should be guaranteed the right to health care and adequate medical services.
- All children who are foreigners should be able to exercise their right to leisure, including the right to engage in games, recreational and cultural activities.

APPENDIXES

Appendix 1: Visits conducted by the BHC

Institutions belonging to the criminal justice system

Type of the institution	Visited institutions	Number of visits	Total number of visits	Total number of interviews
Reformatories	03-04.04.2014 and 10.07.2014 Reformatory – Boychinovtsi	2	4	22 (2 girls) ¹
	20.02.2014 and 22.05.2014 Reformatory – Sliven	2		
Detention facilities	11.04.2014 and 16.04.2014 Detention facility – Plovdiv	2	11	3 (no girls)
	11.04.2014 Detention facility – Pazardzhik	1		
	23.04.2014 Detention facility – “G.M. Dimitrov” – Sofia	1		
	25.04.2014 Detention facility – Slivnitsa ²	1		
	21.05.2014 Detention facility – Burgas	1		
	22.05.2014 Detention facility – Sliven	1		
	29.05.2014 Detention facility – Varna	1		
	25.06.2014 Detention facility – Ruse	1		
	27.06.2014 Detention facility – Pleven	1		
	10.07.2014 Detention facility – Vidin	1		
District police departments (DPD)	29.04.2014 II DPD – Sofia	1	6	none
	29.04.2014 IX DPD – Sofia	1		
	16.05.2014 IV DPD – Plovdiv	1		
	16.05.2014 VI DPD – Plovdiv	1		
	12.06.2014 I DPD - Sofia	1		
	12.06.2014 III DPD - Sofia	1		
Border police departments (BPD)	03.06.2014 BPD – Svilengrad	1	5	none
	03.06.2014 Border checkpoint – Kapitan Andreevo	1		
	25.06.2014 BPD – Ruse	1		
	09.07.2014 BPD – Vidin	1		
	09.07.2014 BPD – Bregovo	1		

1 The two interviewed children are foreign nationals: accompanied girl from Iran and unaccompanied boy from Iraq.

2 The interviewed child is unaccompanied boy, foreign national from Afghanistan.

Institutions belonging to the juvenile delinquency system

Type of the institution	Visited institutions	Number of visits	Total number of visits	Total number of interviews
Correctional boarding schools (CBS)	14.11.2013 and 23.05.2014 CBS "Angel Uzunov" – Rakitovo	2	6	55 (21 girls)
	20.11.2013 and 26.11.2013 CBS "Hristo Botev" – Podem	2		
	29.11.2013 CBS "Sv. Sv. Kiril i Metodiy" – Kereka	1		
	13.02.2014 CBS „N.Y. Vaptsarov” – Zavet	1		
Social-pedagogical boarding schools (SBS)	05.12.2013 SBS – Straldzha	1	3	33 (8 girls)
	30.01.2014 SBS "Hristo Botev" – Dragodanovo	1		
	12.02.2014 SBS "Hristo Botev" – Varnentsi	1		
Home for temporary placement of minors and adolescents (HTPMA)	05.09.2013 and 16.04.2014 HTPMA – Plovdiv	2	7	4 (1 girl)
	27.08.2013 and 23.04.2014 HTPMA – Sofia	2		
	21.05.2014 HTPMA – Burgas	1		
	29.05.2014 HTPMA – Varna	1		
	30.05.2014 HTPMA – Gorna Oryahovitsa	1		

Institutions belonging to the Child protection system

Type of the institution	Visited institutions	Number of visits	Total number of visits	Total number of interviews
Homes for children deprived of parental care (HCDPC)	14-15.05.2014 HCDPC "Olga Skobeleva" – Plovdiv	1	5	21 (10 girls)
	16.06.2014 HCDPC "Maria Luiza" – Plovdiv	1		
	26.06.2014 HCDPC "Hristo Raykov" – Gabrovo	1		
	02.07.2014 HCDPC "Pencho Slaveykov" – Sofia	1		
	03.07.2014 HCDPC "Asen Zlatarov" – Sofia	1		
Shelters for neglected children	29.05.2014 Shelter "Gavroche" – Varna	1	4	7 (6 girls)
	30.05.2014 Shelter – Dobrich	1		
	25.06.2014 Shelter – Ruse	1		
	30.06.2014 Shelter – Pernik	1		

Institutions for refugees, asylum seekers and migrants¹

Type of the institution	Visited institutions	Number of visits	Total number of visits	Total number of interviews
Special homes for temporary placement of foreigners	11.09.2013 SHTPF – Lyubimets	1	3	8 (2 girls) ²
	22.08. and 16.09.2013 SHTPF – Busmantsi District, Sofia	2		
Transit centres (TC) and registration and reception centres (RRC)	02.06.2014 RRC – Harmanli	1	3	16 (4 girls) ³
	03.06.2014 TC – Pastrogor	1		
	04.06.2014 RRC – Banya	1		

TOTAL

11 types of institutions	48 visited institutions	Interviewed children: 169 (54 girls)	Bulgarian citizens: 142 (47 girls)	Foreign nationals: 27 (7 girls) ⁴ Unaccompanied children 10 (1 girl) Accompanied children 17 (5 girls)
	57 visits			

¹ The accompanied children, who are foreign nationals, were interviewed in the presence of their family members.

² In the Special Homes for Temporary Accommodation of Foreigners four unaccompanied boys – three from Afghanistan and one from Algeria and four accompanied children from Syria, two of whom are girls, were interviewed;

³ In the Transit Centres and the Registration and reception facilities four unaccompanied children – two boys and one girl from Syria and a boy from Ghana and 12 accompanied children – four boys and three girls from Syria, three boys from Afghanistan and two boys from Iran were interviewed.

⁴ The interviewed foreign nationals are: 14 children from Syria, seven children from Afghanistan, two children from Iran, one child from Iraq, one child from Algeria and one child from Ghana.

Appendix 2: Interviewed children according to their gender

Total number of children	169
Boys	115
Girls	54

Appendix 3: Interviewed children according to their nationality

Country	Number
Bulgaria	142 (47 girls)
Foreign nationals	27 (7 girls)
Syria	14 (1 girl)
Afghanistan	7 boys
Iran	3 (1 girl)
Iraq	1 boy
Algeria	1 boy
Ghana	1 boy
Total: 7 countries	169 (54 girls)

Appendix 4: Interviews conducted with minors and adolescents who are foreign nationals (number, gender, status)

Foreign nationals	Total number	Total number girls	Unaccompanied children	Accompanied children
Syria	14	6	3 (1 girl)	11 (5 girls)
Afghanistan	7		3 girls	4 boys
Iran	3	1		3 (1 girl)
Iraq	1		1 boy	0
Algeria	1		1 boy	0
Ghana	1		1 boy	0
Total	27	7	9 (1 girl)	18 (6 girls)

CHAPTER 3

Country report: Hungary

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LIST OF ABBREVIATIONS

APT	Association for the Prevention of Torture
CC	Criminal Code
CPC	Criminal Procedure Code
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECtHR	The European Court of Human Rights
EU	European Union
FOI	Freedom of Information
HHC	Hungarian Helsinki Committee
IMEI	Judicial and Observation Psychiatric Institute
NGO	Non-Governmental Organisation
OIN	Office of Immigration and Nationality
OPCAT	Optional Protocol to the UN Convention against Torture Punishment
SCEP	Children in Europe Programme
TÁMOP	Social Renewal Operative Programme
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNICEF	The United Nations International Children's Emergency Fund

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National Penitentiary Headquarters,

Ministry of Internal Affairs,

Ministry of Human Resources,

Social and Child Protection Directorate,

Prosecution Service.

HHC is also grateful to the employees of the institutions visited by the organisation for their help.

EXECUTIVE SUMMARY

The project Children Deprived of Liberty in Central and Eastern Europe: Between Legacy and Reform was implemented parallel to our partner organisations in Bulgaria, Poland and Romania and provided new impetus to the Hungarian Helsinki Committee's (HHC's) work. HHC had the opportunity to visit almost all types of institutions where children are deprived of their liberty. The intensive monitoring phase, supported by massive data collection, provided HHC with a detailed picture of the juvenile justice system in Hungary and institutions where children are deprived of their liberty.

The present report aims at providing an overall picture of the situation and conditions of children deprived of their liberty in Hungary. For this purpose, the report introduces (1) all the relevant legal regulations determining the status, rights and duties of children in detention, the grounds for and the circumstances of detention, and (2) the research conducted by the Hungarian Helsinki Committee during human rights monitoring visits carried out in the framework of the project.

Firstly, the report presents the **research methodology** used for the study. It addresses issues including: (1) how agreements were concluded with the relevant authorities which enabled HHC to carry out the monitoring visits; (2) how compliance with data protection rules was ensured; (3) what criteria determined the selection of institutions to be visited; (4) the composition of research teams; and (5) how monitoring visits were carried out.

Chapter 1 outlines the results from desk research on the relevant Hungarian legal framework. Special focus was placed on the impact of the young age on the sanctioning practice, and the consequences of lowering the age limit of criminal liability, introduced with legislation in 2013. Provisions of the Criminal Procedure Code, addressing the special status and needs of juvenile offenders, were analysed alongside Penitentiary Code rules concerning the place of executing imprisonment and the normative gaps with regard to the separation of juveniles from adult detainees. **A separate section** of Chapter 1 is dedicated to assessing whether the legal framework meets all specific requirements on the right to education, training and adequate physical development enshrined in international standards. Apart from evaluating the legal norms regulating the scholarship system and access to education in solitary confinement, access to vocational education, cultural programmes and health care, the report sheds light on latest legislative developments addressing the general problem of overcrowding.

Due to the large-scale application of pre-trial detention, the report explores whether pre-trial detention in the case of juveniles complies with international standards, which prescribe that

a child's detention should be used only as a measure of last resort and for the shortest appropriate period. Pre-trial detention may be executed also in juvenile correctional facilities. These institutions serve also as a place of execution of the sentence "education in a juvenile reformatory". Therefore, HHC visited all four juvenile reformatories.

A serious change was introduced into the petty offence procedure by the legislature in 2010. The amendments enabled courts to impose petty offence confinement for juveniles. The report provides data on the frequency of the application of petty offence confinement, the transformation of community work into confinement and the length of confinement. Arguments have been raised against these changes since they adversely impact those affected and contravene fundamental principles enshrined in international documents. The arrest, short-term detention and legal representation in petty offence procedures are assessed in the report from a similar perspective.

To present an overall picture of the status of children deprived of liberty, the final two sections of **Chapter 1** present the normative framework regarding (1) the operation of special homes providing care for children showing severe psychological or dissocial symptoms or struggling with psychoactive drugs and (2) asylum detention of unaccompanied children.

Chapter 2 introduces the results of the human rights monitoring visits conducted by HHC in the framework of the project. The chapter outlines the most significant findings during the monitoring visits at: (A) penitentiary institutions; (B) juvenile reformatories; (C) central special homes for children, and (D) asylum detention facilities, coupled with comments regarding their compliance with relevant legal norms.

In certain penitentiary institutions, serious problems were found regarding (1) the hygiene circumstances resulting in infectious skin diseases and (2) the physical conditions inside the cells, such as the use of curtains instead of doors to separate toilets. Overcrowding is less of a problem in the penitentiary institutions for juveniles than in those for adults, but HHC found certain detention facilities for juveniles where the problem emerges. The present report also contains some worrisome findings regarding the treatment of juvenile detainees and their contact with the outside world.

Section B of Chapter 2 provides a detailed description of conditions in juvenile reformatories, from the physical conditions through to leisure activities available to inmates. The findings suggest that juveniles in reformatories live under far better conditions than those detained in penitentiary institutions. This is evident not only from the material conditions but also in the individual education provided in correctional facilities, which oversee the reintegration of these young people into society.

Section C and D of Chapter 2 introduce briefly the central special homes for children, followed by the results from five monitoring visits conducted in asylum detention facilities. The findings highlight the practice of incorrect and unreliable age assessment, which results in unlawful asylum detention.

In **Chapter 3**, HHC outlines its main conclusions drawing particular attention to (1) the petty offence confinement of juveniles; (2) the use of pre-trial detention; (3) the practice of handcuffing, (4) problems related to detention conditions; (5) the lack of supervision and (5) age assessment practices.

HHC identified systemic problems that need to be addressed by key stakeholders and decision-makers. Regarding some of the identified systemic problems, HHC hopes to encourage reforms as all decision-makers seemed to understand the problem and seemed to be committed to change. The petty offence confinement of juveniles, which is implemented in penitentiary institutions, is such an example: it is contrary to international and even national standards,

poses challenges to the penitentiary system and, last but not least, is unreasonable and violates families' and children's rights. There is consensus also on other issues such that unaccompanied minors should not be deprived of their liberty and innovative methods of age assessment should be applied to ensure this.

While, HHC managed to find strategic allies on some issues, there is still a long way to reform. The overuse of pre-trial detention and determining the place of pre-trial detention, which can be carried out in both penitentiary institutions or reformatories, the last providing significantly better conditions, continue to be major issues of concern. What is more, budgetary constraints often seriously influence the impetus for reform.

RESEARCH METHODOLOGY

HHC has been carrying out human rights research in closed institutions and places of detention for two decades. HHC staff have been monitoring detention facilities for migrants since 1994. HHC's **Police cell monitoring programme** started to operate in 1996 under an agreement concluded with the **National Police Headquarters**; and in 2000 a similar agreement on monitoring was concluded with the **National Penitentiary Headquarters**. So far, HHC has carried out hundreds of monitoring visits during which numerous monitoring reports were compiled. During the past two decades, the HHC exposed, and in several instances also helped to remedy, human rights violations, along with problems characteristic to a given institution or systemic deficiencies, affecting the majority of detainees.

Monitoring visits were also undertaken in the framework of the present project on the basis of an agreement concluded with the authorities maintaining and supervising the respective institutions. The Ministry of Human Resources granted permission to carry out monitoring visits to juvenile reformatories and special homes for children based on the rules included in the agreement with the National Penitentiary Headquarters and the National Police Headquarters as a basis, and taking into account the specific characteristics of the relevant institutions.

In order to comply with **data protection rules**, the methodology used throughout HHC's earlier monitoring visits had to be altered. Since researchers came into contact with children in the course of implementing the project, HHC had to comply with data protection rules. According to Article 6(3) of Act CXII of 2011 on Informational Self-Determination and the Freedom of Information, the declaration of consent from minors over 16 should be considered valid without the permission or subsequent approval of their statutory representative. Thus, minors over 16 provided a written statement on whether they consent to their data being processed. However, data collected from children under 16 was not recorded, and was included anonymously in the monitoring reports. Hence, HHC did not process any data in their regard. To further protect the children, no names were disclosed in reports despite legal provisions allowing the publishing of such data.

It is important to emphasise that **monitoring was only one of the activities** carried out by HHC within the framework of the project, aimed at revealing the problems of detainees in closed institutions. Monitoring visits complemented other quantitative research methods. In the framework of the project, HHC prepared analyses, partly on the basis of available literature, examined the legal framework, submitted FOI requests to data processing organs, and conducted in-depth interviews with several experts on the issue.

1. Selecting the institutions visited

In the framework of the research, HHC's monitoring team conducted 21 visits to various institutions and facilities over a one-year period during 2013 and 2014.

In order to select the institutions for monitoring visits, the following definition for places of detention was adopted from Optional Protocol to the UN Convention against Torture¹ (hereinafter: OPCAT): “[D]eprivation of liberty constitutes any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is forbidden to leave voluntarily, or by order of any judicial, administrative or other authority.”

Following preliminary consultations conducted with authorities overseeing the institutions, and on the basis of HHC's own monitoring experience, it is important to emphasise a key point. According to the wider scope of the definition of deprivation of liberty, all the institutions visited during the project qualify as places of detention. Nevertheless, there are considerable differences between the types of institutions and facilities visited. The restriction of liberty is imposed in very different ways. The so-called special homes for children belong to the child protection system, which according to several domestic child protection experts are not considered places for detention and therefore, are dealt with in a separate section. HHC also stresses that these institutions belong to the child protection system, not to the criminal justice system. The predicament of children migrants or asylum seekers placed in asylum, or alien policing detention as a consequence of deficiencies related to their age assessment (i.e. they are labelled as adults even though they are minors) is also considered separately.

When selecting the institutions part of the study, HHC also took into account earlier research on problems regarding certain types of institutions and considered where children's liberty is most restricted. HHC decided to visit central children's homes because of recent criticism voiced by the ombudsperson.² HHC also cannot omit to mention the expertise required for monitoring certain institutions and the scope of institutions HHC's researchers could enter with the approval of the authorities, supervising and operating these institutions.

2. Institutions visited

Bács-Kiskun County Penitentiary Institution (Kecskemét)	Ministry of Human Resources – Rákospalota Juvenile Reformatory and Special Home for Children	Károlyi István Child Centre, Special Home for Children – Fót	Guarded Asylum Reception Centre – Debrecen
Borsod-Abaúj-Zemplén County Penitentiary Institution (Szirmabesenyő)	Ministry of Human Resources – Debrecen Juvenile Reformatory	Ministry of Human Resources – Zalaegerszeg Home for Children	Guarded Asylum Reception Centre – Békéscsaba
Baranya County Penitentiary Institution (Pécs)	Ministry of Human Resources – Aszód Juvenile Reformatory	Ministry of Human Resources – Esztergom Home for Children	Guarded Asylum Reception Centre – Nyírbátor

1 In Hungary, the OPCAT was ratified by Act CXLIII of 2011 on the Promulgation of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2 See also Chapter 1.

Penitentiary Institution for Juveniles (Tököl)	Ministry of Human Resources – Budapest Juvenile Reformatory	Ministry of Human Resources – Kalocsa Home for Children
Pálhalma National Penitentiary Institution		
Judicial and Observation Psychiatric Institute		

Map 1: Closed institutions visited in Hungary



3. Researchers

Within the framework of the project, it was necessary to involve new experts in the work of HHC’s human rights monitoring team. To supplement the existing legal expertise, HHC strived to enlist experts who deal with children either as lawyers or as pedagogues or who work in the social welfare system. Involving a child psychiatrist was also essential, which was a challenge for HHC because the child psychiatry field in Hungary faces a lack of sufficient experts: there were 127 child psychiatrists in Hungary in 2011.¹ Experts new to monitoring visits were trained internally; they were acquainted with the methodology of carrying out visits and monitored aspects, including issues ranging from clothing through to communication with staff members at the institutions.

¹ See the respective statement of the Ombudsperson in that regard, available on: <https://www.ajbh.hu/kozlemenyek-archiv/-/content/10180/24/orvoshiany-a-gyermekpszichiatriai-ellatasban;jsessionid=7D707B644D9B4D9EE880C03495B3D46C>. (All links were last accessed on 1 December 2014).

When HHC formed monitoring teams, HHC considered the gender divide and ensured that visits were conducted by both male and female researchers. It was essential that HHC chose people with a flawless professional background, also because permission to enter penitentiary institutions is issued only after a thorough examination.

The number and the composition of monitoring teams were also adjusted in line with the character of the given institution. Institutions, accommodating a large number of detainees, were visited by more researchers and more male staff participated in visits to facilities for boys.

4. Monitoring visits

HHC gave institutions a three-day prior notice before monitoring visits. Along with the letter, announcing the visit, HHC sent a sample questionnaire with preliminary questions and the list of visitors, including, if required, a copy of a letter of credentials for each researcher.¹ The order of conducting monitoring visits was in principle the same, irrespective of the type of the institution visited. Visits started with a short discussion with the management who gave a presentation about the institution and answered questions included in the preliminary questionnaire. Researchers then inspected the institution, during which they were allowed to enter any of the facility's buildings or rooms housing detainees. Depending on the size of the institution, researchers split into groups, so they could visit different parts of the facilities simultaneously. It was a fundamental principle that researchers did not carry out monitoring or talk to detainees alone. The reason was partly security-related, and partly practical: thus, the contents of a particular discussion could be recalled more easily if there was disagreement about it.

During monitoring visits, researchers entered cells randomly selected with the approval of the concerned detainees and talked to detainees in a particular cell outside earshot of the institutions' staff. Private discussions were conducted with detainees who expressed such a desire beforehand.

After monitoring visits, researchers presented their main conclusions to the institution's management in a short discussion. Thus, they outlined the anticipated main conclusions of the report – both the positive and the negative ones. Individual complaints, falling under the jurisdiction of the institution or those perceived to need immediate redress, were also communicated to the management at the end of the visit.

After each visit, a monitoring report was prepared and published by HHC after the management of the concerned institution and the maintaining authority had added their comments.

When talking to detainees, researchers took into account several criteria, building on international guidelines for monitoring, such as materials by the Association for the Prevention of Torture (APT) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

HHC deems it very important to follow up on reports, and to examine whether promises made as a result were fulfilled.

¹ According to the agreement concluded with the National Penitentiary Headquarters, researchers shall have a "letter of credentials", signed by the representative of the HHC and the Head of the National Penitentiary Headquarters.



The Penitentiary Institution for
Juveniles (Tököl) – 1st visit



The Penitentiary Institution for
Juveniles (Tököl) – 2nd visit

5. Other methods used for the analysis

In addition to monitoring visits, HHC conducted interviews with experts from the criminal justice system and experts dealing with child protection. HHC also submitted FOI requests to the Chief Prosecutor's Office, the Ministry of Internal Affairs, the National Judicial Office, and the National Penitentiary Headquarters.

1. ANALYSIS OF THE NATIONAL LEGAL FRAMEWORK

This chapter introduces the legal framework regarding the deprivation of liberty of children in Hungary. In recent years, a series of legislative changes and reforms have been introduced in Hungary resulting in a stricter criminal policy. Some of the amendments also violate international norms. Just a few examples:

The Fundamental Law and the Criminal Code provides for the possibility of actual life-long imprisonment, i.e. life imprisonment without the possibility of parole, violating Article 3 of the European Convention on Human Rights (ECHR) (see e.g. the case *László Magyar v. Hungary*) and contradicting the respective recommendation of the CPT.¹

In November 2013, the length of pre-trial detention became unlimited in cases where the procedure against the defendant is conducted because of a crime punishable by a prison term of up to 15 years or life-long imprisonment. This raises serious concerns in light of the case law of the European Court of Human Rights (ECtHR).²

Other serious problems concerning pre-trial detention include its excessive length in many cases: suspects often remain in detention for several months, even years. The number of cases where pre-trial detention exceeded one year was 172, 243 and 274 in 2009, 2010 and 2011 respectively

Since 2010, juveniles may also be confined for petty offences for up to 45 days and their detention is not applied only as a measure of last resort. This is in breach of the Convention on the Rights of the Child.

According to the new Criminal Code, the minimum age of criminal responsibility has been lowered for certain offences.

The amendments clearly affect juveniles even though the number of juvenile perpetrators has declined and stabilised in recent years, according to data,

1 CPT (2007), *Report to the Hungarian Government on the visit to Hungary carried out from 30 January to 1 February 2007*, § 33, available on: <http://www.cpt.coe.int/documents/hun/2007-24-inf-eng.pdf>.

2 For further information in English, see: *Update to the briefing paper of the Hungarian Helsinki Committee for the Working Group on Arbitrary Detention – UN Commission of Human Rights*, 25 November 2013, available on: http://helsinki.hu/wp-content/uploads/UNWGAD_HUN_HHC_Addendum_25November2013.pdf.

Definition:

To understand the study, it is important to first clarify terms used such as ‘child’ or ‘juvenile’ in Hungary.

In the Hungarian language, the terminology used reflects society’s approach towards children. The term “gyerek” (child), used in everyday life is replaced by the term “gyermek” (sounding more literary in Hungarian) for official documents. When the suspicion of an offence arises, the child is referred to as a “minor” (“kiskorú”) or a juvenile (“fiatalkorú”). Children are not referred to as “children” when punishments are executed: juvenile reformatories accommodate “pupils”, while penitentiary institutions detain “juveniles”.

Various legal branches and laws have a different approach to the issue. In **civil law, minors are those under 18**. Minors may become **adults** also via marriage after 16. The termination of the marriage does not affect the adulthood acquired by marriage. But if the court declares the marriage void due to the lack of legal capacity or due to lack of permission from the guardianship authorities necessary in the case of minors, the adulthood acquired by marriage ceases.¹

On the other hand, **Act C of 2012 on the Criminal Code** (hereinafter: CC) applies further differentiation. **Being a “child” (i.e. under 14) is grounds for precluding punishment**. According to Article 16 of the Criminal Code, if the perpetrator was under 14 at the time of the offence, they shall be exempt from criminal responsibility, with the exception of homicide, voluntary manslaughter, bodily harm, robbery and plundering committed by a person aged at least 12, if at the time of committing a criminal offence, they had the capacity necessary to understand its consequences. In addition, the severity of possible sanctions is also determined by age. Article 105(1) of the Criminal Code sets out that a **“juvenile” is a person who at the time of committing the offence has already turned 12, but is under 18**. Article 446 of Act XIX of 1998 on the Criminal Procedure, which sets out the requirements related to criminal procedures against juveniles, also refers to the latter definition.

Although it does not specify a particular age, it is worth mentioning that the case law – primarily unified by the Curia (the Supreme Court of Hungary), taking into account Opinion Nr. 56 issued by the criminal law section of the Curia – assesses it as a mitigating circumstance if the perpetrator is a “young adult”, referring to persons only a few years over 18.

Finally, the Decree 30/1997 (X. 11) of the Minister of Social Welfare on the Regulation of Juvenile Reformatories has a broader definition of juvenility than explained above, thus, widening the scope of those who may be placed in a juvenile reformatory. According to Article 1(4), a “juvenile” is a person **between 12 and 21**. The Criminal Code restricts the consequences of this interpretation by setting out under Article 120 that the measure of “education in a juvenile reformatory” may not be ordered where a person is older than 20 at the time of the judgment.

The legal framework for the detention of juveniles may be assessed on the basis of other aspects: on the basis of the grounds for detention, or according to the place of detention. Juvenile reformatories and penitentiary institutions overlap the most, thus the table below aims to explain and summarise the situation regarding these two institutions.

¹ Act V of 2013 on the Civil Code (2013), Art. 2(10).

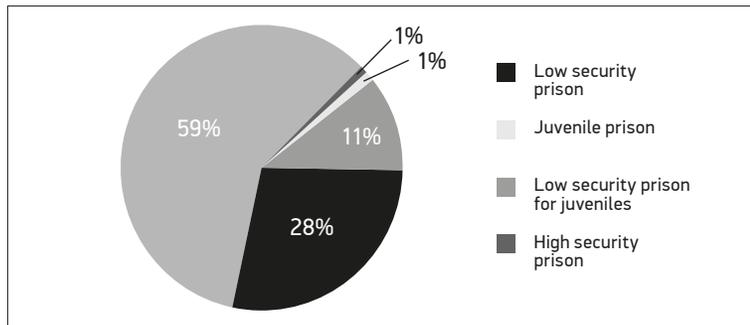
Table 1: Sentences carried out in Penitentiary institutions and Juvenile reformatories

	Penitentiary Institution	Juvenile reformatory
Imprisonment	+	
Pre-trial detention	+	+
Education in a juvenile reformatory		+
Petty offence confinement	+	

As of 1 January 2015, the Act XXXI of 1997 on the Protection of Children and the Guardianship Administration (hereinafter: Child Protection Act) introduces a new measure, preventive supervision.¹ According to the new law, “preventive supervision” can be ordered by the guardianship authority, and the probation service will be responsible for its implementation. In cooperation with the children’s welfare service, the probation officer’s tasks in this regard will be to support support the child to cease offending. According to the legislator, the new measure will also support the key players of the criminal justice system and petty offence authorities to form a much clearer picture of the child. Hence, the report of the probation officer related to the “preventive supervision” of the child may serve as a basis for individualising any future sanction imposed on them. Obviously, there are no observations yet on this practice.

1. Imprisonment

The number of juveniles within the total prison population was 478 on 31 December 2013, thus, juveniles constituted 2.67% of the detainees. This is less than the year before when 514 juveniles were detained in penitentiary institutions. Approximately half the juveniles serve their sentence in a medium security regime. The other half are in a low security regime. According to latest accessible data, the number of juvenile detainees has not increased in 2014.²

Figure 1: Convicts serving a final judgement as of 12 December 2013

Source: Hungarian Prison Service³

1 The term used in Hungarian is “megelőző pártfogás”.

2 On 16 September 2014, a total of 474 juveniles were detained by the penitentiary system. Information from the National Penitentiary Headquarters.

3 Hungarian Prison Service (2014), Hungarian Prison Service Yearbook 2013, available on: <http://bv.gov.hu/evkonyv>.

1.1. Altering the age limit of criminal responsibility

According to the Criminal Code, a juvenile is a person between 12 and 18.¹ Before the amendments, the age of criminal responsibility was higher: in order to call a juvenile to account in the framework of a criminal procedure, they had to be over 14. However, this rule was changed on 1 July 2013 when the new Criminal Code entered into force, and the age of criminal responsibility was lowered to 12 years, however, only for cases of intentional criminal offences. These criminal offences are homicide, voluntary manslaughter, bodily harm, robbery and plundering.² In addition, children between 12 and 14³ who have committed the latter offences may be punished only if at the time of committing a criminal offence, they had the capacity necessary to understand its consequences.⁴ The law does not contain further provisions on their capacity to understand the consequences of an offence; this is examined individually in each case.

The lowering of the age limit was justified by the legislators by noting that children between 12 and 14 perpetrated two thirds of criminal offences committed by children under 14. According to the legislators, the primary of child protection institutions was not to supervise children who exhibited flagrantly deviant behaviour. No professional consensus has been reached regarding the issue: many oppose the changes⁵ and claim that further developing the child protection system would be a more reasonable and effective solution than lowering the age of criminal responsibility.⁶ Such a solution would also be more attentive to the interests of child protection. Others believe that lowering the age limit was justified, and that the limitations, included in the law, ensure the prevalence of the rights of the child. Nonetheless, it is certain that this change raises several problems: it is not clear on what basis the capacity of a child to understand the consequences of the offence is examined or how reliable the outcome of this examination would be. Another issue is how children, who commit a criminal offence upon the instruction of an adult (typically their parent), will be treated. In addition, it is also not clear whether punishment is effective measure with regard to such young children. The scope of emerging problems is quite wide – and those mentioned above cover only a small part. Forming an opinion on the amendment is even harder because of the short period it has been in force. Hence, there is no empirical data on which to rely on.

It is important to note that the number of juvenile perpetrators has declined and plateaued in recent years.⁷

The Criminal Code sets out as a fundamental principle regarding juveniles that a punishment involving the deprivation of liberty may be imposed only if the aim of the punishment cannot be achieved in any other way.⁸ This provision complies with the Convention on the Rights of the Child, ratified by all member states of the European Union, which sets out⁹ that the imprisonment of a child should only be a last resort.

1 Act C of 2013 on the Criminal Code (2013), Art. 105(1).

2 *Ibid.*, Art. 16.

3 According to the Convention on the Rights of the Child, adopted in New York on 20 November 1989 (hereinafter: Convention on the Rights of the Child) child means someone being below the age of eighteen years – hereafter, we also follow this terminology. The Convention on the Rights of the Child was promulgated in Hungary by Act LXIV of 1991.

4 Act C of 2013 on the Criminal Code (2013), Art. 16.

5 For example the UNICEF National Committee of Hungary.

6 Ligeti, K (2008) "The concept of the criminal justice law of juveniles". In: *Kriminológiai tanulmányok* 45. Országos Kriminológiai Intézet, Budapest, p. 15, available on: http://www.okri.hu/images/stories/KT/kt45_2008_sec.pdf.

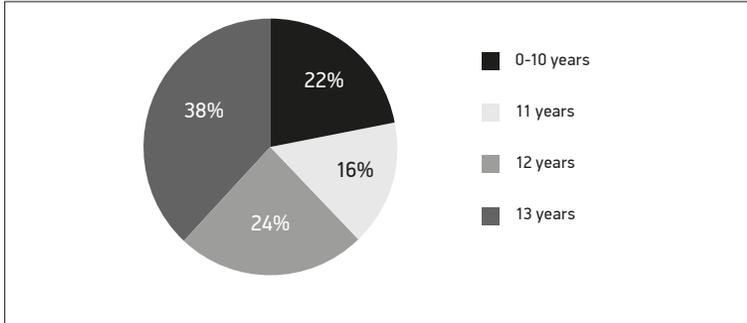
7 The information based on data of the Central Statistical Office processed by HHC, available on: http://www.ksh.hu/docs/hun/xstadat/xstadat_hosszu/h_zji001.html.

8 Act C of 2013 on the Criminal Code (2013), Art. 106(3).

9 Convention on the Rights of the Child, Art. 37(b).

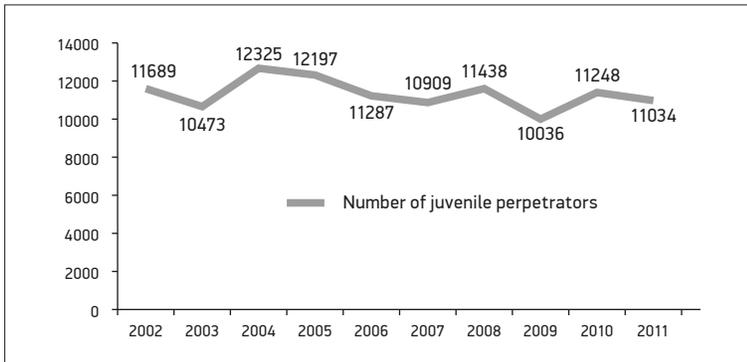
The leading principles for juveniles require that less severe punishments be imposed than those for adults. There are also differences within the category of juveniles: the maximum length of imprisonment, which may be imposed, is lower for those under 16. Life-long imprisonment may be imposed only if the perpetrator was over 20 at the time of the offence.

Figure 2: Division of perpetrators under 14 years per age groups in 2011



Source: Prosecution Service of Hungary¹

Figure 3: Number of juvenile perpetrators



Source: Prosecution Service of Hungary²

1.2. Mandatory defence in criminal procedures against juveniles

Act XIX of 1998 on the Criminal Procedure Code (hereinafter: CPC) contains special provisions applying to juveniles in a separate chapter, under “distinct procedures.”³ From among these, the rule, stating that the participation of a defence counsel is mandatory in procedures conducted against juveniles, is particularly important for the protection of a child’s interests.⁴ To ensure the right to defence, the provision also sets out that if the child does not have a retained defence counsel, the court, the prosecutor or the investigation authority, appoints a de-

1 Prosecution Service of Hungary (2012), Information note on certain issues related to the criminality of children under 14 years and of juveniles, p. 19, available on: <http://www.mklu.hu/repository/mkudok7746.pdf>.

2 Prosecution Service of Hungary (2012), Information note on certain issues related to the criminality of children under 14 years and of juveniles, p. 8.

3 Act XIX of 1998 on the Criminal Procedure (1998), Chapter XXI.

4 Criminal Procedure Code (1998), Art. 450.

fence counsel for them.¹ The fee and costs of the ex officio appointed defence counsel are covered by the state.² These provisions have special significance in practice since it is often the case that juvenile defendants are poor and therefore, unable to retain a defence counsel. The institution of the ex officio appointed defence counsel also entails problems: in recent years concerns were raised several times e.g. as to the effectiveness of the defence in practice in criminal procedures where the defence counsel involved was an ex officio appointed attorney.³

1.3. Rules as to the place of executing imprisonment

Law Decree 11 of 1979 on the Execution of Punishments and Measures (hereinafter: Penitentiary Code) includes several provisions regarding the execution of the punishment of imprisonment in the case of juveniles. The law designates medium and low security prisons as the place of execution for juveniles.⁴ The law also stipulates that the imprisonment of juveniles shall be executed in a separate institution⁵ and that they shall be separated from adults.⁶ The latter rule – included also in the Convention on the Rights of the Child⁷ – is partly overwritten by the provision allowing the placement of adult detainees in juvenile penitentiary institutions to maintain the operation of the facility.⁸ In practice, this means that juveniles do not serve their sentence in separate institutions, and their separation from adults is resolved within a particular institution instead.⁹ The new Penitentiary Code, i.e. Act CCXL of 2013 on the Execution of Punishments, Measures, Certain Coercive Measures and Petty Offence Confinement, which will enter into force on 1 January 2015, explicitly includes among the provisions related to imprisonment the possibility to accommodate juveniles not only in separate institutions, but also in a separate part of a given institution.¹⁰ Decree 21/1994 (XII. 30) of the Minister of Justice on the Designation of Penitentiary Institutions lacks clarification on the placement of juveniles: it only says that juveniles shall be placed in a penitentiary institution for juveniles.¹¹

1.4. The right to education, training and adequate physical development

According to the Convention on the Rights of the Child, State Parties recognise the child's right to education, and with a view to guaranteeing this right, they shall make primary education compulsory and available to all. They should also encourage the development of different forms of secondary education, including general and vocational education. They should make these available and accessible to every child and introduce appropriate measures, such as the introduction of free education and offering financial assistance in case of need. They should also introduce measures to encourage regular attendance at school and the reduction

1 Act XIX of 1998 on the Criminal Procedure (1998), Art. 48(1).

2 *Ibid.*, Art. 74(1)c).

3 Kádár, A., Tóth, B., Vavró, I. (2007), *Without Defence – Recommendations for the Reform of the Hungarian Ex Officio Appointment System in Criminal Matters*, Hungarian Helsinki Committee, Budapest, available on: http://helsinki.hu/wp-content/uploads/Without_Defense.pdf.

4 Law Decree No. 11 of 1979 on the Execution of Punishments and Measures (1979), Art. 48(1).

5 *Ibid.*, Art. 49(1).

6 *Ibid.*, Art. 30(1); Ministry of Justice (1996), Decree No. 6 of 1996 (VII. 12) on the Rules of Executing Imprisonment and Pre-Trial Detention, Art. 39(1)c).

7 Convention on the Rights of the Child, Art. 37(c).

8 Law Decree No. 11 of 1979 on the Execution of Punishments and Measures (1979), Art. 48(3).

9 An example for this is the Penitentiary Institution for Juveniles in Tököl, where 667 adult convicts serving a final sentence and only 185 juveniles serving a final sentence were detained in the beginning of November 2013.

10 Act CCXL of 2013 on the Execution of Punishments, Measures, Certain Coercive Measures and Petty Offence Confinement (2013), Art. 192(2).

11 Ministry of Justice (1994), Decree No. 21 of 1994 (XII. 30) on the Designation of Penitentiary Institutions, Art. 8.

of drop-out rates.¹ In compliance with these provisions, the Penitentiary Code sets out that while executing imprisonment, special attention shall be given to the training and education of the juvenile to develop their personality and physical development.² To accomplish this, several provisions cover the education of detainees in general, and specifically, the education, training and personality development of juveniles. In the framework of employment, the penitentiary system should ensure primary education, vocational education, work, therapeutic employment, and the possibility of participating in cultural, leisure, sport, personality development, curative, and rehabilitative programmes not only for juveniles but for all detainees.³

According to the respective legal provisions, the completion of primary education shall be particularly encouraged and supported.⁴ The participation of juveniles in education is mandatory until they reach 16.⁵ To establish the possibility of actual participation in the educational system, the Penitentiary Code sets out that primary education, school supplies, schoolbooks and other costs of education shall be guaranteed and covered by the penitentiary system.⁶ According to a related provision, juveniles are exempt from the obligation to work in the training period necessary to obtain the given qualification,⁷ and the child is also not obliged to contribute to the costs of their accommodation in this period.⁸ With respect to juveniles, the provision ensuring the possibility of providing a scholarship, and by that aiming at the practical realisation of Article 28(1)(b) of the Convention on the Rights of the Child, is very important: according to the provision in question, convicts participating in primary education, vocational education or in continuing education are entitled to a financial allowance equal to one third of the basic wage of detainees.⁹

Experience shows that granting a scholarship may indeed be a quite effective means of encouraging detainees over the compulsory school age to continue their studies, but it is questionable whether the system operates adequately in its present form. Rules aimed at ensuring the possibility of participating in education in practice apply also to solitary confinement: under the respective rule, juveniles sentenced to solitary confinement cannot be banned from attending school classes.¹⁰

The Penitentiary Code also sets out that the participation of the juvenile in vocational education and training for semi-skilled workers shall be guaranteed, and participation in secondary education shall also be made possible.¹¹ Permission to participate in secondary or higher education may be granted by the institution's warden upon the convict's request,¹² and the costs of these forms of education may be covered by the penitentiary system.¹³ Convicts serving a prison sentence in a medium or low security regime and rated as a "Grade 1" security

1 Convention on the Rights of the Child, Art. 28(1).

2 Law Decree No. 11 of 1979 on the Execution of Punishments and Measures (1979), Art. 48(2).

3 *Ibid.*, Art. 73.

4 Ministry of Justice (1996), Decree No. 6 of 1996 (VII. 12) on the Rules of Executing Imprisonment and Pre-Trial Detention, Art. 74(3).

5 Act CXC of 2011 on the National Public Education (2011), Art. 45(3).

6 Ministry of Justice (1996), Decree No. 6 of 1996 (VII. 12) on the Rules of Executing Imprisonment and Pre-Trial Detention, Art. 74(6).

7 This applies to primary education and school training providing a first vocational qualification.

8 Ministry of Justice (1996), Decree No. 6 of 1996 (VII. 12) on the Rules of Executing Imprisonment and Pre-Trial Detention, Art. 216.

9 In 2014 the basic wage was HUF 32,670 (EUR 108) per month.

10 Ministry of Justice (1996), Decree No. 6 of 1996 (VII. 12) on the Rules of Executing Imprisonment and Pre-Trial Detention, Art. 215.

11 Law Decree No. 11 of 1979 on the Execution of Punishments and Measures (1979), Art. 50(1).

12 Ministry of Justice (1996), Decree No. 6 of 1996 (VII. 12) on the Rules of Executing Imprisonment and Pre-Trial Detention, Art. 74(4).

13 *Ibid.*, Art. 74(6).

prisoner – thus, demonstrating good behaviour – may, exceptionally, and with the warden’s permission, carry out studies outside the institution. So, in theory, juveniles even have the possibility of obtaining a higher education degree while incarcerated.

According to the Penitentiary Code, the possibility of organising and participating in cultural programmes should be guaranteed in the institutions. Self-motivational organisations, established by the institution or the convicts with the aim of organising leisure, sport, cultural and community programmes, may establish amateur groups and special interest groups. In their free time, convicts may participate in activities in compliance with the internal regulation of the institution (“house rules”).¹ Juveniles may also establish self-motivational organisations, but these may operate only with supervision.² Depending on the institutions’ possibilities, the convict should also be guaranteed access to information about events in the outside world, and the political, social, economic and cultural life of the country.³ This may be provided e.g. via the use of the library, newspapers, or in certain cases through access to television and certain popular educational lectures. These provisions are particularly important regarding juveniles since their young age requires their exposure to information and education.

The Penitentiary Code also states that detainees (on request) may participate in personality development, curative and rehabilitation programmes, which contribute to the development of the juvenile’s personality. The warden shall also allow the convict to turn to professionally provided services outside the institution provided that the detainee is able to cover the costs and the service’s conditions may be guaranteed by the institution. The latter provisions apply to all detainees.⁴

Similarly, several provisions deal with ensuring the adequate physical development of juveniles. By law, if possible, all convicts shall have six cubic metres air space, and, if possible, juveniles shall have 3.5 square metres moving space (this is more than for adults).⁵ The term “if possible” was included in the law in November 2010. Therefore, the above provision on the minimum space is only a “guideline” rather than a binding provision. It is important to note that the ECtHR determined four square metres per detainee as a minimum, still acceptable, personal space. This provision of the Penitentiary Code is not heeded in some cases even with respect to juveniles,⁶ and overcrowding is a widespread problem in Hungarian penitentiary institutions.⁷

The stipulation, if conditions prevail, that juvenile convicts shall have access to a daily hot shower is also related to adequate physical development.⁸ According to the rule concerning adults, they are only entitled to one shower per week as a minimum. To ensure the healthy development of children, the rules currently in force set out that juvenile detainees under 16 are not allowed to keep tobacco and materials related to smoking (e.g. lighters and smoking paper) on them. However, breaking the latter rule does not constitute a disciplinary offence;

1 Law Decree No. 11 of 1979 on the Execution of Punishments and Measures (1979), Art. 75(1) and (2) and Art. 77.

2 Ministry of Justice (1996), Decree No. 6 of 1996 (VII. 12) on the Rules of Executing Imprisonment and Pre-Trial Detention, Art. 212.

3 Law Decree No. 11 of 1979 on the Execution of Punishments and Measures (1979), Art. 78.

4 *Ibid.*, Art. 76 (1).

5 Ministry of Justice (1996), Decree No. 6 of 1996 (VII. 12) on the Rules of Executing Imprisonment and Pre-Trial Detention, Art. 137 (1).

6 For example in the beginning of July 2013 the institution in Szirmabesenyő (the facility for juveniles within the Borsod-Abaúj-Zemplén County Penitentiary Institution) allowed the placement of 6 juveniles in a cell of 18 square meters, thus in case the cell would have operated with a maximum capacity, one detainee would have had only 3 square meters moving space.

7 As of 16 September 2014 the average overcrowding rate of the Hungarian penitentiaries was 142%.

8 Law Decree No. 11 of 1979 on the Execution of Punishments and Measures (1979), Art. 210/A.

the sanction is limited to a security measure¹ in these cases.² It is to be noted that from 1 January 2015, no juvenile detainee will be allowed to keep tobacco and smoking-related materials³ and breaking the latter rule, however, does not constitute a disciplinary offence.

To ensure ample meals necessary for the adequate physical development of juveniles, their daily amount of nutrition is higher: its amount in joule shall be that given to convicts performing light physical work.⁴

Detainees may also participate in sport programmes or operate self-motivational groups to organise such programmes (under supervision) in line with rules pertaining to cultural programmes as discussed above.

It should be noted that, according to Rule 66 of the European Rules for Juvenile Offenders, sentenced juveniles also have the right to wear their own clothes, if these are “suitable.” This last standard may be widely interpreted. According to the Commentary to the European Rules for juvenile offenders subject to sanctions or measures,⁵ however, it “[...] may mean that in certain circumstances their own clothing might be considered unsuitable if it risks creating undesirable social and financial ranking among juveniles or putting a significant financial burden on their families.” Hungarian law meets the requirements explained by the Commentary. Decree 6/1996 (VII. 12) IM⁶ states that detainees shall wear uniforms provided by the institution but civil clothing may also be allowed for juvenile detainees. It also stipulates that uniforms cannot be degrading or humiliating.

1.5. Rules pertaining to admission, daily routine and gathering information on the history and environment of the juvenile

The competent local guardianship authority at the juvenile’s residence, their statutory representative (in case of guardianship, the guardian), and, in the case of a juvenile in temporary or permanent state care, the competent regional child protection service shall be informed about the admission and the release of the juvenile within 72 hours.⁷ The institution is obliged to obtain information from these organs and individuals in order to learn more about the juvenile.⁸ This procedure may be omitted only if the shortest imprisonment possible is imposed under the Criminal Code (one month).⁹ The institution is also obliged to obtain the assessment of the juvenile’s living conditions from the Probation Service.¹⁰ This provision aims to

1 Security measures include e.g. the separation of the detainee from others, applying tools restricting the movement of the detainees, search, ordering the closure of the cell doors, etc.

2 Ministry of Justice (1996), Decree No. 6 of 1996 (VII. 12) on the Rules of Executing Imprisonment and Pre-Trial Detention, Art. 210/B.

3 Act CCXL of 2013 on the Execution of Punishments, Measures, Certain Coercive Measures and Petty Offence Confinement (2013), Art. 203.

4 Ministry of Justice (1996), Decree No. 6 of 1996 (VII. 12) on the Rules of Executing Imprisonment and Pre-Trial Detention, Annex 7.

5 Council of Europe, *Commentary to the European Rules for juvenile offenders subject to sanctions or measures*, available on: http://www.coe.int/t/dghl/standardsetting/prisons/Commentary_Rec_2008_11E.pdf.

6 Ministry of Justice (1996), Decree No. 6 of 1996 (VII. 12) on the Rules of Executing Imprisonment and Pre-Trial Detention, Art. 149.

7 *Ibid*, Art. 208.

8 *Ibid*, Art. 209(2).

9 Law Decree No. 11 of 1979 on the Execution of Punishments and Measures (1979), Art. 209 (3).

10 Ministry of Justice (1996), Decree No. 6 of 1996 (VII. 12) on the Rules of Executing Imprisonment and Pre-Trial Detention, Art. 209(1). In Hungary the Probation Service is subordinated to the Office of Justice which works under the supervision of the Ministry of Justice. The Office of Justice is a central authority with national competence. It has numerous tasks linked to the criminal procedure, from victim offender mediation to supervising community service. Probation officers also compile social inquiry reports at the request of the penitentiary institution upon the reception of the juvenile for serving imprisonment.

ensure that the institution learns more about the child admitted and, thus, indirectly, encourages the development of the most effective treatment and approach taking into account the best interests of the child. When admitted to a penitentiary institution, the child shall be placed in the “preparatory department,”¹ which also serves the best interests of the child.

It is essential for the child and in most cases, desirable, that their parents participate in their lives during their detention (via visits, correspondence and other methods of contact). Accordingly, the statutory representative of the child has the right to ask for information about the juvenile’s development and behaviour. To follow the children’s development and progress in school, institutions may organise parent conferences, and relatives may be invited to programmes organised for juveniles.²

When establishing the rules pertaining to the juveniles’ daily routine, the order of their quarters, their movements within the institution and their allowance for personal needs, the special needs of their age groups shall be taken into consideration and an effort shall be made to avoid anything detrimental to the juveniles.³

1.6. Rules on work, rewards and discipline

According to the Penitentiary Code, juveniles may be granted permission to work or even to participate in work outside the institution. Their employment is governed by labour law rules pertaining to juveniles. The provisions setting out that juveniles under 18 shall not be assigned to nightshifts⁴ and cannot be obliged to work extra hours (within the framework of extraordinary employment)⁵ are justified with regard to the child’s healthy development.

Rules on rewards for good behaviour, adequate work and school results slightly differ from those for adults. Juveniles or groups of juveniles may be rewarded with a certificate, which may be issued by the warden of the institution.⁶ Juveniles under 18 may be granted a short-term leave or absence from the penitentiary if approved by their statutory representative, adult relative, a probation officer, or the representative of a charity organisation. These should conclude a cooperation agreement with the penitentiary system and must oversee the juvenile’s escort and transport back to the institution.⁷ The length of short-term leave – both in the medium and low security regime – may be a maximum of 15 days per year.⁸

Disciplinary punishments imposed on convicts found guilty of violating penitentiary rules are the following: reprimand, decreasing the allowance, which may be spent on personal needs, and solitary confinement. Disciplinary punishments may be applied in that order depending on the gravity of the offence. The maximum length of solitary confinement is shorter in the case of juveniles: it may amount to 20 days in a medium security regime and 10 days in a low security regime.⁹

1 *Ibid.*, Art. 209(1).

2 *Ibid.*, Art. 213.

3 *Ibid.*, Art. 210.

4 *Ibid.*, Art. 110.

5 *Ibid.*, Art. 117(4)(a).

6 Law Decree No. 11 of 1979 on the Execution of Punishments and Measures (1979), Art. 51(1); Ministry of Justice (1996), Decree No. 6 of 1996 (VII. 12) on the Rules of Executing Imprisonment and Pre-Trial Detention, Art. 214(1).

7 Ministry of Justice (1996), Decree No. 6 of 1996 (VII. 12) on the Rules of Executing Imprisonment and Pre-Trial Detention, Art. 214(2).

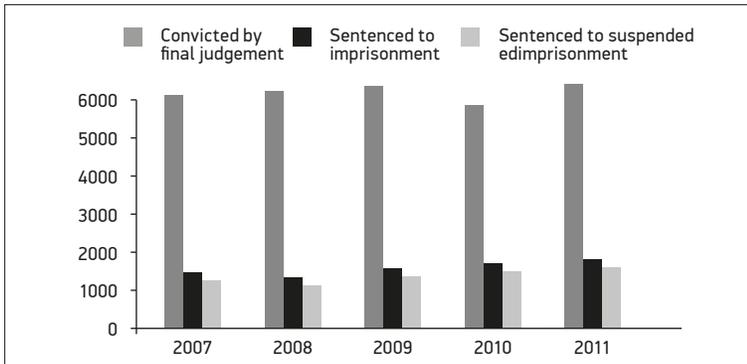
8 Law Decree No. 11 of 1979 on the Execution of Punishments and Measures (1979), Art. 51(2).

9 *Ibid.*, Art. 52(2).

1.7. Special rules pertaining to the health care of juvenile detainees

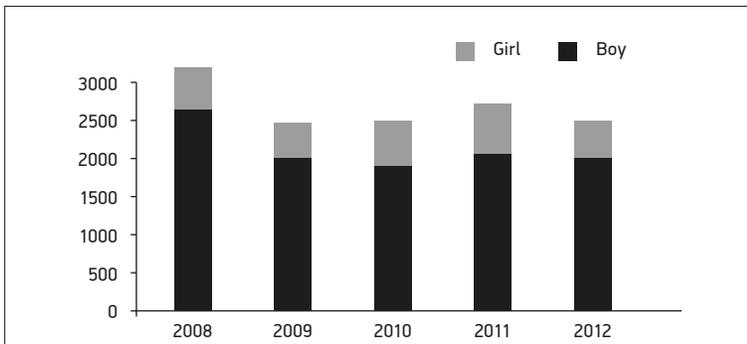
The provision stipulating that juvenile detainees shall receive medication and free health care is very important.¹ This rule is justified since most juvenile detainees are considered to have a low socioeconomic status. Its aim is to ensure the healthiest life possible for child detainees. Free medication and health care are given by the penitentiary institution upon the instruction of the institution's physician.²

Figure 4: Division of punishments imposed on juveniles – Data on imprisonment



Source: Information from the Prosecution Service of Hungary³ processed by HHC

Figure 5: Division of juvenile perpetrators by gender



Source: Information from the Prosecution Service of Hungary⁴ processed by HHC

1.8. Special rules on release

Special rules have also been introduced regarding the release of juveniles. Preceding release, the the institution, in cooperation with the probation officer, is obliged to arrange the housing of the juvenile, to help them find employment, encourage them to continue their studies, and provide them with information about available social allowances and social care.⁵ If the

1 *Ibid.*, Art. 55/A.

2 Art. 15(5) and Art. 36(1).

3 Prosecution Service of Hungary (2012), *Information note on certain issues related to the criminality of children under 14 years and of juveniles*, p. 37.

4 *Ibid.*, p. 24.

5 Ministry of Justice (1996), Decree No. 6 of 1996 (VII. 12) on the Rules of Executing Imprisonment and Pre-Trial Detention, Art. 218.

juvenile is still under 18 at the time of release, the institution must inform the competent regional probation service.¹ If the juvenile was in temporary or permanent state care prior to detention, the institution shall inform the regional child protection service before their release.² Furthermore, the Penitentiary Code sets out that to facilitate the juvenile's education and their integration into society, one should make use of the help of the guardianship and other state authorities, social organisations, the probation officer and the juvenile's relatives.³

These provisions play an important role in facilitating the juvenile's reintegration into society and preventing possible re-offending. Their effective use may be instrumental to the child's life following their release. The provision, stipulating that school certificates shall be issued by the educational institution without any reference to the juvenile's detention, is also geared towards their reintegration. It aims at avoiding, if possible, discrimination against the juvenile on the basis of their criminal record.⁴

1.9. Criminal law concerning juveniles

Although it is not specifically related to their imprisonment, it is noteworthy that many expert stakeholders in the criminal justice system deem it a major problem that criminal law concerning juveniles does not have separate provisions. There is also no court dealing explicitly and exclusively with juvenile cases. Experts told HHC that this is particularly problematic in a country, which has one of Europe's lowest ages of criminal responsibility and where imprisonment features highly among possible imposed sanctions.⁵

2. Pre-trial detention

2.1. Conditions and length of pre-trial detention

The rules regulating pre-trial detention are also included in the Criminal Procedure Code. According to the legal definition, this coercive measure is the **judicial deprivation of the defendant's personal liberty before the delivery of the final decision on the merits of the case**. The Hungarian definition of pre-trial detention is not entirely equivalent to that of the European Convention on Human Rights, since the latter refers to pre-trial detention with respect to the period preceding the first instance judgment. Under Hungarian law, however, pre-trial detention may last until the final – even third instance – judgment. Pre-trial detention is the gravest coercive measure entailing the deprivation of liberty, and may be applied only in exceptional cases. Instances when pre-trial detention may be ordered are determined by the CPC:

The defendant may be subjected to pre-trial detention in the case of an offence punishable with imprisonment and if:

“a) They have escaped or hidden from the court, the prosecutor or the investigative authority; They have attempted to escape, or during the procedure another criminal procedure is launched against them for an intentional offence punishable with imprisonment;

1 *Ibid.*, Art. 220(1).

2 *Ibid.*, Art. 220(3).

3 Law Decree No. 11 of 1979 on the Execution of Punishments and Measures (1979), Art. 50(2).

4 Ministry of Justice (1996), Decree No. 6 of 1996 (VII. 12) on the Rules of Executing Imprisonment and Pre-Trial Detention, Art. 74(5).

5 The prison population is 186 per 100,000 persons, Hungary is ranked 43rd in the world (United Nations Development Program, Human Development Reports, Prison population, available on: <http://hdr.undp.org/en/content/prison-population-100000-people>), while according to the ratio of juvenile detainees Hungary is ranked 9th (for more information see Ferenc, N. (2008) *Gondolatok És kérdések A Jogellenesség Köréből*, p. 14, available on http://ujbtk.hu/wp-content/uploads/PDF_EPUB/bjk_2008-2.pdf).

- b) Taking into account the risk of their escape or hiding, or for any other reason, there are well-founded grounds to presume that their presence at procedural actions may not be secured otherwise;
- c) There are well-founded grounds to presume that if not taken into pre-trial detention, they would – through influencing or intimidating witnesses, eliminating, forging or hiding material evidence or documents – thwart, hinder or threaten the procedure;
- d) There are well-founded grounds to presume that, if not taken into pre-trial detention, they would perpetrate an attempted or prepared criminal offence or would commit another criminal offence punishable with imprisonment.¹

As compared to the general rules, the CPC limits the applicability of pre-trial detention for juveniles. This complies with the requirement set out in several international documents that the detention of a child shall be used only as a last resort and for the shortest appropriate period of time.² Under the CPC, juveniles may only be incarcerated in cases of a serious criminal offence and where the general and special conditions set out above prevail.³ Thus, with respect to juveniles, it is not enough that the offence is punishable with imprisonment; it also has to be very serious.

The CPC also limits the length of pre-trial detention for juveniles. In adult cases, pre-trial detention has no upper limit for a criminal offence punishable with a prison term of up to 15 years or life-long imprisonment.⁴ Article 455 of the CPC sets out the following: “Pre-trial detention shall be lifted if a) its term reaches two years in case of a juvenile being at least 14 when committing the criminal offence; b) its term reaches one year in case of a juvenile being under 14 when committing the criminal offence; [...]” The exception is when pre-trial detention is ordered or upheld after the promulgation of the first instance judgment, or if a third instance proceeding or a repeated trial is ongoing.

The execution of pre-trial detention of juveniles is governed by rules pertaining to the execution of imprisonment of juveniles, detailed in the previous chapter. These rules will not be repeated here, and only the differences will be presented.

2.2. The place of executing pre-trial detention

The pre-trial detention of juveniles may be executed in both penitentiary institutions and juvenile reformatories. By law, the decision on placement is based on the personality of the juvenile and their criminal offence. Upon the request of the prosecutor, the defendant or the defence counsel, the court may alter the place of detention any time during the procedure. However, accommodating the juvenile in a penitentiary institution may also be necessary in order to carry out procedural actions, even if the pre-trial detention is otherwise executed in a juvenile reformatory. In these cases, the separation of juveniles from adults is implemented. In the case of juveniles under 14, the CPC stipulates that pre-trial detention must be carried out in a juvenile reformatory. According to the Criminal Code, this is because only measures may be imposed on juveniles under 14.⁵ Thus, special provisions have been adopted regarding the execution of pre-trial detention for juveniles under 14 to ensure that, in their case, pre-trial detention is not executed in a penitentiary institution under any circumstances.

1 Act XIX of 1998 on the Criminal Procedure (1998), Art. 129(2).

2 Convention on the Rights of the Child, Art. 37(b).

3 Act XIX of 1998 on the Criminal Procedure (1998), Art. 454(1).

4 *Ibid.*, Art. 132(3)(a).

5 The Hungarian criminal law has a dual system of sanctions: penalties and measures. The latter also aim at special crime prevention. For example admonition and probation are educational measures, while compulsory psychiatric treatment is a remedial measure. Confiscation is also a measure listed in the Criminal Code to be applied against the offender.

Decree 30/1997 (X. 11) of the Minister of Social Welfare on the Regulation of Juvenile Reformatories allows temporary placement in a penitentiary institution or a police cell in the case of a juvenile's arrest. The length of the temporary placement may be 24 hours or a maximum of five days, depending on whether it was ordered by the prosecutor or court.

As for the execution of imprisonment, the same conditions apply here: juveniles shall be accommodated and separated by gender as well as from adults. Pre-trial detainees shall be separated from convicts,¹ and depending on the ruling of the proceeding authority, from other pre-trial detainees, who were arrested in the framework of the same procedure.² A pre-trial detainee may be placed in the same cell as convicts (juveniles of the same sex), if the pre-trial detainee works together with them.

3. Juvenile reformatories

According to the Child Protection Act, juvenile reformatories form a part of the child protection system and according to Article 105(2) of the Penitentiary Code, they operate under the supervision and direct control of the Minister of Human Resources. Tasks related to the maintenance of juvenile reformatories and other related organisational tasks are carried out by an institution under the authority of the Ministry of Human Resources, the central organ of the Social and Child Protection Directorate, according to the Government Decree 316/2012 (XI. 13) on the Social and Child Protection Directorate.

Currently, there are four juvenile reformatories in Hungary: institutions in Budapest (in the Szőlő Street), Aszód and Debrecen accommodate boys, while the juvenile reformatory in Rákospalota accommodates girls. The institution in the Szőlő Street accommodates exclusively pre-trial detainees, while the institutions in Debrecen and Rákospalota admit both juveniles with educational measures in a juvenile reformatory and pre-trial detainees. The institution in Aszód deals only with juveniles with educational measures in a juvenile reformatory. A total of 216 places are available for juveniles in pre-trial detention and 256 places for juveniles with educational measures in a juvenile reformatory. It is expected that the building of a fifth juvenile reformatory in Nagykanizsa will be completed by the end of 2014. This will accommodate 108 juvenile boys from the first quarter of 2015.

Juvenile reformatories have a complex task. On the one hand, the pre-trial detention of juveniles may also be executed in these institutions, and on the other hand, juveniles with educational measures in a juvenile reformatory are also accommodated. Since the new Criminal Code came into force on 1 July 2013, the court may only impose measures on children between 12 and 14 who have committed a criminal offence of serious gravity³ as a sanction in the juvenile reformatory.⁴

1 Law Decree No. 11 of 1979 on the Execution of Punishments and Measures (1979), Art. 119(1)(a).

2 *Ibid.*, Art. 119(1)(c).

3 Act C of 2013 on the Criminal Code (2013), Art. 16 "Persons who were under 14 at the time the criminal offence was committed shall be exempt from criminal responsibility, with the exception of homicide [Art. 160(1)-(2)], voluntary manslaughter [Art. 161], bodily harm [Art. 164(8)], robbery [Art. 365(1)-(4)] and plundering [Art. 366(2)-(3)], if the perpetrator was over 12 at the time of committing the offence, and had the capacity to understand the consequences of the criminal offence".

4 Act C of 2013 on the Criminal Code (2013), Art. 106(2) "A punishment shall be imposed upon a juvenile if applying a measure is not expedient. Only measures may be applied to a person who has not reached 14 at the time the criminal offence was committed".

5 An "aftercare" unit can be operated in the institutions for those who are dismissed from the institution but cannot return to their families and their residence and cost of living is not ensured.

Table 2: Juvenile Reformatories in Hungary

Name	Address	Legal basis of placement	Number of places
Ministry of Human Resources – Rákospalota Juvenile Reformatory and Special Home for Children	1151 Budapest, XV., Pozsony u. 36.	<ul style="list-style-type: none"> • Education in a juvenile reformatory; • Pre-trial detention • Special home for children (for girls). 	<ul style="list-style-type: none"> • 54 (total); • 30 (education in a juvenile reformatory); • 20 (pre-trial detention); • 4 (aftercare³). (The institution also accommodates a special home for children with altogether 24 places.)
Ministry of Human Resources – Budapest Juvenile Reformatory	1032 Budapest, III., Szótló u. 60.	Pre-trial detention (for boys)	100
Ministry of Human Resources – Aszódi Juvenile Reformatory	2170 Aszód, Baross tér 2.	Education in a juvenile reformatory (for boys)	160
Ministry of Human Resources – Debrecen Juvenile Reformatory	4300 Debrecen, Böszörményi út 173.	<ul style="list-style-type: none"> • Education in a juvenile reformatory; • Pre-trial detention aftercare (for boys). 	<ul style="list-style-type: none"> • 140 (total); • 36 (education in a juvenile reformatory); • 96 (pre-trial detention); • 8 (aftercare).

Source: Hungarian Helsinki Committee

Table 3: Number of children in Juvenile Reformatories

Number of places	Girls	Boys	Total
Pre-trial detention	20	196	216
Education in a juvenile reformatory	30	196	226
Aftercare	4	8	12

Source: Hungarian Helsinki Committee

The role of “education in a juvenile reformatory” is twofold: it is partly a sanction, a measure limiting and depriving of liberty, which is applied against the perpetrator of a criminal offence. But it is also a child protection mechanism aimed at re-socialisation and education, the main goal of which is to reintegrate juvenile delinquents into society. In line with the letter of the law, an overwhelming majority of professionals in the child protection system consider education in a juvenile reformatory primarily to have the latter goal.¹

According to the Criminal Code in force since 1 July 2013, “education in a juvenile reformatory is ordered by the court if placement in an institution is necessary for the juvenile’s effective

¹ Interview with Péter Szabó, acting head of department of the Social and Child Protection Directorate, Department of Directly Maintained Institutions conducted in Budapest on 9 October 2013.

education.”¹ Thus, on the basis of the nature and gravity of the criminal offence, the court may deem it sufficient to apply an educational measure instead of imposing a sentence since the conditions of the juvenile’s education may not have been ensured in their earlier environment. To determine this, the court may obtain opinions from authorities and an assessment of the juvenile’s home environment. Education in a juvenile reformatory may last from one to four years. Under certain conditions (placement within an institution for at least a year, or there are well-founded grounds to presume that the aim of the measure may be achieved without keeping the juvenile in the reformatory), those sentenced to education in a juvenile reformatory may be temporarily released from the institution after serving half their sentence.

According to the Penitentiary Code, the aim of the educational measure in a juvenile reformatory is such that “the juvenile develops in the right direction and becomes a useful member of society.”² Thus, taking this into account, the education and protection of the juvenile shall be considered when imposing a measure or sentence.

Table 4: Measures applied individually

Year	Number of juveniles convicted by final judgements	Measures applied individually		Measures applied individually (broken down)					
				Probation		Education in a juvenile reformatory		Reprimand	
		Number	%	Number	%	Number	%	Number	%
2008	6,283	3,974	63.3	3,515	88.4	229	5.8	220	5.5
2009	6,309	3,887	61.6	3,403	87.5	229	5.9	244	6.3
2010	6,007	3,509	58.4	3,136	89.4	182	5.2	189	5.4
2011	6,312	3,709	58.8	3,321	89.5	210	5.7	167	4.5
2012	5,279	2,979	56.4	2,677	89.9	177	5.9	122	4.1

Source: Prosecution Service of Hungary³

Professional organisations and experts have an unequivocally positive view of juvenile reformatories. The National Institute of Criminology’s 2008 research report, entitled *The effectiveness of the criminal justice system of juveniles*, also draws a favourable picture of juvenile reformatories. The research report states: “the majority of juveniles placed [in the juvenile reformatories] perceived the period spent in the reformatory not as a punishment, but as a certain kind of help, which provided them with the possibility to break with their previous behaviour and they also received adequate help in that process. The performance of the educators working in the institutions was extremely good. [...] According to the research results, the juvenile reformatory is a very beneficial institution; it creates a realistic possibility for the specific population placed there to solve a part of their problems related to their way of living, and enhances the chances of the juveniles educated in the institution in several areas.”⁴

1 Act C of 2013 on the Criminal Code (2013), Art. 120(1).

2 Law Decree No. 11 of 1979 on the Execution of Punishments and Measures (1979), Art. 105(1).

3 Prosecution Service of Hungary (2012), *Information note on certain issues related to the criminality of children under 14 years and of juveniles*, p. 38.

4 Kerezsi, K., Kó, J. (2008) “The effectiveness of the criminal justice system of juveniles”. In: *Kriminológiai tanulmányok* 45. Országos Kriminológiai Intézet, Budapest, pp. 115-116, available on: http://www.okri.hu/images/stories/KT/kt45_2008_sec.pdf.

4. Petty offence confinement

The petty offence confinement of juveniles was introduced in 2010 by the Act LXXXVI of 2010 on Certain Amendments of Laws Necessary for Improving Public Security. Before 2010, petty offence confinement could not be imposed in juvenile cases, an approach to juvenile justice that had prevailed for decades.¹ Accordingly, currently under Act II of 2012 on Petty Offences, the Petty Offence Procedure and the Petty Offence Registry System (hereinafter: Petty Offence Act), the following sanctions may be imposed on juveniles committing a petty offence (similarly to adult offenders):²

- petty offence confinement,
- fine, and
- community work.

Punishments may be imposed **individually** or **jointly**, with the exception that community work may not be imposed alongside petty offence confinement.

According to the new rules, the **longest possible period** of petty offence confinement is **30 days** in the case of juveniles, as opposed to the general rule, which allows a maximum of 60 days confinement. In the case of a cumulative sentence, the maximum length may be **45 days**.³ **A fine may be imposed only if the juvenile agrees to pay it**,⁴ while community work may be imposed only if the juvenile is at least 16.⁵ An on-the-spot fine may not be imposed on juveniles in the absence of their statutory representatives.⁶

HHC believes that the above system of sanctioning **does not comply with the fundamental principles enshrined in international documents**. HHC's concerns are also shared by several other organisations and institutions. For example, the National Judicial Office stated in a related submission that "the system of sanctioning, applied in petty offence procedures conducted against juveniles, is not differentiated enough". Hence, it proposed to prioritise "measures aimed at the protection of children, alongside with pushing punishments into the background".⁷ In April 2012, the Commissioner for Fundamental Rights (the Ombudsperson of Hungary) turned to the Constitutional Court to request in its submission⁸ that provisions allowing the petty offence arrest and confinement of juveniles be abolished, claiming that they violate the juveniles' right to liberty and personal security, and the right of children to protection and care. The Constitutional Court rejected the submission and concluded that "juveniles' respect for the law has seriously declined, which endangers the evident social aim of them becoming law-abiding adults".⁹ The Constitutional Court also stated that "the confinement of juveniles was justified by the legislator by the pressing need to safeguard property, ensure public safety and facilitate the proper development of juveniles."

1 Act I of 1968 on Petty Offences (1968), Art. 27; Act LXIX of 1999 on Petty Offences (1999), Art. 15(1).

2 Act II of 2012 on Petty Offences, the Petty Offence Procedure and the Petty Offence Registry System (2012), Art. 7(1).

3 *Ibid.*, Art. 27(2).

4 *Ibid.*, Art. 27(3).

5 *Ibid.*, Art. 27(5).

6 *Ibid.*, Art. 27(3).

7 Submission of the National Judicial Office in relation to the amendment of Act II of 2012 on Petty Offences, the Petty Offence Procedure and the Petty Offence Registry System and further related laws, 30.148-33/2012 OBH, available on: <http://www.birosag.hu/obh/obh-szerv-dontesei/2012/szabalysertesi-javaslat-30148332012>

8 Commissioner for Fundamental Rights (2012), Submission to the Constitutional Court, available on: [http://public.mkab.hu/dev/dontesek.nsf/0/f34a40e998ddd4a4c1257ada00524cd9/\\$FILE/ATTOPHNY.pdf/2012_2806-0.pdf](http://public.mkab.hu/dev/dontesek.nsf/0/f34a40e998ddd4a4c1257ada00524cd9/$FILE/ATTOPHNY.pdf/2012_2806-0.pdf).

9 Constitutional Court (2013), Decision 3142/2013 (VII. 16), available on: <http://public.mkab.hu/dev/dontesek.nsf/0/F34A40E998DDD4A4C1257ADA00524CD9?OpenDocument>

By allowing the confinement of juveniles for petty offences, the legislator fails to take into account their special needs. The respective provisions violate an international convention, and cause several theoretical and practical problems. Petty offence confinement may lead to the unnecessary and disproportionate limitation of rights. This can have serious repercussions for those juveniles who have low maturity levels and impulsive by nature.

As shown by Table 3,¹ the number of petty offence procedures initiated against juveniles increased by 32.7% in 2013 from the previous year. In the first five months of 2014, the number of procedures launched was 9,799 and if the tendency does not change, the number of procedures should revert to the figures from 2012 by the end of the year. The number of procedures launched against juveniles because of petty offences against property also shows an increase (65%) in 2013. In the first five months of 2014, a total of 3,204 procedures were launched for this kind of offence, which is also close to the 2012 figures, and would mean a decrease from 2013.

As for cases against juveniles in which criminal responsibility was established, there was a 21.5% increase in 2013, but the numbers in 2014 are far below the two preceding years. In the first five months of 2014, 21 juveniles in total were sentenced to community work, which is a much higher proportion than in previous years. The number of juveniles ordered to pay a fine increased drastically from 2012 to 2013 (from 57 persons to 131 persons). In the first five months of 2014, 65 juveniles were ordered to pay a fine, maintaining similar levels as in 2013.

In petty offence cases involving a juvenile, the number of offenders sentenced to petty offence confinement increased by 46% in 2013 from the previous year. Based on available data for 2014, a further increase is expected. The proportion of petty offence confinements as compared to petty offence procedures is as follows: in 2012, a confinement was imposed in 0.66% of the cases; in 2013 the proportion was higher – 0.72%; while in the first five months of 2014, it reached 1.02%.

Table 5: Petty offence procedures (2012-2014)

	2012	2013	2014 (January-May)
Petty offence procedures initiated against juveniles	23,578	31,301	9,799
Petty offence procedures initiated against juveniles for petty offences against property	6,597	10,896	3,204
• <i>out of which</i> : cases where responsibility was established	4,159	5,054	701

Source: Data obtained through FOI request by HHC

Table 6: Number of confinement measures imposed

Data pertaining to juveniles	2012	2013	2014 (January-May)
Number of confinements imposed	157	227	102
Length of confinement:			
• 1-10 days	4	4	5
• 11-20 days	16	16	18

¹ The tables were prepared on the basis of the database provided by the Ministry of Internal Affairs, dated 30 June 2014, upon the FOI request of the Hungarian Helsinki Committee.

• 21-30 days	25	29	27
Transforming community work into confinement (instances)	1	18	14
Average length of confinement when transformed from community work	20	8	11
Transforming a fine into confinement (instances)	10	121	57
Average length of confinement when transformed from a fine	6	5	5

Source: Data obtained through FOI request by HHC

It shall be noted that, according to information provided by the National Penitentiary Headquarters, on average one to five juveniles serve their petty offence confinement in the penitentiary institutions at the same time.¹

According to Article 27(1) of the Petty Offence Act, a juvenile is a person who was over 14 but less than 18 when committing the petty offence. Juveniles under the Petty Offence Act qualify as a child under the Convention on the Rights of the Child.² Therefore, they fall under the scope of the Convention on the Rights of the Child and are covered by its system of guarantees.

The confinement of juveniles for petty offences contravenes the obligations undertaken by Hungary in international documents in several ways. Hence, it was rightly criticised by Hungarian human rights and child protection experts. HHC and the Hungarian Civil Liberties Union stated, even upon the publication of the draft law allowing for the confinement of juveniles, that the introduction of the petty offence confinement for juveniles is highly problematic.³

HHC still believes that petty offence confinement should not be applied to individuals under 18, in line with the previous decades-long practice. The system currently in force violates several provisions of the Convention on the Rights of the Child as detailed below.

4.1. The principle of the best interests of the child

According to Article 3(1) of the Convention on the Rights of the Child, in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the child's best interests should be the primary consideration. Thus, this aspect is clearly not equal to other circumstances that should be assessed, but requires priority. This requirement unequivocally applies also to the legislator, not only to the adjudication of individual cases. Accordingly, the Parliament should also be guided by the principle of the best interests of the child when framing laws pertaining to petty offences.⁴ It should be emphasised that the above principle is one of the general principles of the Convention on the Rights of the Child, which pervades the other rules of the Convention and gives guidance when interpreting them. As a study on the interpretation of

1 Information provided on the roundtable discussion on 16 September 2014, organised by the Hungarian Helsinki Committee.

2 Convention on the Rights of the Child, Art. 37(b).

3 Opinion of the Hungarian Helsinki Committee and the Hungarian Civil Liberties Union on Bill T/580 on Certain Amendments of Laws Necessary for Improving Public Security, 9 July 2010, available on: http://helsinki.hu/wp-content/uploads/Helsinki_TASZ_kozbiztonsagi_csomag_velemeny_20100709_final.pdf.

4 As it was declared that it had done so when adopting the Child Protection Act (see Art. 2).

Article 3 states: “Indeed, there is no article in the Convention, and no right recognised therein, with respect to which this principle is not relevant”.¹

As the Committee on the Rights of the Child points out in General Comment No. 10 Children’s rights in juvenile justice (hereinafter: General Comment No. 10)² regarding Article 3, children “differ from adults in their physical and psychological development, and their emotional and educational needs. [...] These and other differences are the reasons for a separate juvenile justice system [which petty offence law is a part of] and require a different treatment for children. The protection of the child’s best interests means, for instance, that the traditional objectives of criminal justice, such as repression/retribution, must give way to rehabilitative and restorative justice objectives in dealing with child offenders”.³ Having this in mind, it may be safely stated that the petty offence confinement of juveniles does not comply with the internationally accepted fundamental principles of child protection.

Nevertheless, the Hungarian government does not agree with the statement above, and does not consider rehabilitative and restorative justice a primary objective for juveniles. This is clearly illustrated by the regulation currently in force and an earlier response from the Minister of Internal Affairs (formerly responsible for justice matters) given to the inquiry of the Parliamentary Commissioner for Civil Rights (the Ombudsperson). In the course of a procedure, initiated by the Ombudsperson ex officio, involving child theft of custom jewellery, the Minister submitted that maintaining the ban on imposing confinement on juveniles was not justified because the authorities lacked available sanctions. He reasoned that confinement serves the best interests of the juvenile perpetrator because “treating the ‘swings’ within the realm of petty offences with adequate vigour is absolutely necessary at a stage of life when the juvenile already has the physical and mental abilities to commit graver breaches of the law, but their personality may still be shaped and they may be driven in the right direction”.⁴

It is true that neither the Convention on the Rights of the Child, nor domestic laws, define the principle of the best interests of the child. However, the Council of Europe’s respective guidelines provide a point of reference when setting out that, in assessing a child’s best interests, a comprehensive approach should be adopted to consider carefully all interests involved, including psychological and physical well-being and the child’s legal, social and economic interests.⁵ It is safe to conclude that ensuring the rights enshrined in the Convention on the Rights of the Child definitely serves the child’s best interests.⁶ Accordingly, decisions upholding the rights enshrined in the Convention on the Rights of the Child best serve the child’s well-being.

Therefore, the confinement of juveniles not only conflicts with the child’s best interests as a matter of principle, it also undermines the child because it impinges on other rights: it violates the right to education (Article 28 of the Convention on the Rights of the Child) and the respective guiding criminal justice principles pertaining to children (Article 37 of the Convention on the Rights of the Child).

1 Alston, P., Gilmour, B., Walsh (1996) *The Best Interests of the Child. Towards a Synthesis of Children’s Rights and Cultural Values*, Innocenti Studies, UNICEF, p. 1.

2 CRC, General Comment No. 10: Children’s rights and juvenile justice, CRC/C/GC/10, 25 April 2007 (hereinafter: General Comment No. 10), available on: <http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>.

3 *Ibid.*, § 10.

4 Report of the Parliamentary Commissioner for Civil Rights in the case No. AJB-5980/2010 referred to above, p. 2.

5 Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 17 November 2010, Art. III.B.2.

6 Judicial Implementation of Art. 3 of the Convention on the Rights of the Child in Europe: The case of migrant children including unoccupied children, UNICEF – Regional Office for Europe of the United Nations High Commissioner for Human Rights, June 2012, p. 11, available on: <http://www.statewatch.org/news/2012/nov/rights-the-child-in-europe.pdf>

4.2. Right to education

According to Article 28(1) of the Convention on the Rights of the Child, State Parties recognise the right of the child to education, and with a view to achieving this right, they shall

- encourage the development of different forms of secondary education, and make them available and accessible to every child (Article 28(1)(b)); and
- take measures to encourage regular attendance at schools and the reduction of drop-out rates (Article 28(1)(e)).

As deliberated on in Paragraph 1 of General Comment No. 13 on the right to education by the Committee on Economic, Social and Cultural Rights, education is both a human right in itself and an indispensable means of realising other human rights. Education is also increasingly recognised as one of the best financial investments a country can make.¹

Despite the above considerations, the upper limit of the compulsory school age was lowered to 16 from 18 in 2011.² Some of the juveniles within the scope of the Petty Offence Act, those between 14 and 16, are of a compulsory school age. It may also be presumed that most juveniles between 16 and 18 also attend school. However, the continuation of their studies may be put in jeopardy if they are confined for committing a petty offence.

At the same time, the education of juveniles in confinement is not guaranteed in any way, since Chapter XI of the Penitentiary Code, pertaining to the execution of confinement (Articles 122-125), does not include the obligation to ensure the right to education. The reference rule under Article 122(3) of the Penitentiary Code explicitly omits Article 36 (1)(n), which ensures the right to education for convicted persons, from the list of rights entitled to persons serving a confinement sentence. Article 48(2) of the Penitentiary Code stipulates that in the course of executing imprisonment, special attention shall be paid to the juvenile's training, education, personality development and physical development. Nevertheless, it does not apply to all detainees, but only in the case of juveniles with a final judgment. The Decree 17/2012 (IV. 5) of the Minister of Internal Affairs on the Detailed Rules of Executing Petty Offence Confinement does not mention the right to education at all.

Considering that petty offence confinement may even last up to 45 days, the right to education of juveniles, enshrined in the Convention on the Rights of the Child, is violated. Thus, the state neglects its obligation to make secondary education accessible to every child (Article 28(1)(b)), since "accessibility" does not only entail a theoretical possibility to enforce the right to education, but also a practical, realistic possibility for the juvenile to receive adequate education.

On the other hand, the maximum possible period of confinement is long enough to cause the juvenile in question to considerably lag behind with the school curriculum. As a result, their likelihood of having to repeat the school year increases. According to Article 51(2)(d) of Decree 20/2012 (VIII. 31) of the Minister of Human Resources on the Operation on Training and Educational Institutions and the Use of Names by Public Education Institutions, it is officially accepted (considered a "justified omission") if a student cannot comply with their obligation to attend school because of an imposed measure. Yet, justified omissions may entail rather severe consequences. Article 51(7) of the above decree sets out that if the student's justified and unjustified omissions altogether exceed 250 hours in a given school year, or if they fail to attend 30% of the classes in a given subject, and as a result their performance cannot be assessed during the school year, the student cannot be given a final mark at the end of the

1 General Comment No. 13: Right to education, E/C.12/1999/10, 8 December 1999, available on: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/462/16/PDF/G9946216.pdf?OpenElement>.

2 Act CXC of 2011 on the National Public Education (2011), Art. 45(3).

year. The only exception is if the teacher's council allows them to take a special assessment exam. Taking this into account, the petty offence confinement of juveniles clearly contravenes Article 28(1)(e) of the Convention on the Rights of the Child, since depriving a child of liberty is a measure which jeopardises regular attendance at schools and increases the possibility of dropping out.

According to Paragraph 89 of General Comment No. 10, the Committee on the Rights of the Child emphasises that every child deprived of liberty of a compulsory school age has the right to education suited to their needs and abilities, which is designed to prepare them to return to society. In addition, every child should, when appropriate, receive vocational training in occupations likely to prepare them for future employment. When juveniles are confined under the Petty Offence Act none of these requirements are fulfilled.

4.3. Confinement as a last resort

Both the Criminal Code and the Petty Offence Act specify that the aim of the punishment or measure is to ensure that the juvenile develops in the right direction and becomes a useful member of society.¹ However, the Criminal Code also considers the principle of incremental punishment and *ultima ratio*. In the event of violations, considered to be the most dangerous to society (i.e. for criminal offences), the principle dictates that a punishment may be imposed only if a measure would be ineffective, and sets out that deprivation of liberty may be applied only if the aim of the measure or the punishment cannot be achieved in any other way.² These law enforcement guidelines function as important guarantees, but are not included in the Petty Offence Act, which sanctions breaches of norms that are considered less dangerous to society. This legislative solution is not only unreasonable, but also clearly flouts respective international rules.

According to Article 37(b) of the Convention on the Rights of the Child, State Parties shall ensure that the arrest, detention or imprisonment of a child shall conform to the law and should be used only as a last resort. The above provision of the Convention on the Rights of the Child applies to all forms of deprivation of liberty, thus, it should be applied to the regulation of confinement.

The General Assembly of the United Nations adopted other resolutions related to the Convention on the Rights of the Child:

- UN General Assembly Resolution 40/33 on the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, adopted on 29 November 1985 (“The Beijing Rules”),
- UN General Assembly Resolution 45/113 on the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, adopted on 14 December 1990 (“The Havana Rules”),
- UN General Assembly Resolution 45/112 on the United Nations Guidelines for the Prevention of Juvenile Delinquency, adopted on 14 December 1990 (“The Riyadh Guidelines”).

The aim of the Beijing Rules is to formulate guidelines of a general nature which summarise the minimum rules to be observed in the juvenile criminal justice system. The Havana Rules set out rules for juveniles who have already been deprived of their liberty (this resolution was practically adopted as a supplement to the Beijing Rules). The Riyadh Guidelines deal with

¹ Act C of 2013 on the Criminal Code (2013), Art. 106(1); Act II of 2012 on Petty Offences, the Petty Offence Procedure and the Petty Offence Registry System (2012), Art. 134(1).

² Act C of 2013 on the Criminal Code (2013), Art. 106(2) and (3).

an issue which slightly differs from the ones covered by the first two resolutions and sets out that the primary aim of criminal policy should be crime prevention in the case of juveniles. As pointed out by HHC in its detailed analysis, the petty offence confinement of juveniles violates the fundamental principles laid down in these General Assembly resolutions *ab ovo*.¹

Under the provisions of the Petty Offence Act, juveniles may also be deprived of their liberty in cases when it is not a measure of last resort in violation of the principles of the Convention on the Rights of the Child and the respective resolutions of the UN General Assembly. It is also unreasonable on the one hand, for the lower age limit for imposing confinement (entailing the most severe limitation of rights) to be 14, while on the other hand, the lower age limit for imposing other less restrictive measures, such as community work, to be 16 at the time of the court decision.

Legislation usually qualifies acts as petty offences, which are less dangerous to society than criminal offences.² Accordingly, if a given action does not violate or endanger the Hungarian state, socio-economic order, or the person or rights of individuals to such an extent that it is penalised by the legislator as a criminal offence, then the petty offence confinement of juveniles cannot be in compliance with the requirement of *ultima ratio*.

Rule 17.1(a) of the Beijing Rules sets out that the response of the justice system should always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to society's needs. Rule 17.1(b) says that restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum. The commentary attached to Rule 17.1(a) explains that the basic consideration underlying the rule is that strictly punitive approaches are not appropriate. It adds that in adult cases, and possibly also in cases of severe offences by juveniles, only desert and retributive sanctions might be considered to have some merit. But it stresses that, in juvenile cases, such considerations should always be outweighed by the interest of safeguarding the well-being and future of the young person. Furthermore, the Beijing Rules also add that persons under 18 may be deprived of liberty only if the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and if there is no other appropriate response.³

However, the Petty Offence Act currently in force does not include such limitations. Petty offence confinement may be imposed both on adults and on juveniles for committing the following offences: trespassing, arbitrary occupation, violating the rules of a restraining order, disorderly conduct, rowdiness, conducting civil patrol activities in an irregular way, performing activities aimed at ensuring public safety without authorisation, prostitution, making dangerous threats, participating in the activities of a dissolved social organisation, submitting a false claim, driving a vehicle while banned, and petty offences against property.⁴

The list shows that most offences, punishable by confinement, are not violent in character. Although juvenile prostitution is certainly not to be supported, imposing confinement on a child committing such a petty offence (as happened in the city of Miskolc, where the city court sentenced a 17-year-old girl to 10 days confinement for prostitution⁵) is unreasonable

1 Hungarian Helsinki Committee (2010), *The petty offence confinement of juveniles in the light of the provisions of the Convention on the Rights of the Child, adopted in New York, on 20 November 1989*, available on: http://helsinki.hu/wp-content/uploads/Helsinki_Bizottsag_fiatalkoruak_elzarasa.pdf.

2 Act II of 2012 on Petty Offences, the Petty Offence Procedure and the Petty Offence Registry System (2012), Art. 2.

3 Beijing Rules, Rule 17.1(c).

4 Fececs, B. (2011) "Petty offence case law at courts." In: *Kriminológiai közlemények 69. – Közbiztonság és társadalom*, Magyar Kriminológiai Társaság, Budapest, p. 39.

5 See: <http://www.origo.hu/itthon/20100827-tiltott-kejelges-miatt-tiz-napra-bezartak-egy-17-eves-lanyt.html>.

and disproportionate. It should be noted that perpetrators in these cases are usually underprivileged, have a troubled family background and are sometimes victims in a certain sense.

Confinement has a serious stigmatising effect on juveniles in their family, among their peers and in school, and endangers their moral development. As a result of confinement, the juvenile may lose touch with their normal environment and, in certain cases, confinement may also jeopardise the continuation of their studies. Detention, executed in a penitentiary institution, is a serious criminogenic factor for juveniles who are especially sensitive to negative influences. Thus, the danger of recidivism increases. In light of all this, it is clear that the application of confinement may not serve the best interests of the juveniles. The commentary on Rule 19 of the Beijing Rules states that progressive criminology advocates the use of non-institutional over institutional treatment and that little or no difference has been found in terms of the success of institutionalisation as compared to non-institutionalisation. The many adverse influences on an individual that seem unavoidable within any institutional setting evidently cannot be outbalanced by treatment efforts. This is especially the case for juveniles who are vulnerable to negative influences. The commentary adds that the negative effects, not only stemming from the loss of liberty but also from a child's separation from their normal social environment, are certainly more acute for juveniles than for adults because of their early stage of development.

The United Nations International Children's Emergency Fund (UNICEF) believes that, in the case of juveniles, the use of the restorative justice approach should be preferred,¹ since restorative justice programmes are an effective way of addressing offending behaviour and reducing recidivism. According to the recommendation put forward by UNICEF, legislation should give judges clear and explicit power to order non-custodial, restorative justice sentences, the essence of which is that the victim and the offender participate together actively in the resolution of matters arising from the crime, often with the help of a fair and impartial third party.²

This approach is also in compliance with Rule 18.1 of the Beijing Rules, which sets out as a requirement that a large variety of measures shall be at the disposition of the competent authority, allowing for flexibility so as to avoid institutionalisation whenever possible. "Institutionalisation" is a set of symptoms emerging as a consequence of permanent treatment in a live-in institution, by which the consciousness of the affected person narrows along with their interest in the outside world and other people. It is especially dangerous during childhood since it slows down psychological development and may even impede it.³

4.4. Arrest and short-term detention in petty offence procedures

In cases where juveniles commit a petty offence, they may also be detained for a short period by the police. According to Article 33(2)(f) of Act XXXIV of 1994 on the Police, the police may arrest someone and bring them in front of the competent authority or organ, among others, if the offender continues to perpetrate a petty offence after they were ordered to desist. If the procedure against them may be conducted immediately, or if no material evidence is obtained from the person concerned, then nothing obtained under seizure should be retained.

The wording of the provision clearly shows that the police on the scene have full authority to arrest and bring someone before the competent authority. According to the general rule pertaining to arrest, personal liberty may be limited only for the period necessary, and for a

- 1 For the definition of restorative criminal justice, see: Declaration of Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters, Economic and Social Council, 27 July 2000, U.N. Doc. E/2000/INF/2/Add.2.
- 2 UNICEF *Guidance for Legislative Reform on Juvenile Justice*, p. 86. (hereinafter: UNICEF Guidance Paper), available on: http://www.unicef.org/policyanalysis/files/Juvenile_justice_16052011_final.pdf.
- 3 Soósné, Dr. Faragó Magdolna (2003), *Collection of definitions in the field of mental hygiene pedagogy and social psychology*, p. 17., available on: <http://www.nefmi.gov.hu/letolt/kozokt/fogalomtar.pdf>.

maximum of eight hours. If the aim of the arrest was not achieved, the arrest, if justified, may be prolonged once by four hours by the head of the police authority.¹

Following arrest, the offender may be taken into “short-term detention” by the police under the Petty Offence Act in order to conduct an accelerated court procedure against them, provided that the petty offence committed is punishable with confinement.² The short-term detention shall last until the in-merit decision of the court is reached, but for a maximum of 72 hours.³

On the basis of the rules above, a juvenile shoplifting goods, valuing a few thousand HUF (anything less than HUF 50,000, approximately EUR 160), may be detained in a police cell for up to 72 hours – three days. Experience shows that if the law provides for the possibility of limiting the liberty of juveniles to such an extent, then authorities will resort to this practice more frequently. In the case of the high school girls already referred to above, the police made use of the possibility of detaining offenders for a maximum of 72 hours and ordered the short term arrest to last from 1 September 2010, 16.20 CET until 4 September 2010, 16.20 CET. – for stealing a few items of custom jewellery. The actual length of the detention was shorter (it lasted until 3 September, 9.00 CET) only because the Pest Central District Court set the date of the accelerated procedure (the trial) to 3 September 2010, 9.00 CET, when it ordered the release of the two girls from short-term detention.⁴

As pointed out by one of the perpetrator’s attorneys,⁵ the absurdity of the situation is illustrated by the fact that if the stolen jewellery was valued above the petty offence value, then it is likely that they would have been released from the police station after their interrogation and could await the development of the the case and for the subpoena outside of detention.

Clearly, regulation allowing for such anomalous cases does not comply with the requirement that incarceration shall be a last resort. This case is especially illustrative because the girls detained in the police cell, as a consequence of which one of them ended up in psychiatric care, had committed their first petty offence, expressed regret for their actions immediately, did not try to escape and did not cause any further damage.

4.5. Fine, community work and transformation

Juveniles, who have committed a petty offence, may be confined not only if the court imposes it as a punishment, but also if they fail to pay the fine or fulfil the community work sentence. There is no rule, which would prohibit the transformation of a fine or community service sentence into confinement in these cases.⁶

The amount of a fine ranges from HUF 5,000 (approximately EUR 16) to HUF 150,000 (approximately EUR 480) in general, but it can amount to HUF 300,000 (approximately EUR 985) if the criminal offence is punishable with confinement.⁷ When transforming the fine, HUF 5,000 (EUR 16) is equal to one day in confinement.⁸

According to HHC, the provisions above negatively affect underprivileged juveniles who due to their parents’ financial circumstances are unable to pay a fine amounting to tens or even

1 Act XXXIV of 1994 on the Police (1994), Art. 33(3).

2 Act II of 2012 on Petty Offences, the Petty Offence Procedure and the Petty Offence Registry System (2012), Art. 73(1).

3 *Ibid.*, Art. 73(2).

4 Report of the Parliamentary Commissioner for Civil Rights in the case no. AJB-5980/2010.

5 HVG.hu (2012), “Olcsóbban megússza a rendőre támadó, mint a csokitolvaj”, 15 October 2012, available on: http://hvg.hu/itthon/20121015_A_csokitolvaj_elzarjak_a_rendorre_tamadot.

6 Act II of 2012 on Petty Offences, the Petty Offence Procedure and the Petty Offence Registry System (2012), Art. 12(1).

7 *Ibid.*, Art. 11(1).

8 *Ibid.*, Art. 12(1).

hundreds of thousands of Hungarian forints. Juveniles in Hungary may work legally only after they turn 16, so the age group falling between 14 and 16 is particularly vulnerable to ending up in a penitentiary because they do not receive an income and their parent's low socioeconomic status prevents them from paying the fine.

The same problem arises when it comes to imposing community work: unlike confinement, which qualifies as a much more severe limitation of rights, community work may be imposed only if the juvenile is older than 16. This rule may result in further deficiencies in practice, since it narrows the sanctions available to the authorities regarding juveniles between 14 and 16. If the “warning” is not considered a sufficient sanction, only the most severe or the least severe punishment may be imposed (i.e. confinement or a fine). Thus, authorities do not have at their disposal to impose community work in a given case where that would be the most proportionate punishment, serving the best interests of the child. Furthermore, if the juvenile and their family lack the means to pay the fine, the judge has no other option but to impose the petty offence confinement on a child of 14 or 15.

It also creates disproportionate situations if a juvenile under 16 attempts to pay the fine but it transpires that they cannot afford to do so. In this case, the court would be compelled to impose a petty offence confinement even if the juvenile was willing to carry out community work instead of paying the fine under Article 13(1) of the Petty Offence Act. In this case, imprudent rules deprive juveniles of the possibility of serving a less restrictive punishment which adults have access to immediately.

In its guidance paper, UNICEF mentions that children who are homeless, or who have been in the care of the local authority, are more likely to be given a custodial sentence because of the lack of supervision and care by their families.¹ Regarding this group of children, there may be a need for separate measures to ensure that the guarantees included in the Convention on the Rights of the Child actually apply to them as well.

4.6. The execution of petty offence confinement

Article 37(c) of the Convention on the Rights of the Child provides among other things that children deprived of liberty shall be treated in a manner which takes into account the needs of persons of their age. In particular, every child deprived of liberty shall be separated from adults.

The current Hungarian legislation does not comply with these stipulations. Petty offence confinement is executed in penitentiary institutions regulated by a separate law; thus, it is not possible to execute the petty offence confinement in a juvenile reformatory.² In the case of juveniles, the following penitentiary institutions may be assigned as places of detention:³

Table 7: Institutions accommodating juvenile petty offenders

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1. Penitentiary Institution for Juveniles – Tököl (juvenile men)
 2. Regional Penitentiary Institution for Juveniles – Kecskemét (juvenile women)
 3. Pálhalma National Penitentiary Institution (juvenile women)
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¹ UNICEF Guidance Paper, p. 93.

² Ministry of Internal Affairs (2012), Decree No. 17 of 2012 (IV. 5) on the Detailed Rules of Executing Petty Offence Confinement (2012), Art. 1(1).

³ Government Decree No. 173 of 2013 (V. 30) on the Designation of Institutions Executing Confinement and Petty Offence Confinement (2013), Art. 2 (1) and Annex 2.

The petty offence confinement of juveniles shall be primarily executed in the three institutions included in Table 7. However, if upon deducting the length of petty offence short-term detention from the length of petty offence confinement, there are less than 15 days left, petty offence confinement may also be executed in one of the other 18 institutions listed by the law. This should correspond to the residence of the juvenile.¹

When executing petty offence confinement, juveniles shall be separated from adults and other detainees. This is a challenge to the penitentiary system given the current overcrowding.

The needs of juveniles based on their age obviously differ from those of their fellow adult inmates. The Penitentiary Code takes into account the specific needs of juveniles in contrast to the Petty Offence Act. The former provides that the imprisonment of juveniles shall be executed in separate penitentiary institutions.²

Regarding the placement of juveniles, the UN Committee on the Rights of the Child stated in Paragraph 85 of General Comment No. 10 that separation from adults means that a child deprived of liberty shall not be placed in an adult prison or other facility for adults. The Committee on the Rights of Child stated categorically that ample evidence shows that placing children in adult institutions compromises their basic safety, well-being, and their future ability to steer clear of crime and to reintegrate. Accordingly, State Parties should establish separate facilities for children deprived of their liberty, which include distinct, child-centred staff, personnel, policies and practices.

4.7. Legal representation

According to Article 40 of the Convention on the Rights of the Child, States Parties recognise the right of every child alleged to, accused of, or recognised as having infringed the penal law, to be treated in a manner consistent with the promotion of the child's sense of dignity and worth. This should reinforce the child's respect for human rights and the fundamental freedoms of others. It shall also take into account the child's age and the desirability of promoting the child's reintegration and their ability to take on a constructive role in society.

To that end, as set out by Article 40(2)(b)(ii) of the Convention on the Rights of the Child, States Parties must ensure that juveniles are informed promptly and directly of the charges against them and provide legal or other appropriate assistance in the preparation and presentation of their defence. According to Article 37(d) of the Convention on the Rights of the Child, States Parties shall ensure that every child deprived of their liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of their liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

General Comment No. 10 also states that the child must be guaranteed legal or other appropriate assistance in the preparation and presentation of their defence. Assistance need not necessarily be legal but it must be appropriate. General Comment No 10 states that it is possible that e.g. a social worker may also provide adequate assistance in the course of the procedure, but the person providing assistance must have sufficient knowledge and understanding of the various legal aspects of the juvenile justice system and must be trained to work with children in concert with the law. General Comment No 10 further states that the Convention on the Rights of the Child leaves it to the State Parties to establish what form of assistance is provided, but it must be free.³

1 Government Decree No. 173 of 2013 (V. 30) on the Designation of Institutions Executing Confinement and Petty Offence Confinement (2013), Art. 2(3) and Annex 1.

2 Law Decree No. 11 of 1979 on the Execution of Punishments and Measures (1979), Art. 49(1).

3 CRC, General Comment No. 10.

In the spirit of the above provision, the CPC stipulates that the participation of a defence counsel is mandatory in all criminal procedures launched against juveniles.¹ However, this guarantee is not ensured by the Petty Offence Act, which states that the statutory representative of the juvenile may also proceed on the juvenile's behalf.² Even though the presence of their parents or caretakers is generally reassuring for the juvenile, it cannot substitute the professional knowledge of a defence counsel. Thus, the Petty Offence Act does not safeguard the child's best interests during the procedure.

Examining petty offence legislation and its implementation shows that the approach to dealing with juvenile petty offences is on the basis of an imprudent regulatory concept, contravening Hungary's international obligations.

5. Central special homes for children

The Central special homes for children differ from the previously discussed institutions as they are not part of the juvenile criminal justice system, but belong to the child protection system. The aim and methods of their operation differ greatly from other institutions. However, as mentioned in the methodology, HHC conducted monitoring visits to the special homes for children because placement in these homes qualifies as deprivation of liberty under the definition of the OPCAT. Furthermore, the Commissioner for Fundamental Rights issued a report in 2012 after an on-site visit, stating that the special home for children in Fót reminded him of a penitentiary institution.³ The head of the home for children in Fót contested the Ombudsperson's statements; the guardianship authority confirmed the concerns raised after the Ombudsperson's on-site visit; while the Ministry of Human Resources agreed with the necessity for legislative amendments proposed in the report. Thus, the report served as another reason for including these facilities in the human rights monitoring.

The Child Protection Act specifies that special homes for children or "special groups" in the regular social care homes for children provide care, socialisation, re-socialisation, habilitation and rehabilitation of children, showing severe psychological or anti-social symptoms, struggling with psychoactive drugs or having "twofold needs"⁴. Children can be placed in an institution temporarily or taken into temporary or permanent state care. Children, whose placement must be separate from children in state care not in need of special treatment, may also be placed in special children's homes if their condition does not allow for their placement in a social live-in institution or such an institution lacks available places.

The County Child Protection Services establishes whether a child has special needs and determines the appropriate place for treatment. The respective decision can be appealed by the statutory representative or the guardian of the child before the county guardianship office. The second instance decision is subject to judicial review.

Children struggling with the most severe problems are placed in central special homes for children, which are overseen by the Ministry of Human Resources, and, specifically, the Social and Child Protection Directorate. The Social and Child Protection Directorate and its regional offices perform tasks related to maintenance and organisation with respect to the

1 Act XIX of 1998 on the Criminal Procedure (1998), Art. 450.

2 Act II of 2012 on Petty Offences, the Petty Offence Procedure and the Petty Offence Registry System (2012), Art. 53(1).

3 Commissioner for Fundamental Rights (2012), Report No. AJB-3012/2012, available on: <http://www.ajbh.hu/kozlemenyek-archiv/-/content/10180/12/a-foti-specialis-gyermekotthon-vizsgalata;jsessionid=0306D0807357141240CDB3017C48A659>.

4 According to the Hungarian law, a person with "twofold needs" is someone who requires both a particular treatment (the Child Protection Act refers to permanently ill and children with disabilities as those requiring particular treatment) and special treatment (for example children with severe psychic or dissocial symptoms).

social, child welfare and child protection institutions determined by Government Decree 316/2012 (XI. 13). Children from any part of Hungary may be placed in central special homes for reasons outlined by the Child Protection Act, as well as for requiring therapy, requiring specialised knowledge regarding their acquired immune deficiency disease.¹

Table 8: Central special homes for children

Name	Address	Activity	Number of places
Ministry of Human Resources – Rákospalota Juvenile Reformatory and Special Home for Children	1151 Budapest, XV., Pozsony u. 36.	<ul style="list-style-type: none"> • Education in a juvenile reformatory; • Pre-trial detention • Special home for children (for girls). 	24 (The institution has 54 further places for pre-trial detainees, those sentenced to education in a juvenile reformatory, and juveniles in aftercare.)
Ministry of Human Resources – Child Protection Service Centre, Esztergom Home for Children, Primary School and Vocational School	2500 Esztergom, Budai Nagy Antal u. 28.	Special home for children (for girls)	64
Ministry of Human Resources – Kalocsa Home for Children, Primary School and Vocational School	6300 Kalocsa, Szent István király út 16-22.	Special home for children (for boys)	48
Károlyi István Child Centre	2153, Fót, Vörösmarty tér 2.	Special home for children (for boys) (The child centre is also vested with the task of accommodating unaccompanied minors, to provide special treatment to permanently ill minors, and to provide aftercare to young adults previously accommodated in the home for children)	32
Ministry of Human Resources – Zalaegerszeg Home for Children	8900 Zalaegerszeg, Posta u. 144.	Special home for children (for boys)	48
Total			216 128 places for boys and 88 places for girls

Source: Hungarian Helsinki Committee

¹ Ministry of Social Welfare (1998), Decree No. 15 of 1998 (IV. 30) on the Professional Tasks of Child Welfare and Child Protection Institutions and Persons Providing Personal Care and the Conditions of their Operation, Art. 131(2)d).

Children may be placed full-time in special homes for children or in special groups part of homes for children for more than two years and only in exceptional cases, for a maximum of one additional year. An exceptional case would be, for example, if a child's therapy were not yet completed, as well as the possibility to complete the school year.

According to the Decree 15/1998 (IV. 30) of the Minister of Social Welfare on the Professional Tasks of Child Welfare and Child Protection Institutions and Persons Providing Personal Care and the Conditions of their Operation (hereinafter: Child Welfare Decree), special homes for children may accommodate children over 12, and, in some justified cases, children over 10.

According to the Child Welfare Decree, special homes for children may accommodate a maximum of 40 children. One group may be comprised of a maximum of eight children (same gender). The group shall be provided with a separate living space, consisting of dorms, a common living room, kitchen/ dining room, bathroom and toilets for both sexes, and equipped with furniture, fixtures and tools necessary for daily life. One bedroom may accommodate a maximum of four children; the minimum space per child is 12 square metres. Staff members responsible for taking care of the children (educators, child supervisors, caretakers) shall have a separate room near the living space, where they can conduct private discussions with the children, carry out their administrative tasks and reside overnight.

According to the Child Protection Act, the liberty of a child placed in a special home for children may be restricted, if their behaviour directly endangers their life or health or that of others. The aim of restricting a child's liberty is to make the child participate in therapy. When restricting a child's liberty, one of the following measures may be ordered for a maximum of 48 hours:

- The child is not allowed to leave the area of the special home for children;
- The child shall stay in the rooms of the special home for children, determined by the head of the institution;
- The child shall stay in the "security room" of the special home for children, separated from the others.

The children's rights representative, a responsible county/ district expert committee and the guardianship authority must be informed about the measures above within 36 hours. The head of the children's home can initiate educational supervision¹ of the child if they deem the limitation of personal liberty necessary for more than 48 hours. Educational supervision is ordered by the guardianship authority after requesting the opinion of the county/ district child protection expert committee and hearing the child, their statutory representative, the head of the home for children, the children's rights representative and the guardianship consultant. Educational supervision may last for two months maximum. Additionally, a child may be forced to remain in specifically designated room(s), have their contact with the outside world restricted, and be obliged to undergo medical treatment.

The decision of the guardianship authority, ordering educational supervision, cannot be appealed, but there is a possibility for judicial review. If judicial review is requested, the guardianship authority forwards its decision to the court within 15 days, which then decides whether to terminate or maintain the educational supervision within 15 days. In the court procedure, the representation of the child is mandatory, and if they have no representative, a fiduciary is appointed.

¹ Please note that "educational supervision" as referred to here differs from the institution discussed under the same name with respect to other countries involved in the present research.

Educational supervision restricts the child's personal liberty: they may not leave the premises of the home for children and are obliged to stay in the room(s) designated by the director.

Educational supervision may cease *ex officio* after a given period of time, or upon request. Such a request may be submitted by the child, the children's rights representative or the head of the home for children. In the procedure, aimed at the termination of educational supervision, an opinion can be requested from the competent child protection expert committee.

The task of the National Child Protection Expert Committee¹ is, among others, to prepare an expert opinion on the procedure to change the place of care, if the newly proposed place of care is the central special home for children. The expert opinion analyses whether the child requires placement in a central special home and makes a proposal for the preparation of an individualised education plan or its amendment. In compliance with the Child Protection Act, the National Child Protection Expert Committee may propose the placement of a child, which has committed severe violent acts due to their severe neurotic or psychological state, or use of psychoactive drugs, and thus, needs therapy that demands special knowledge that cannot be ensured at their place of residence or other place of care. This is also applicable in cases where the removal of children from their former environment is justified based on the child's best interest.

The National Child Protection Expert Committee also determines, based on its registry of the empty places in homes for children, which special home for children is able to admit the child and the admittance date. According to information received by the head of one of the institutions, there are waiting lists for the institutions consisting of 20-25 persons. The National Child Protection Expert Committee may propose that the full-time care of a child in a special home for children, or in a special group at the home for children, exceeds two years. In particular, this may occur if a child's therapy is incomplete and their personality renders them unsuited to live with the other children.

6. Asylum detention of unaccompanied children²

The detention of irregularly staying foreigners under 18 is not explicitly prohibited in international or European immigration and refugee law.³ Migrants with irregular status during the return process may be detained in order to carry out an expulsion order under Article 5(1) (f) of the ECHR and Articles 15-17 of Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals (hereinafter: EU Returns Directive). The legal basis of detaining asylum seekers was established in EU law by Articles 8-11 of the Recast Reception Conditions Directive in 2013. It has to be noted that asylum detention, as a new form of detaining foreigners, was introduced in Hungary during the period of the present project. The provisions regulating this form of detention entered into force on 1 July 2013 by partially transposing the Recast Reception Conditions Directive into Hungarian law.

1 Ministry of Social Welfare (1998), Decree No. 15 of 1998 (IV. 30) on the Professional Tasks of Child Welfare and Child Protection Institutions and Persons Providing Personal Care and the Conditions of their Operation, Art. 129/A.

2 "Unaccompanied minor": means a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States (Art. 2(e) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (hereafter: Recast Reception Conditions Directive)).

3 The Recast Reception Conditions Directive in its Art. 11(3) foresees that "unaccompanied minors shall be detained only in exceptional circumstances. All efforts shall be made to release the detained unaccompanied minor as soon as possible."

These two detention regimes – immigration and asylum – concern two different groups of foreigners:

- 1) Immigration detention is a policy of holding individuals suspected of unauthorised stay, having exhausted all remedies, awaiting expulsion or deportation.
- 2) In contrast, asylum detention is a policy of holding third-country nationals or stateless persons, whose asylum application is pending. Thus, they may be able to stay in the country, if they receive asylum status or subsidiary protection.



The two legal regimes are similar in many ways in Hungary, since the provisions regulating asylum detention were formulated on the basis of immigration detention rules.

On 1 July 2013, following the adoption of Bill T/11207,¹ new amendments to the Act LXXX of 2007 on Asylum (hereinafter: Asylum Act) entered into force. The transposition of the Recast Reception Conditions Directive (not even formally adopted at the time of drafting the amendments²) served as a pretext for the changes. Transposition, however, remained limited to provisions concerning the detention of asylum seekers, whereas provisions, which impose obligations on Member States in relation to the assessment of the special reception needs of vulnerable persons, were not transposed.³

The amendments to the Asylum Act provide **extensive grounds for the detention of asylum-seekers** under a new and separate legal regime named “asylum detention.” Grounds for asylum detention under the new rules include the following.

Article 31/A of the Asylum Act foresees that “in order to ensure compliance with the provisions set forth in Articles 33⁴ and 49(5)⁵, and taking into consideration the restrictions under Article 31/B,⁶ the refugee authority may order asylum detention of a person seeking recognition, whose right of residence is only based on the submission of an application for recognition if:⁷

- 1 Bill no. T/11207 on the amendment of certain acts relating to law enforcement matters amends the Asylum Act. A Hungarian version of the amendment is available on: http://parlament.hu/internet/plsql/ogy_irom.irom_adat?p_ckl=39&p_izon=11207.
- 2 On 7 June 2013 the European Parliament adopted the final text of the Recast Reception Conditions Directive.
- 3 The comments made by the United Nations High Commissioner for Refugees (UNHCR) on the draft amendments are available in English on: <http://www.unhcr-centraleurope.org/pdf/where-we-work/hungary/unhcr-comments-and-recommendations-on-the-draft-modification-of-migration-related-acts-april-2013.html>.
- 4 Act LXXX of 2007 on asylum (2007), Art. 33 “The asylum procedure is aimed to determine whether, based on the present Act, the foreigner seeking recognition satisfies the criteria of recognition as refugee, beneficiary of subsidiary or temporary protection.”
- 5 *Ibid*, Art. 49(5) “The refugee authority shall provide in the resolution on transfer that the foreigner may not leave the place of residence designated for them until the completion of transfer but for a maximum of 72 hours in the interest of securing the implementation of the transfer procedure.”
- 6 *Ibid*, Art. 31/B foresees that: “(1) Asylum detention may not be ordered for the sole reason that the person seeking recognition has submitted an application for recognition. (2) Asylum detention may not be ordered in the case of an unaccompanied minor seeking recognition. (3) Families with minors may only be placed in asylum detention as a measure of last resort, and taking the best interests of the child into account as a primary consideration.”
- 7 *Ibid*, Art. 31/A, available on: <http://www.refworld.org/docid/5371cb504.html>.

- a) the identity or nationality of the person seeking recognition is not established;
- b) the person seeking recognition has hidden from the authority or has obstructed the course of the asylum procedure in another way;
- c) there are grounds to presume that the person seeking recognition is delaying or jeopardising the asylum procedure or presents a risk of absconding, in order to obtain the data required for conducting the asylum procedure;
- d) the detention of the person seeking recognition is necessary to protect national security, public safety or – in the event of serious or repeated violations of the rules of the compulsory designated place of stay – public order;
- e) the application has been submitted at the airport; or
- f) the person seeking recognition has not fulfilled their obligation to appear on summons, and is thereby obstructing the Dublin procedure.

(2) Asylum detention may only be ordered on the basis of individual deliberation and only if its purpose cannot be achieved through measures securing availability.

(3) Before ordering asylum detention, the refugee authority shall consider whether the purpose determined in Subsection (1) can be achieved through measures securing availability.”

The above means that asylum detention may be ordered:

- (a) For the verification of the applicant’s identity and nationality;¹
- (b) If the asylum-seeker has absconded or hinders the processing of the asylum procedure in any other way;
- (c) To obtain information necessary for the processing of the asylum claim or if there are serious grounds to presume that the asylum-seeker would abscond, delay or hinder the procedure;
- (d) To protect public order and national security;
- (e) If the claim has been submitted at the airport;
- (f) The applicant has repeatedly failed to fulfil their obligation to attend procedural acts and thus, hinders the processing of a Dublin procedure.

HHC believes that these grounds are too vaguely formulated and thereby, jeopardise legal certainty – an overriding principle established by the jurisprudence of the European Court of Human Rights. Furthermore, it is questionable whether asylum detention in general is in line with Article 5 of the European Convention on Human Rights, since it does not fall under any provision of Article 5(1).

As a more favourable provision compared to the Recast Reception Conditions Directive, it should be noted that unaccompanied minors seeking asylum cannot be lawfully detained in Hungary. Children, however, who arrive with their families, may be detained for up to 30 days.² Furthermore, other categories of vulnerable asylum-seekers are not excluded from detention.

Regarding unaccompanied minors, who are accidentally detained despite the prohibition of the Asylum Act, the law stipulates that detention shall be terminated with no delay if **it has been established** that the detainee is an unaccompanied minor seeking recognition (Article 31(A)(8)c)). The law is unclear regarding how to establish that a detainee is an unaccompanied minor: Article 36(B) of Government Decree 301/2007 (XI. 9) on the implementation of

¹ These grounds can in principle be applied in most cases, as more than 95% of asylum-seekers usually arrive in Hungary without documents.

² Act LXXX of 2007 on asylum (2007), Art. 31/B(2) and Art. 31/A(7).

the Asylum Act (hereinafter: Government Decree 301/2007 (XI. 9)) provides that *“if the person seeking recognition declares, after the ordering of detention, that they are an unaccompanied minor, the refugee authority shall contact the medical service provider operating in the area of the place of detention to establish the age of the applicant without delay.”*

The above provision leaves the authorities without further practical guidance about which medical service provider to contact and whether a forensic expert should give an expert opinion on the estimated age of the detainee. Also, there is no protocol on age assessment, leaving both decision makers and experts conducting age assessment examinations in uncertainty. The lack of a standard operating procedure, based on legal grounds, may lead to conflicting practices whereby different standards are observed and different types of evidence are accepted in determining the minor’s age.

Article 31/B of the Asylum Act contains provisions related to unaccompanied minors and families in asylum detention:

- (1) Asylum detention may not be ordered for the sole reason of submitting an application for asylum.
- (2) Asylum detention may not be ordered in the case of an unaccompanied minor seeking recognition.
- (3) Families with minors may only be placed in asylum detention as a measure of last resort, and the best interests of the child shall be of primary consideration.

The above provisions, allowing the detention of undocumented asylum-seekers, have undoubtedly led to a significant increase in the number of detained asylum-seekers. During its monitoring visits in the framework of the present project, HHC found that **more than one third (in early April 2014, over 40%) of adult male asylum-seekers are held in asylum detention** in Hungary. The findings of HHC’s monitoring visits carried out in early 2014 confirmed that authorities failed to carry out a proper individual assessment of the cases before placing an asylum-seeker into asylum detention. Hence, detention became a quasi-automatic measure for, at least, asylum-seekers of certain nationalities.¹

¹ For more information on the HHC’s previous experience with the extensive and arbitrary use of immigration detention please see: Hungarian Helsinki Committee (2011), *Stuck in Jail – Immigration Detention in Hungary* (2010), available on: http://helsinki.hu/wp-content/uploads/HHC-immigration-detention_ENG_final.pdf; Hungarian Helsinki Committee (2014), *Note on Asylum Seekers in Detention and in Dublin Procedures in Hungary*, available on: <http://helsinki.hu/wp-content/uploads/HHC-Hungary-info-update-May-2014.pdf>.

2. Monitoring results

INTRODUCTION

In the framework of the project, HHC conducted 21 monitoring visits to different types of institutions. In this chapter, HHC introduces the results from these monitoring visits. It assesses the state of children's rights in the penitentiary institutions, juvenile reformatories, central special homes for children and asylum detention facilities. The main problems and good practices of the penitentiaries are also presented, which include examples where the material conditions meet or exceed the standard and the rights to education and healthcare are respected.

HHC encountered serious and recurrent problems concerning the material conditions in the penitentiary institutions: the state of showers and toilets, the lack of proper hygiene and the inadequate washing of bed linen, which resulted in alarming health concerns in certain institutions. Moreover, in some cases, juveniles lack access to education and leisure activities.

On the other hand, HHC concluded that the physical and hygiene standards in the juvenile reformatories are far better to those at the penitentiary institutions. Researchers encountered far fewer serious problems compared to throughout the juvenile reformatories.

The Central special homes for children accommodate children with severe psychopathic or anti-social behaviour, or children struggling with psychoactive drug use. Therefore, it is a serious deficit that these institutions do not employ child psychiatrists. The situation is further exacerbated by the fact that the provision of child psychiatry consultation outside these homes is only partly satisfactory.

The detention of asylum-seekers under the age of 18 violates Hungarian and international norms. Due to malpractices concerning age-assessment, children are detained in asylum detention facilities in innumerable cases. As these children are not identified as minors, they have no access to any form of education or leisure activities.

A. PENITENTIARY INSTITUTIONS

According to the Hungarian legal provisions, both imprisonment and petty offence confinement shall be executed in a penitentiary institution. Pre-trial detention of juveniles may also be executed in penitentiary institutions.

1. Material conditions

HHC frequently encountered grave problems during its visits to penitentiary institutions: the state of the showers and toilets, the lack of adequate hygiene and the inadequate washing of bed linen resulted in troubling health issues in certain institutions, according to the HHC researchers.

In the Penitentiary Institution for Juveniles in Tököl, bed linen, towels and clothing should be changed every two weeks. Nevertheless, according to the complaints received from detainees, in practice this is not the case. Juvenile detainees explained that they received different clothes after each laundry although they wished to retain their personal clothes. This resulted in a risky practice: almost all juveniles did their own laundry. The conditions for this were not adequate, namely, there was no hot water, no washing machine and, according to the statements of the detainees, the washing detergent was also insufficient. So they used e.g. shower gel for the laundry. Furthermore, the penitentiary provided only one basin per cell for the laundry, which was used by all the detainees in the cell. This partly explains the emergence of infectious skin diseases in the institution.

The badly washed clothes and linen, accompanied by crowded conditions, may have resulted in the spread of a skin disease involving suppuration (pyoderma). Following HHC's visit and recommendations made in the monitoring report, a physician specialised in the field concluded that a total of 15 juvenile detainees were infected with pyoderma in the institution. Detainees received the necessary treatment; four detainees were even separated from the others in the interests of effective medical treatment. The institution acquired new mattresses, uniforms, bed linen and blankets. A washing machine will be installed on every floor for those detainees who want to do their own laundry and basins were distributed among the juveniles. As a consequence of the monitoring visit, the state of the showers and toilets was reviewed and, where necessary, old sinks and taps were replaced, and both toilets and cells were whitewashed. Pictures below show the state of the cells before and after HHC's first visit. For pictures on the toilets, see the "Research Methodology" section of this report.



Penitentiary Institution for Juveniles (Tököl)

Following the visit, the practice of leaving the cell doors open was also amended: according to detainees, prior to the visit cell doors were open only for four hours (between 10.00 CET and noon and between 15.00 CET and 17.00 CET), while HHC's second visit showed that cell doors were open for half the day, for 12 hours.

In the unit of the **Bács-Kiskun County Penitentiary Institution**, where juveniles are held, HHC's researchers found cells, where the toilet door was missing, and in some cases substituted with a curtain. According to information provided by the penitentiary institution, the cells in question were to be renovated in 2014. HHC also encountered deficiencies regarding closing and opening cell doors. Several detainees stated that cells were often shut for longer periods both in the morning and in the afternoon. In addition, cells were open only during breakfast and lunch and for one-and-a half-hours in the afternoon, and cells were closed before 18.00 CET. According to information provided by the



institution, the movement of detainees was restricted because too few guards were on duty. Guards also had to carry out additional tasks besides their duties in one of the blocks, such as bringing detainees before the respective authority or supervising detainees from other blocks during time spent outdoors. Some detainees also complained that certain cells were closed during the day as a punishment, which is an unacceptable practice. The National Penitentiary Headquarters also stated in its reaction to the draft monitoring report that the practice of shutting cells is an unacceptable breach of the institution's official regulation for the daily routine. Furthermore, the Head of the National Penitentiary Headquarters instructed the warden of the institution to take necessary steps to terminate irregularities. It was necessary to investigate the logistical steps needed to ensure that the low guard numbers did not result in closing juveniles in their cells for much longer than laid out in the daily routine of the institution. The National Penitentiary Headquarters also stated that the practice of "shutting" cells as a punishment must be terminated.



Pálhalma National Penitentiary Institution



Baranya County Penitentiary Institution

In the **Baranya County Penitentiary Institution**, the detention of juveniles is executed under essentially adequate conditions. There is a separate toilet in each cell, with separate ventilation. The only significant problem was that the bed linen and towels returned from the Pálhalma National Penitentiary Institution after laundry were dirty and smelly, which speaks of a lack of a proper laundry service.

The petty offence detention of juvenile girls is executed in the **Pálhalma National Penitentiary Institution**. Conditions are essentially adequate in terms of the domestic prison conditions, but since

juveniles are detained here for committing low-grade offences, detention conditions are problematic from a human rights perspective.

Detainees, who have committed a serious criminal offence, but are exempt from punishment due to their mental illness, and detainees, suffering temporarily or permanently from a mental problem, can be placed in the **Judicial and Observation Psychiatric Institute (IMEI)**. However, juveniles serving a petty offence confinement may also be placed here if their psychiatric examination or treatment is necessary due to some kind of mental disorder. The building of the IMEI is generally in a bad condition; several parts of it should be renovated. In 2012, a total of 34 juveniles were referred to the IMEI. They spent a total of 311 days in the institution, the average length of their stay being 7.95 days. There were six juveniles who were referred to the IMEI twice within a year. In recent years, there were instances when juveniles were not separated from adults in the institution, which contravenes the laws governing the penitentiary system. Nevertheless, in certain cases it was assessed that the child's best interests required joint placement. This is especially true in situations where there is only one juvenile detained in the institution, and their separation would mean that the juvenile would

be alone in a ward, which may not be appropriate for their psychological state and may entail other risks (e.g. the danger of attempting suicide).

In line with the organisation's standpoint and practice, HHC believes that the placement of juveniles in IMEI requires special attention and is a medical question rather than a legal one, requiring the thorough assessment of all circumstances. However, HHC would like to emphasise that placement of juveniles must under all circumstances comply with the respective legal provisions. If an institution is not able to place juveniles separately from adults, as enshrined in law, and if the IMEI believes that separate placement does not serve the child's best interests in every case, then they should initiate the amendment of the law without delay.

2. Overcrowding

While overcrowding is less of a problem in penitentiary institutions for juveniles than in the institutions accommodating adults, problems still exist. The **Bács-Kiskun County Penitentiary Institution** ensured the moving space per person set out by law. The conditions were also much better and the overcrowding rate lower than on average, similar to the unit of the **Borsod-Abaúj-Zemplén County Penitentiary Institution** detaining juveniles. However, in the latter institution, each cell can accommodate six detainees, and if cells were used up to maximum capacity, then the moving space per detainee would be less than the respective international standard. At the same time, the overcrowding rate in certain blocks of the **Penitentiary Institution for Juveniles in Tököl** was so high that placement amounted to inhuman and degrading treatment according to the standard case law of the European Court of Human Rights. In the course of its visit, HHC registered that the average occupancy rate was around 100% in Building "B" for juveniles, while the overcrowding rate within that building was 132% in Block B/10 and 144% in Block B/14.

In the unit of the **Baranya County Penitentiary Institution**, accommodating juveniles, where overcrowding is generally not a problem, it emerged that the problem of temporary overcrowding was resolved ad hoc by placing a juvenile in one cell with an adult for a few days. However, dealing with overcrowding in this way violates the respective legal provisions. In the blocks of the **Judicial and Observation Psychiatric Institute** and the unit of the **Pálhalma National Penitentiary Institution**, where petty offence confinement is executed, overcrowding is not common.

In addition, in November 2010, the respective ministerial decree ensuring six cubic metres of air space, along with three square metres of moving space for men and 3.5 square metres for women and juveniles – which was not a very generous provision overall – was amended and supplemented with the ambiguous term "*if possible*". The European Court of Human Rights recently condemned Hungary in several more cases because of detention conditions, which amounted to torture and degrading treatment, including overcrowding.

3. Personnel and treatment

In contrast to juvenile reformatories, HHC researchers revealed alarming incidents of violence and mistreatment in the penitentiary institutions involving staff. In the **Borsod-Abaúj-Zemplén County Penitentiary Institution**, some of the detainees claimed that they were beaten by guards on admission to the institution. According to one of the complaints, concerning an ill-treatment incident, which supposedly occurred two months prior to HHC's visit, guards kicked the limb of a juvenile detainee with their legs (shinbone). Another detainee claimed that when he was admitted to the penitentiary three years ago, he was beaten until he fainted. According to detainees' statements, ill treatment tends to be more severe

in cases where perpetrators committed certain criminal offences: perpetrators sentenced to imprisonment for rape or for criminal offences against elderly persons will provoke harsher ill-treatment. Detainees also mentioned that the guards would sometimes take detainees out in pairs to fight in places without surveillance, e.g. to the staircase or the showers. In a cell, where exclusively Roma persons were accommodated, detainees reported that the guards made racist comments. Another severely degrading practice that all of the detainees interviewed spoke about that after every visit, they were forced to strip completely naked in a separate room in front of a guard and crouch three times in a row while coughing.

While the institution responded that they would review the practice of strip searches to ensure that they do not take place in an unjustified and lewd way, their only response to the flagrant ill-treatment allegations was that no detainee turned to the prosecutor supervising the legality of the execution. This approach was shared by the National Penitentiary Headquarters. HHC does not consider this response satisfactory and believes that concrete measures should be taken to investigate past cases and to prevent similar incidents in the future. One of the solutions, aimed at preventing the “fights,” would be to install cameras at potential fight scenes, i.e. on the flights of the staircase and the showers. However, installing cameras in the showers may be problematic, since recordings made while detainees shower would violate their right to privacy. To overcome this problem, HHC proposes that cameras, installed in the showers, are turned on only outside the period when detainees shower.

In the **Bács-Kiskun County Penitentiary Institution**, there are only two educators in the unit accommodating 45 juveniles. According to the information provided by the leading educator of the unit for juveniles, understaffing often forces educators to perform other tasks unrelated to their position.¹ Educators working with juveniles do not receive any special training, and some juveniles complained to researchers that they rarely meet the educator.

For juveniles, the presence of an educator has increased significance. Furthermore, the experiences presented above suggest that **juvenile reformatories ensure better detention conditions both with regard to physical conditions, overcrowding and staff numbers**. Therefore, it is inexplicable why the authorities do not refer more children to juvenile reformatories. These institutions clearly function better under normal circumstances and should be favoured when deciding on the placement of children. According to HHC, there is no relevant difference from a professional point of view between the treatment of juveniles sentenced to imprisonment and the treatment of juveniles sanctioned with an educational measure in a juvenile reformatory, which would justify the present situation. **Prioritising placement in a juvenile reformatory would also contribute to compliance with international standards.**

4. Education

Lowering the compulsory school age to 16 from 18 decreases the chances for integration of children detained in penitentiary institutions and juvenile reformatories. It also makes the work of these institutions harder. Without the motivation of school life and normal youth-centred activities, children usually enter a spiral of passivity and violence. This not only undermines their reintegration possibilities, but also imposes an extra burden on institutions and increases the risks related to vigilance and surveillance of juveniles. The education of the children detained is very important because most of them have a criminal background and lack social skills. The completion of primary education is one of the most important dividing lines in the job market: without it, there is practically no chance of getting a permanent, legal

¹ In the Hungarian system, the “educator” is the penitentiary staff member responsible for facilitating the re-socialisation of detainees, including their personal development, schooling, occupation, maintaining their contacts with the outside world, etc.

and fulfilling job. According to Article 106(1) of the Criminal Code, *“the primary aim of the punishment imposed on the juvenile or the measure applied to them is that the juvenile develops in the right direction and becomes a useful member of society”*. In that spirit, Decree 6/1996 (VII. 12) IM provides that the completion of primary education, in particular, should be encouraged and supported. Article 36(n) of the Penitentiary Code even guarantees a convict’s right to continue their primary school education.

HHC is aware that education cannot be made mandatory for detainees beyond the compulsory school age – those over 16. Taking into account that the legal provisions also emphasise special prevention, and education being one of the most effective tools in achieving this aim, HHC believes that institutions should not only ensure the possibility of participating in education, but also facilitate the studies of detainees with the help of incentive mechanisms (e.g. scholarship, issuing a certificate for vocational training, special education methods and making materials as accessible as possible).

Continuing studies promptly is of paramount significance: in order to prevent further falling behind in studies, it is vital that juveniles admitted to the penitentiary institution are enrolled in school without delay. A related problem in the **Bács-Kiskun County Penitentiary Institution** was that juveniles in the institution often lack a school certificate determining their grade level. In certain cases, the juvenile’s documents lack information about the school attended. Hence, the institution does not know in which grade they should be enrolled. In addition, schools are not always cooperative in providing certificates.

Among the penitentiary institutions, HHC encountered a good practice, beneficial to the development of juveniles in the **Baranya County Penitentiary Institution**, whereby detainees may participate in education even if their school certificate is not available. Juveniles are asked to state the grades they completed and are enrolled on the basis of that statement. Meanwhile, the penitentiary contacts the relevant educational institution and the probation officer, and/or asks the juveniles or their family to obtain the school certificate as soon as possible.

Juveniles placed in penitentiary institutions are usually educationally disadvantaged. It is vital for their reintegration that they progress in primary education and acquire practical knowledge during their detention. Engaging students and retaining their interest is challenging even for teachers in educational institutions outside the penitentiary system. This is even more pronounced in education within the penitentiaries. The special circumstances (the detention itself, in certain cases the pre-trial detention, the social status of the child and their previous studies) require special solutions even in schools. At the same time, HHC encountered certain practices in the juvenile reformatories, which prove that methods for increasing the efficiency and effectiveness of education may also be applied to juvenile detainees. Yet implementing these methods is, naturally, determined by an institution’s finances and staffing rates.

The scholarship, being a fair sum under prison conditions (amounting to HUF 8,000-10,000 or EUR 26–32), motivates the students, and in addition, eases prison poverty, which particularly afflicts juveniles. A scholarship is paid to detainees pursuing primary education, but those in secondary education are not entitled to it.

The National Penitentiary Headquarters should transform the scholarship system so that the new levelling performance system in the school would have a larger role. Thus, those with a higher performance receive a higher amount of scholarship funds. In mainstream schools outside of the penitentiary system, such a system would be motivating, but according to HHC, under prison conditions every such measure that increases already existing inequalities between juveniles can be dangerous, and the “community costs” of rearranging the system will

be larger than the returns from levelling. HHC deems it more important to extend the existing scholarship system to those attending grades above eight (i.e. who already completed primary education). HHC found the practice of awarding a scholarship to juveniles, who repeated a grade level several times, but not to those who advanced with their studies at a normal pace, to be detrimental. It seems that differentiating between students financially may lead, unintentionally, to those who receive a small scholarship, or do not receive a scholarship at all, to neglect their studies or even cease their education altogether.

Another form of motivation may be the granting rewards (appraisal by the educator), which may also facilitate the juvenile's conditional release. Informed by the National Penitentiary Headquarters in relation to its report on the monitoring visit to the Borsod-Abaúj-Zemplén County Penitentiary Institution, **HHC welcomes future professional plans of enlarging the circle of detainees entitled to a scholarship to detainees participating in secondary education, vocational secondary school education, vocational technical school education, vocational training or continuing education, or in higher education.**

The special needs of juveniles with mental disabilities (moderate or mild degree) should also be considered when selecting and applying different educational methods. The problem cannot be neglected because the number of those affected is high. In the unit of the **Borsod-Abaúj-Zemplén County Penitentiary Institution** executing juvenile detention, there were 50-60 detainees with mental disabilities (moderate or mild degree), according to information provided by the leading educator, while the psychologist believes the proportion of such detainees is almost 30%.

Vocational training is provided under some form in all of the penitentiary institutions visited. Yet, there are significant differences in the applicability of the knowledge gained by students in the framework of the training in the outside world. There are also differences regarding the certificates received upon completion of the training.

A new law on adult education created an unavoidable disadvantage for detainees when it made the conditions for obtaining a vocational training qualification under the state registered "OKJ" system stricter, since the penitentiary institutions cannot necessarily ensure the significantly increased compulsory number of classes. For example, the **Bács-Kiskun County Penitentiary Institution** cannot provide vocational training to detainees and can only provide a preparatory course for vocational training, at the end of which students receive a "competence certificate." In the **Baranya County Penitentiary Institution** detainees are trained to be semi-skilled workers (building cleaners, painters, building maintainers or tilers). In the unit of the **Borsod-Abaúj-Zemplén County Penitentiary Institution** for juveniles, detainees may participate in a building care and maintenance course, supported by the so-called Social Renewal Operative Programme (TÁMOP).

The juveniles' future life after release from the penitentiary may depend greatly on whether they have a vocational training certificate. The certificate enhances their chances on the job market. Introducing and maintaining vocational training aiming at a certificate, possibly training under the OKJ system, deserves priority in the case of detainees serving a final sentence as a minimum.

Penitentiary institutions, executing the petty offence confinement of juveniles, encounter specific problems. Detainees in petty offence confinement – due to the short timeframe of confinement – usually do not attend school while being detained.

5. Leisure activities

The respective international rules, for example Rule 27.1 of the European Prison Rules, prescribe that every prisoner should exercise in open air for at least one hour every day. According to HHC's monitoring results, the Hungarian penitentiaries detaining juveniles generally adhere to this rule.

In the unit of the **Bács-Kiskun County Penitentiary Institution**, which houses juveniles, there are three separate yards. Hence, it is possible for all three units of the penitentiary to be outside at the same time. Furthermore, in 2014, 11 juveniles participated in planting 500 saplings, which are taken care of and watered also by detainees, allowing for extra time spent outside.

According to information provided by the **Penitentiary Institution for Juveniles in Tököl**, detainees may stay outside for one hour daily in the yards of the blocks, and in the case of Building "B", in front of the block or in the football field. The latter is included in the institution's organisational rules but detainees complained that often they are not allowed outside for days on end or their stay outside is shorter than stipulated.

The unit for juvenile detention at the **Borsod-Abaúj-Zemplén County Penitentiary Institution** prescribes the minimum length of a period outside. Detainees may stay outside for an hour, according to the schedule compiled by the guard in charge of the block. The prison has a large yard and garden. However, researchers did not understand why detainees were only allowed to make "regulated movements" (i.e. walking in circles with their hands behind their back). The institution justified it by explaining that the rule applies to pre-trial detainees. This is supposed to ensure compliance with legal stipulations on banning potential communication between co-defendants. Juvenile convicts proceed to the yard divided by the regime they are in; in their case, walking in a closed formation is not a rule. Since exercising and, in particular, unrestricted exercise, is not only a physical but also a mental need for juveniles, HHC believes it advisable that the institution finds another way to comply with separation rules for pre-trial detainees.

Apart from their stay in the open, it is clear that sport is vital for the healthy development of juveniles, especially when in prison. Sport is not only indispensable for physical and mental development; it is also an excellent way of easing tension, which sometimes results in conflicts.

In that regard, the penitentiary institution in Tököl proved to be the most problematic. The **Penitentiary Institution for Juveniles in Tököl** has a gym, which, according to the information provided by the institution, may be used by any detainee who signs up and receives permission from the physician to use it. However, at the time of the HHC's monitoring visit, the gym was out of bounds because of a longstanding leak awaiting repair. The institution also submitted that all floors have a table tennis table. Yet, according to the detainees, they had not used them for a very long time.

At the time of HHC's visit, the gym at the **Bács-Kiskun County Penitentiary Institution** did not function; but the penitentiary informed researchers that they would acquire gym equipment under the Social Renewal Operative Programme. This will be installed in the institution's yard and it is envisaged that detainees will be able to use it during their daily exercise outside. At the time of the visit, juveniles could use the pull-up device in the yard during their daily exercise outside. Juveniles may also participate in sports activities in addition to their exercise outside in the framework of a workshop held by the educators (inside the building, they may e.g. play table tennis). Juvenile detainees may also use the grass-covered football field – according to information provided by the leading educator, they strive to ensure this

possibility every day. The juvenile male convicts informed researchers that they may use the football field once or twice weekly.

In the juvenile detention unit at the **Borsod-Abaúj-Zemplén County Penitentiary Institution**, playing table tennis and football on the sports field is allowed, if the weather permits. Researchers noted that it would be useful if the institution ensured that sports activities were available for at least one hour a day.

In the **Baranya County Penitentiary Institution**, juveniles may use the gym of the penitentiary (with the permission of the physician - convicts once a week, pre-trial detainees three times a week), and they may play football during their daily exercise outside. On weekends and public holidays, educators organise sports programmes (football tournaments, basketball games, table tennis tournaments, badminton and other ball games as required) either during their daily time outdoors or separately.

In the **Bács-Kiskun County Penitentiary Institution**, it was noted that the male convicts' community room had no television or any other equipment for use in their free time. In the girls' community room, the television was not working because of a missing cable. The institution's management promised to remedy this without delay. They also explained to HHC's researchers that the digital switchover requires considerable investment on their part. They plan to finance the exchange of cables and technical devices from grant money. On the basis of discussions with detainees, HHC's researchers felt that juveniles who do not attend school have nothing useful to do for most of the day. According to the management of the institution, some detainees do not attend programmes organised by the penitentiary because they do not find them "suitable". HHC believes that it is always important to consider carefully the ways to motivate juveniles to take part in social activities.

In the **Borsod-Abaúj-Zemplén County Penitentiary Institution**, cultural and leisure programmes are guaranteed on the basis of a daily, weekly and quarterly and yearly schedule; participation in these programmes is always voluntary. There is a gardening group, a programme for taking care of and training puppies, and a board game club, led by a teacher. Despite the fact that the warden had declared that the penitentiary aimed to keep juveniles occupied most of the time – a desirable goal, researchers generally noted that juveniles were not kept busy. For most juveniles, routine is provided by the school, but during summer holidays even that is missing. The smaller, workshop-like programmes are good initiatives, but due to the lack of money and staff, there are only a few: 4-6 detainees can take part in the programme for looking after and training dogs, and 10-12 individuals participate in gardening.

6. Contacts with the outside world

The right to family life is not suspended while in detention. As set out by Article 8 of the European Convention on Human Rights: "Everyone has the right to respect for his private and family life, his home and his correspondence." Ensuring detainees' right to family life involves proper regulation and access to contact with the outside world.

Regarding visits at the **Penitentiary Institution for Juveniles in Tököl**, indigent detainees reported it was almost impossible for them to meet relatives because of the high travel costs. A solution could be the "circle transport" or "weekly transport", organised every Monday. However, accessing transport in good time is difficult because of overcrowding and the large number of detainees.

Visits in most institutions are conducted at the convenience of all parties. Participants sit next to tables, allowing family members to enjoy their time together informally. Among penitentiaries visited by HHC, the **Bács-Kiskun County Penitentiary Institution** was an excep-

tion. Here, in the most cases juvenile pre-trial detainees may only receive visitors who are separated from them by a plexiglass barrier. A visit where participants sit by a table may be granted only as a reward. However, convicts in this institution also receive their visitors sitting by tables, installed in the corridor.

In the **Penitentiary Institution for Juveniles in Tököl**, in accordance with the general regime rules, juveniles are entitled to at least 10 minutes of phone calls every week, while those in laxer regimes are entitled to 10 minutes every day. Adults are allowed to use the phone for 10 minutes a day, according to the respective phone schedule. Similarly, in the **Borsod-Abaúj-Zemplén County Penitentiary Institution**, juveniles may use the phone twice a week for up to 10 minutes, while adult detainees may use the phone three times a week for up to 10 minutes, using public phones installed in the units. HHC researchers did not understand why most juveniles were generally forbidden from using the phone as often as adults. HHC considered this limitation to be unnecessary and unjust and proposed that juvenile detainees are also allowed to use the phone three times a week. The latter institution, i.e. the facility in Szirmabesenyő, responded that they would amend their organisational rules in line with HHC's proposal.

HHC found that correspondence is not restricted in any of the institutions, except for security reasons. Complaints about this were received only in one institution, namely from juveniles interviewed in the **Bács-Kiskun County Penitentiary Institution**. In their view, they often receive their letters very late, amounting to weeks. They blamed this on the educator's absence. Furthermore, during discussions, female juvenile detainees stated that maintaining contacts with others in the penitentiary, typically with juvenile boys, is prohibited. The institution justified the ban by claiming that these types of relationships, between detained boys and girls, seldom endure, and allowing contacts between them may cause tensions among detainees.

HHC believes that restricting contact with another person in this way has no legal basis. The National Penitentiary Headquarters stated that institutions must enforce the rules on separation and, accordingly, juvenile girls should not have contact with juvenile males. Furthermore, the possibility of maintaining contacts coupled with their immature nature and often inadequate coping strategies could increase conflicts and suicides. The practical aspects raised by the National Penitentiary Headquarters are worth considering, but HHC maintains that such a restriction on socialising and correspondence has no legal basis, and permitting contact would not violate the rules on separation.

No special rules apply to detainees serving a petty offence confinement in terms of contact with the outside world: detainees in petty offence confinement may receive visitors at least twice a month, for an hour each time. During visits, researchers noted as problematic the fact that the registration of contact persons may take too long as it requires sending a contact person form via post, especially if the length of confinement is taken into account.

B. JUVENILE REFORMATORIES

HHC's researchers noted that the physical and hygiene standards in the juvenile reformatories are far better than those in the penitentiary institutions. Researchers encountered far fewer serious problems throughout the juvenile reformatories.

1. Material conditions

Based on the results from the monitoring visits, HHC concluded that problems related to physical and hygienic conditions within the juvenile reformatory system cannot be compared to those of the penitentiary system. While, in the case of juvenile reformatories, inadequate lighting and ventilation constituted the most flagrant problems, HHC encountered severe hygiene and health issues in the penitentiary institutions.

In the juvenile reformatories detainees are accommodated in adequately occupied group rooms; juveniles may usually use showers and toilets, which are clean and maintained; there is a living room in their unit for leisure activities, equipped with a television set, bookshelves, and sometimes a computer; and often there is a kitchenette in the living unit.



Dining area in the Aszód Juvenile Reformatory

In the **Aszód Juvenile Reformatory**, all the groups had a ventilator against the summer heat. The meals provided five times a day were adequate both in terms of quality and quantity. The juvenile reformatories strive to provide a varied menu within their financial constraints. In the case of the Aszód Juvenile Reformatory, the town's elderly residents also get their meals from the juvenile reformatory. The same also applies to inhabitants living close to the Budapest Juvenile Reformatory. Staff members eat the same meal as the juveniles detained in all of the juvenile reformatories. Children interviewed expressed their satisfaction with meals.

Rule 36 of the Havana rules¹ and Rule 66.1 of the European Rules for Juvenile Offenders² state that detainees should have the right to wear their own clothing. Inmates of juvenile reformatories may generally wear their own clothes but only following permission from the director (e.g. in Aszód), or when transported for investigation or performing activities outside the reformatory (e.g. in Debrecen). According to the director of the Debrecen Juvenile Reformatory, the provision of uniforms is designed to avoid tensions resulting from the branded clothes of some of the detainees, which in HHC's view is justified and does not violate international norms.

In fact, the Commentary to the European Rules for juvenile offenders explicitly states that wearing their own clothing might be considered unsuitable if it creates undesirable social ranking. In Aszód, all of the juveniles wear uniforms (simple coat, shoes and jumpers), which they receive from the institution. It was deemed useful that children sew a coloured mark on their clothes on admission. In this way, their clothes and towels may be easily identified after laundry and dyeing. Clothes provided centrally are usually cleaned every week; bed linen is cleaned fortnightly. In the Debrecen Juvenile Reformatory, the laundry has an instructional purpose: boys do their laundry themselves by using a rotary washing machine and a spin dryer and teachers check whether they do it with enough care. According to the feedback provided by the educators and the children, this practice is beneficial to children when they leave the institution.

The only serious problem regarding physical conditions arose in the **Budapest Juvenile Reformatory**. The windows of Building "A", overlooking public premises, can only be partially opened in order to avoid children communicating with people outside without permission or being handed prohibited objects. The solution, although adequate from a security point of view, obstructs natural light: on the day of the visit, the weather was sunny, but the front rooms were dim. Ventilation is also obstructed by this limitation, which, according to information provided by the institution, is resolved during the summer by making a draught to facilitate airflow, while the children are busy elsewhere. Furthermore, extractors are used in the showers and toilets to prevent steam and unpleasant odours, and they operate a ceiling fan in common areas. Nevertheless, the new, modern unit of the institution, which was opened in July 2013, is impeccable in terms of lighting and ventilation.



Budapest Juvenile Reformatory

- 1 United Nations Rules for the Protection of Juveniles Deprived of their Liberty, GA resolution 45/113 of 14 December 1990, Rule 36 „To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing.”
- 2 European rules for juvenile offenders subject to sanctions or measures, Recommendation CM/Rec (2008)11 of the Committee of Ministers of the Council of Europe of 5 November 2008, Rule 66.1. “Juveniles shall be allowed to wear their own clothing provided that it is suitable.”

The adequate placement of mothers, residing in a juvenile reformatory, while giving birth is a special problem in the **Rákospalota Juvenile Reformatory**. Earlier, the reformatory operated a transitional home for families (a “mothers’ home”), partly with the support of a foundation, but this possibility terminated in 2006. The joint placement of mothers and children is possible, according to Decree 30/1997 (X. 11) of the Minister of Social Welfare on the Regulation of Juvenile Reformatories, but it is up to the reformatory’s director to decide. Nevertheless, it is difficult to provide adequate supervision. Currently, the reformatory resorts to half-hearted solutions: the pupil of the juvenile reformatory may leave the institution during the day (between 08.00 CET and 18.00 CET) to breastfeed her child in the nursery and maintain contact with them. Mothers-to-be in pre-trial detention may request their transfer to a penitentiary institution to give birth in one of the hospitals of the penitentiary system (in Tököl or in Kecskemét) so that they can stay together with their child for a period of one year. **There is a pressing need to address the placement of young mothers within the Rákospalota facility:** there were more pregnant girls in both the juvenile reformatory and the special home for children, including at the time of the visit. Since the upper and lower age limit applicable to juvenile reformatories was extended to 12 and to 21 and the maximum length of education measures in a juvenile reformatory was increased to four years from three, the demand for the joint placement of mothers and babies could grow. During HHC’s visit, the deputy director of the institution stated that they are planning to restart the mother-child group in a year’s time, and that they would be able to accommodate four mothers with four children in the unit in the future. The financial preconditions of this were already assessed by the Child Protection Service Centre of the Ministry of Human Resources, responsible for financial management.

2. Occupancy rate

Monitoring visits by HHC revealed that the system of juvenile reformatories cannot be characterised as overcrowded. Rooms at the Debrecen Juvenile Reformatory comply with respective international standards in terms of net moving space per person. Six persons sleep in the pre-trial detention rooms, while the rooms for juveniles sentenced to education measures are more spacious and accommodate four persons, but all of them comply with the respective norms.

Even though the number of children placed in the **Budapesti Juvenile Reformatory** is usually higher than the institution’s official capacity, as indicated in its memorandum of foundation (the official capacity being 100 persons), the reformatory’s director stated that the over-



Debrecen Juvenile Reformatory



crowding is not a problem, since they may accommodate 130 children without even having to use extra beds. In the group rooms, the net moving space does comply with the international standard applicable in case of children (4 square metres per person), laid down by the European Court of Human Rights (*Kalashnikov v. Russia*, Application no. 47095/99, Judgment of 15 July 2002). Nevertheless, it is considered outstanding under the Hungarian detention conditions. According to its director, the **Aszód Juvenile Reformatory** would be able to perform its tasks in accordance with the legislative framework without any problem, maintaining the current professional level even if it had to accommodate 140-160 children. In comparison, the average number of children placed in the institution was 104 in 2013. Dorms in the **Rákospalota Juvenile Reformatory** are designed to accommodate two or three persons. According to Article 19(1) of Decree 30/1997 (X. 11) of the Minister of Social Welfare on the Regulation of Juvenile Reformatories one juvenile shall have at least 5 square metres of dorm and studying area; and one group shall have a common living room of at least 30 square metres. The Rákospalota facility abides by these requirements and overcrowding is not a problem.

3. Personnel and treatment

Besides the occupancy rate of institutions, the number and ratio of staff carrying out professional and pedagogical tasks, compared to the number of children, also has a significant effect on detention conditions and the treatment of children. Monitoring visits revealed that juvenile reformatories are also well placed in this regard.

At the time of the visit, the **Aszód Juvenile Reformatory** employed 166 persons. Of these, 129 were professionals and 37 of them worked in other roles. Most employees (86 of them altogether) were educators and child supervisors (guards). Seven teachers and three vocational trainers participated in the education process. This staff number ensures fair professional work.

During HHC's visit, the total staff of the **Debrecen Juvenile Reformatory** consisted of 138 persons, 93 of which perform educational tasks. Those in professional positions, including the director and the educational deputy director, the educators and the psychologist, attend a daily teachers' conference. At the conference, the events of the previous day, night or weekend are discussed alongside disciplinary matters, punishment and rewards. They also discuss any issues deviating from the institution's daily routine.

Budapest Juvenile Reformatory's internal regulations require the presence of two educators and three child supervisors per groups during afternoons. Nevertheless, two of the three child supervisors work night shifts, while one of them works afternoons. Accordingly, in the afternoons, usually two educators and one child supervisor are assigned to the groups. The exceptions are Group 4 (psycho-pedagogic group) and Group 7 (group of those over 16) where three educators work in parallel during the afternoons to cater to the children's special needs and carry out the professional programme of the institution more effectively. During HHC's monitoring visit, 112 staff member places were assigned to the institution with 110.5 of the positions being filled in. According to information provided by the management of the institution, the number of staff members assigned will shortly be raised to 119.

At the time of the visit, there were 65.5 employment positions filled by educators or child supervisors. In the **Rákospalota Juvenile Penitentiary**, two educators work with a group, consisting of 12 children as a maximum, and take shifts on weekday afternoons and on weekends, and work in parallel for one afternoon a week. Additionally two to three child supervisors are assigned to every group (two of them on a night shift, who reside in the living units between 08.00 CET and 18.00 CET). In practice, this means that during every shift, there is one educator or child supervisor supervising the group.

Juveniles did not report ill-treatment in any of the juvenile reformatories. In general, they made positive statements about the educators and the management. The children accommodated in the **Debrecen Juvenile Reformatory** told researchers that they mostly turn to the educator with their complaints, but they also greatly trust the institution's psychologist, who often mediates in conflicts. The children said that the director asks them whether they have any complaints, while the deputy director walks through the groups in the evenings and talks to them. They may also turn to the deputy director with questions and complaints without any reservation.

In the **Budapest Juvenile Reformatory**, children repeatedly gave the same answer when asked in whom they most trust: "Uncle Peter", i.e. the director of the juvenile reformatory. The children unanimously stated that the director walks around the entire institution every day and they may talk to him about anything. During the visit to the **Rákospalota Juvenile Reformatory**, researchers concluded that the relationship between educators and juveniles was outstanding. Children did not submit any complaint about staff members at the institution either.

The **Aszód Juvenile Reformatory** was the only institution where the researchers were informed about certain derogatory statements made by one of the nurses and certain vocational trainers. These were sometimes supplemented with racist comments. The director of the reformatory submitted that he had already investigated these complaints and reminded the staff in question that racist comments were forbidden and would not be tolerated. This also applies to cases where the comments were induced by the staff member's helplessness at the hands of a disobedient child whose behaviour was provocative. The staff in question understood that these instructions are justified. Apart from these complaints, juveniles also made positive statements about educators in this institution.

4. Education

Based on the results from the monitoring visits, education is conducted in a more effective framework and with more effective methods in juvenile reformatories than in the penitentiary system. The **Aszód Juvenile Reformatory** operates under the aegis of the pedagogical education and attaches appropriate importance to school education. In the institution, all of the children attend school or vocational training. Similarly, all of the children attend school both in the **Debrecen Juvenile Reformatory** and the **Budapest Juvenile Reformatory**, including those who could, under the law on national education, stop studying due to their age. The 10-member teachers' board, employed by the reformatory institution in Debrecen, consists of a special education teacher, a development teacher, two primary school teachers and six subject teachers. The institution in the Szőlő Street in Budapest is also equipped with an appropriate number of subject teachers; nine-and-a-half positions are filled by the 10-member board of teachers. In the latter institutions, only the absence of foreign language teaching was a recurring problem in primary education.

Education is considerably enhanced if the institution maintains its own school and employs a group of teachers, as in the case of the **Aszód Juvenile Reformatory**. On the other hand, an agreement is sometimes concluded with an educational institution, which is organisationally not linked to the juvenile reformatory (as e.g. in the case of the **Debrecen** and **Budapest Juvenile Reformatory**). In such cases, juveniles are in a student relationship with the relevant school. This is an advantage since their school certificate would be issued by a regular school instead of a juvenile reformatory, which could enhance their future employment possibilities.

The situation of juveniles receiving an individualised education within the framework of the education in a juvenile reformatory and conducted with special methods as presented

below cannot be compared to the situation of juveniles having a “private student” status, the latter being more common in the penitentiary system. “Private students” do not attend classes but should study on their own.

As demonstrated by the practice of the juvenile reformatories, the problem in the Bács-Kiskun County Penitentiary Institution regarding juveniles admitted to the institution without a school certificate could be solved in different ways. The **Debrecen Juvenile Reformatory** assesses the education of the child admitted to the institution within the reformatory, and children are placed on that basis in a group at an appropriate level. The assessment is conducted promptly, within 30 days, to allow the child to participate in education as soon as possible. The speed of enrolling the children into school once they are admitted to the **Budapest Juvenile Reformatory** in the Szőlő Street is similarly exemplary. Enrolment is not delayed or impeded by administrative difficulties, the abilities of the students are assessed promptly and their education may begin without delay. The enrolment of students is also continuous in the **Rákospalota Juvenile Reformatory**, but staff members occasionally encounter difficulties in this institution when trying to figure out where and for how many years the student has attended school. Enrolment is especially problematic with regard to pupils who have special educational needs, in which case the opinion of the regionally competent Expert Opinion Committee Examining Studying Abilities is also necessary for enrolment. In practice, the juvenile reformatory overcame the above problems by placing the student into a group considered ideal for him on the basis of the information at hand and the student’s knowledge as assessed by the reformatory, to allow them to adapt to the order of the institution as soon as possible.

In the course of the monitoring visits, HHC encountered practices in the juvenile reformatories, which prove that methods enhancing the effectiveness of education may also be used for juvenile detainees. In the **Debrecen Juvenile Reformatory**, the individual needs of the children are handled flexibly. The teachers, educators and psychologist are in a continuous discussion about the situation, abilities and actual performance of the students. As a result of the continuous dialogue and the familiarisation with the individual background stories and current state of the children, teachers are able to react adequately to problems that may emerge in school. Educational methods with elements of play are used on a daily basis to increase the children’s interest in study. Several students are, in fact, forced to engage in education in the institution, but a survey conducted by the reformatory shows that while, at the time of their admission to the institution, 75% of juveniles rejected the school, the number disliking school dropped to 16% within a few months. Thus, the children’s impression of the school changed over time. The institution strives to motivate the boys by appraisal and avoids giving students a “red dot” (meaning a positive achievement), a grade 5 (being the best grade) or the worst grade (1) to prevent under-achievers from developing low self-esteem.

Some children mentioned during the monitoring visit that they understand the curriculum in the reformatory better than in regular school. The curriculum is presented in an easily accessible manner, using simple language educational notes, explaining issues via practical examples, which were developed by the teachers’ conference of the reformatory. Exams are held twice a year, in January and in June, and usually 50-60 students are able to take the assessment exam.

Teachers employed by the **Budapest Juvenile Reformatory**, who help students in the last (12th) grade of high school with extra classes and coaching, are similarly devoted. There is an exam every quarter, which students are required to pass in order to continue to the next grade. The reformatory may deem it a success that seven juveniles in the 12th grade were preparing to obtain their high school diploma in 2014.

These two examples also show the advantages of employing teachers at the reformatory. These advantages, such as following a student's progress, individualised education and providing students with easily accessible materials, are, of course, lost if the juvenile is enrolled as a "private student".

In the **Debrecen Juvenile Reformatory**, they even operate learning circles, consisting of a smaller number of persons, for students with special educational needs to ensure that these students receive appropriate attention. In the **Rákospalota Juvenile Reformatory**, there is a class for students with special educational needs, attended by only four students. The development teacher also deals with the students with special educational needs separately during school time. HHC proposes that such juveniles are registered in all detention facilities and that they are classified correctly (as students with special educational needs) within the respective registry. Also, if necessary, institutions should consult an expert on learning difficulties or related disabilities regarding the special needs of detainees with learning difficulties or other related disabilities and use corresponding special methods in the course of their education. Furthermore, HHC stresses that under Article 45(3) of Act CXC of 2011 on the National Public Education, the compulsory school age of students with learning difficulties or other related disabilities may be extended to 23.

Vocational training is provided in some form in all of the institutions but there are significant differences as to the relevance of knowledge obtained by the students within the training framework in the outside world and also as to the certificate received upon completion of the training. The new law on adult education created an unavoidable disadvantage when it made the conditions for obtaining a vocational training qualification under the "OKJ" system stricter, since an institution executing detention cannot necessarily ensure the significantly increased compulsory number of classes. With respect to the reasons above, the **Budapesti Juvenile Reformatory** cannot provide vocational training. In the **Aszód Juvenile Reformatory**, students involved in vocational training as future painters, timber industry workers and welders receive only a record of their studies (and the training of welders is suspended due to lack of financing). Even though the **Debrecen Juvenile Reformatory** provides various forms of vocational training as an important part of the daily routine, such as basketwork, pottery and carpentry workshops and work in the dressmaker's shop, juveniles gained knowledge, which cannot really be used in the external job market. In the **Rákospalota Juvenile Reformatory**, a preparatory vocational course is provided in the 9th and 10th grade in three professions (chef, dressmaker and waiter), and students receive a certificate upon completing the course. However, they cannot obtain a professional qualification, which is also hindered by the fact that for most OKJ trainings completion of tenth grade and a school certificate are required.

5. Leisure activities

Based on HHC's monitoring visits, the places for juvenile detention generally abide by international requirements for stay in the open. In the **Debrecen Juvenile Reformatory**, children in pre-trial detention may spend one hour per day outside, while children sentenced to education in a juvenile reformatory spend a lot of time outside through activities providing such possibilities such as gardening and raising animals. In the framework of gardening, children grow grapes, tomatoes, peppers, peas and cabbages with the help of a vocational teacher. Most of the vegetables are consumed within the institution, while the rest are sold on the local bio market. In the framework of household farming, children take care of sheep, hens, ducks, turkeys, goats and rabbits.

Judging by the discussions with children in the Debrecen facility, gardening is a popular activity; children are happy to work outside. In the **Budapest Juvenile Reformatory**, pre-

trial detainees move within the institution in the morning in groups corresponding to their school classes or their place of employment. In the afternoon, they are supervised by an adult staff member with the rest of their living unit, Moving around in the yard individually, or in smaller groups, also happens with an adult escort for an adequate period as shown by their daily routine.

The written daily routine of the **Aszód Juvenile Reformatory** does not even refer to a period of time assigned for a stay in the open. Some of the juveniles interviewed stated that they do not even spend one hour outside. In another “closed” group (i.e. a group which as a main rule is not in contact with other groups), it was presumed that juveniles chose not to spend a long time outside because their exercise was in a narrow, separate yard. The institution responded that the planned stay outside could indeed form a part of the daily routine of the juvenile reformatory, but that was not a programme, which has pedagogical content or an educative nature. It also submitted the following: “We organise several programmes in the areas around our buildings. The park, as a therapeutic space, operates actively almost every day. The surroundings of the fountain calm the boys and conversations with teachers carried out there have a different feel to those in the living unit. For the boys, this is not aimed at fulfilling their need to stay outside, and cannot be attached to the respective minimum standard. Of course, activities outside the buildings may be halted if the educator is notified that somebody is planning to escape from the yard. Seemingly, this delays or violates the fulfilment of the need to stay outside and the juvenile complains about it, but at the same time special prevention is achieved. In this process, any tensions the juvenile may be experiencing can become clear and the situation can be subsequently addressed and resolved.”

Despite these statements, designed to reassure the researchers, HHC upholds its comments on the basis of information acquired from the group diaries, registering the events. According to these diaries, Group 10 had outdoor activities on 16 days within two months (April-May 2014) and the psycho-pedagogic group had 19 days of outdoor activities in this period (but only two juveniles participated on each occasion in the outdoor activities). In the case of the “closed” group, there were more than 15 days within that period on which they did not take part in outdoor activities, according to the group diaries. Staying outside only on 16-20 occasions within two months cannot be justified by the weather conditions. On the basis of the group diaries, it was the “closed” group, which spent the most time outside. In some cases, juveniles, taking part in a training farm at the institution, were able to spend more time in the open at a greenhouse, where they grow vegetables. The training used to organise large-scale agricultural activities, but has become smaller in size. At the time of the visit, 10-15 pupils carried out work in the training farm. They mow the grass, prune the fruit trees and pick fruit.

As for the respective legal provisions, HHC would like to highlight that **even though the Decree 30/1997 (X. 11) of the Minister of Social Welfare on the Regulation of Juvenile Reformatories does not prescribe a one-hour period outside, the international standards referred to above require that places of detention guarantee at least a one-hour period outside per day.** The lack of regulated stay in the open is in conflict with the rules for executing imprisonment or detention in a police cell.

The children interviewed in the **Aszód Juvenile Reformatory** particularly stressed that they miss exercise and sports. The school curriculum does not include physical education, so this is possible only in the afternoons. Nevertheless, sports activities are organised only if they are preparing for a competition between juvenile reformatories or if the selection process for these competitions takes place. In contrast to the above opinions, the reformatory emphasised that sports have an important role and place in the daily life of the institution: “The high number of cups, medals and certificates justify this statement. The weather during the month preceding the visit involved unusually high levels of rain and stormy wind. The stay in the

open is important to boys and can be difficult for those, whose execution of pre-trial detention in a medium security prison leaves a mark.”

In this regard, HHC stresses that working at the training farm does not supplement sports activities during leisure time: hacking and rasping provide an entirely different experience than common sports activities or simply spending time with others outside. Taking into account that the reformatory in Aszód has excellent sport fields, HHC believes that more time should and could have been given to the children. Among juveniles, interviewed by HHC, several detainees expressed that they miss not being able to use the gym, even though there is a gym in the institution. According to the director of the institution, as part of the educational concept, the latter form of physical education is not permitted despite the fact that the conditions for it prevail. In his view, conditions for using the gym include not only the existence of exercise equipment, but also a professional staff member trained in their use. According to information provided, these preconditions are currently not fulfilled; and they cannot put the children at risk by allowing them to use the equipment.

Inmates at the **Debrecen Juvenile Reformatory** may often take part in sports activities on the handball and football fields outside the building or in the yard of the institution. Inside the institution, there is table tennis and a gym, and they may also play basketball and football indoors. There are regular sporting competitions between the groups: at the time of the visit, an internal volleyball competition was taking place. In the **Budapest Juvenile Reformatory**, the school curriculum entails daily physical education lessons both for school groups and other groups.

Beyond the compulsory number of classes, they regularly organise entertaining and challenging sports competitions, which enhance the competitive spirit; children’s favourite activities are playing football and using the gym. In the **Rákospalota Juvenile Reformatory**, there are two mandatory physical education lessons per week, which take place in the gym of the institution or in the sports field in the yard. In addition, juvenile girls may play basketball once a week, do karate every Sunday, and attend a zumba class every week.

Juvenile reformatories are able to organise several community, handicraft and cultural activities for juveniles living in the institutions, which constitute an essential part of the educational programmes. The pendants and artworks seen on the walls and shelves of the corridors and rooms of the **Aszód Juvenile Reformatory**, prepared by the pupils of the institution, attested to the organisation of such handicraft activities. On the day of the monitoring visit, there was an exhibition of skill games in the hall of the institution, assistance dogs arrived at the institution and juveniles could get a henna tattoo. The **Debrecen Juvenile Reformatory** regularly organises programmes related to the juveniles’ studies or other cultural group programmes outside the institution. Not long before the monitoring visit, six children were taken to the national park in Hortobágy for two days to introduce them to the flora and fauna. Other juveniles had a summer holiday at Lake Balaton, while other juveniles could visit the Parliament, a mintage, a rubber factory, or the so-called Kenézy Café, organised by the Kenézy Gyula Hospital of Debrecen, offering cultural programmes. It is noteworthy that the institution pays special attention to developing the children’s verbal skills to improve their lives when they leave the institution. The drama teacher in the institution prepares the children for related events, and they also create movement theatre plays in the framework of the drama workshop. Pupils of the **Rákospalota Juvenile Reformatory** may also attend different workshops: literature and beading workshops and the vocational training workshop; there is also a possibility to do pottery (although at the time of the visit they had no resources to employ an adequate vocational trainer) and gardening. Children living in the **Budapest Juvenile Reformatory**, work in gardening, the lavatory, the dressmaker’s shop, or in the pet-stroking area. They help with maintenance, and also do handicrafts and weave rugs. As one of them told researchers: “I never get bored during the day because I am always engaged.”

6. Contacts with the outside world

HHC researchers noted that in several juvenile reformatories only one visit is allowed per month and that a second visit may be granted only as an extra reward. This was the practice also at the (**Debrecen Juvenile Reformatory**). In the **Budapest Juvenile Reformatory**, the general rule was either to allow one visit lasting an hour, or two visits lasting half an hour each, every month; detainees could acquire an extra visiting possibility beyond that as a reward.

Under Article 118(1) of the Penitentiary Code and Article 394(1)(b) of Act CCXL of 2013 on the Execution of Punishments, Measures, Certain Coercive Measures and Petty Offence Confinement (which will enter into force on 1 January 2015), pre-trial detainees may have visitors twice a month. Accordingly, HHC recommended that institutions ensure that they comply with the respective legal obligations in terms of visitation rights, and that they allow two monthly visits as the main rule, and that, if necessary, they amend the system of rewards. The reformatory in Debrecen responded to HHC's proposal by noting that they will amend their internal rules and will ensure the possibility of two visits a month. The reformatory in Szóló Street in Budapest also responded that they deem it particularly important to maintain and strengthen family ties, and they intend to increase visitations once the conditions became more favourable (meaning fewer pupils and more guards).

Apart from the deficiencies described above, at the **Budapest Juvenile Reformatory**, physical contact is not allowed as a general rule (with rare exceptions) during visits. Researchers feel that being less stringent in this matter would be more appropriate, especially because physical contact is allowed in most penitentiary institutions – in the case of adult detainees – at least at the beginning and end of the visit. Researchers believe that restricting physical contact when greeting visitors may only be justified if hard evidence emerged that the detainee and their particular visitor violated, or intended to violate, the rules of the juvenile reformatory, e.g. by bringing in a prohibited object.

Visits are conducted on weekends both in the juvenile reformatories and the penitentiary institutions. HHC researchers encountered a good practice in the Debrecen Juvenile Reformatory, whereby the date of receipt of the families' income, salary and social allowances is noted when scheduling visits. This ensures that families can afford to travel to the reformatory. At the reformatory, they also pay attention to family ties within the institution, e.g. if two siblings are detained in the penitentiary, they are allowed to sit at the same table during visits, except if their separation during their pre-trial detention is necessary because they are co-defendants.

Besides visits, making phone calls is another essential personal form of maintaining contact with family and relatives. Phone calls are guaranteed in every institution, but researchers encountered differences regarding the length of calls allowed within particular institutions, between institutions, and between juvenile and adult detainees. At the time of HHC's visit, certain groups in the **Aszód Juvenile Reformatory** could receive calls every day between 02.00 CET and 06.00 CET while in other groups children could receive phone calls only on certain days. The difference in rules had no reasonable grounds. Hence, the discrepancy in the length of phone calls is viewed as arbitrary by HHC and, most probably, also by the juveniles. Researchers could find no explanation for it either. Maintaining contact with the outside world is an important aspect of detention, and since detainees often experience intense feelings, such an inconsistency may lead to tension. Therefore, HHC recommended that rules on phone calls should be standardised. In its response, the reformatory promised to review the practice of phone calls and related case management. In the **Debrecen Juvenile Reformatory**, children complained that they may only make one phone call a week and some juveniles, who

were detained before in a penitentiary institution, recalled that they could make three phone calls a week at the penitentiary institution. The director of the juvenile reformatory responded that, in justified cases, and depending on individual need, he sometimes allows additional phone calls. In the **Rákospalota Juvenile Reformatory**, girls in pre-trial detention could also make only one five-minute phone call a week, every Wednesday.

It is worth noting with regard to phone calls that the **Budapest Juvenile Reformatory** considered introducing the BVFon system. This system is used in penitentiaries in Hungary and is often criticised for its high prices. HHC believes that every step, involving increased phone tariffs, would make maintaining contact with the outside world harder, and may be particularly detrimental to children. HHC regards the current general practice of juvenile reformatories favourable, whereby children initiate phone calls under regular phone tariffs.

According to HHC's monitoring results, correspondence is not limited in any of the institutions, apart from the necessary security rules.

C. CENTRAL SPECIAL HOMES FOR CHILDREN

As already discussed in the present study, central special homes for children are part of the **child protection system**. This form of care provided to children with special needs taken into state care is **not related to the criminal justice system** in any way. Children placed in such institutions are not in contact with the machinery of the criminal justice system, and their placement is justified by their **special needs**. The educational aim of the institution differs from that of earlier discussed institutions: these institutions, apart from striving to provide support in (re)socialisation, aim to facilitate the child's return to their previous place of care and preparation for an independent life.

However, special homes for children are also **considered to be places of deprivation of liberty**, according to the definition provided by the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) as cited in this study. Nevertheless, HHC emphasises that the child protection professionals interviewed do not consider the special homes for children to fall under the scope of the OPCAT.

Central special homes for children accommodate children with severe psychopathic or anti-social symptoms or children struggling with psychoactive drug use. Therefore, one of the serious problems at these institutions is the lack of child psychiatrists. The situation is further exacerbated by the fact that the provision of child psychiatry consultation outside these homes is only partly satisfactory.

In the framework of the project, HHC researchers visited *central* special homes for children, since these institutions accommodate children with the gravest problems. According to the law, central special homes admit children exhibiting **severe psychological or anti-social symptoms, struggling with psychoactive drug use** or suffering from "an **acquired immune deficiency disease** not requiring acute medical care but individual care." Furthermore, according to the National Child Protection Expert Committee, if the child cannot be provided with care services elsewhere, or their separate placement is not possible, then these are pre-conditions for the child's placement in a central special home for children. During visits, HHC researchers did not meet anyone accommodated because they had AIDS, but they met several children who suffered from other ailments, e.g. diabetes.

During the monitoring visits, with the help of the child psychiatrist, who was part of the monitoring team, researchers noted that often children in central special homes for children

did not constitute homogeneous groups. In addition, they met several children with “**twofold needs**”, who would therefore require both a **particular** treatment (the Child Protection Act refers to permanently ill and disabled children) and **special** treatment. For example, according to the statistics from 2013 for one of the homes visited, only nine children out of 28 had no special educational needs whatsoever. Out of the remaining 19 children, eight had a mild degree of mental disability, and they usually also had some kind of behavioural problem. Nine children had other psychological problems (psychological problems stemming from the drug use, activity and attention disorder, depression, anxiety, etc.). In HHC’s view, children with mild mental disability problems and children with drug abuse problems require special treatment from a child psychiatry perspective.

The system of special homes for children was originally designed for children with impulse control and learning problems. In recent years, the **scope of problems for which children can be admitted has widened**. First, the institutions have been obliged to receive children with mild mental disabilities as well as children with neurotic-psychic problems. Second, the scope was extended to include children suffering from diabetes and flour intolerance, and, according to the information provided by the heads of the institutions, the number of children using psychoactive drugs has also increased. However, **staff members** at the homes for children are primarily qualified for working with and treating children with **conduct disorders**.

Based on HHC’s monitoring visits, apart from the widening scope, the lack of further training provided to educators and pedagogues is another serious problem. Taking care of children, placed in the central special homes, is a complex task, requiring multi-fold knowledge and various kinds of professionals. Given the lack of professionals with adequate qualifications, **the special treatment of children cannot be fully applied**, and results achieved remain very limited, irrespective of efforts and wide professional support. However, if the institution is not able to fulfil its function, then after the maximum three years of treatment, older children, who were affected by drug use and who as a result have been criminalised, or are in the process of becoming criminalised, or have already developed permanent behavioural disorders, leave the facility without having received adequate help for treatment and development. Accordingly, their chances of living a long and fulfilling life are diminished. The lack of adequate therapy may contribute to the development of dysfunctional attitudes, which may lead later on to the criminalisation of the child.

The situation is exacerbated by the fact that **child psychiatry consultations outside these homes** are only sporadic. The deficiencies of the entire national child psychiatry system also affect the special homes for children. Every institution suffers from the problem that there is no such child psychiatric ward, which would admit children at the age of 15. For example, in Budapest, the child psychiatric ward of the Heim Pál Hospital only admits children under 15, so older children usually end up in the adult or the geronto-psychiatric ward. HHC strongly believes that without experts, this institutional system of child protection cannot fulfil its task in relation to all children with special needs, severe psychiatric problems or those struggling with psychoactive drugs.

Material conditions were adequate in all of the homes for children visited by researchers; no com-



plaints were made as to the placement; and children viewed the meals as generous and of good quality in all but one institution. Along with having common meals, the groups of children cook or could cook for themselves. Researchers noted that in many of the institutions the doors were damaged, as they were unfortunately made of such a material that could easily be severely damaged by a single strong blow.

With slight differences in each institution, all of the special homes for children use a “**progressive educational system**,” which was considered to be useful and effective by all of the experts interviewed. The children may be referred to a higher educational level depending on their behaviour and diligence. Levels clearly determine the leaves and absences a child may be granted and the possibility to move freely within the premises of the institution:

Level 1: Newly admitted pupils and pupils re-admitted after trying to escape or who have committed a severe offence are referred to Level 1. Pupils on Level 1 may leave the premises of the institution only in justified cases (e.g. going to the doctor and in urgent official cases) and with an escort. They may spend time in the park and garden in the presence of an adult. Newly admitted pupils remain on Level 1 for a month after admission.

Level 2: Reliable pupils, who follow the rules, may be referred to Level 2 if proposed by the educators of the group and if all the adults, working with the juvenile, unanimously agree with the proposal. Pupils on Level 2 may move around on the premises of the institution with the permission of an adult, and may participate in group programmes outside the institution with adult supervision. Level 2 pupils may be members of a sports association or a workshop outside the institution and may participate in educational programmes for gifted children. The minimum time to be spent on Level 2 is one month.

Level 3: Level 2 pupils, who demonstrate that they are reliable, independent and obedient, may be referred to Level 3 if proposed by the educators of their group and if adults directly working with them agree unanimously with such a proposal. Level 3 pupils may go on a short-term individual leave at their teachers' discretion and may go on a longer “absence” with the permission of the guardianship authority. Level 3 pupils may also undertake volunteer activities outside the institution and may participate in programmes abroad.

In all of the institutions, an emphasis is placed on education and providing children with substantial and meaningful leisure activities both inside and outside the institution.

From among the institutions visited by HHC, only the staff members of the special homes for children in Esztergom had **external supervision**, i.e. regular case discussion led by external specialists. According to the researchers, this could be detected by the atmosphere in the institution. It is important to ensure that staff members at the special homes for children participate in common programmes, but unfortunately due to understaffing and a tight budget, this is currently not possible in most institutions.

D. ASYLUM DETENTION FACILITIES

The detention of asylum-seekers under the age of 18 violates Hungarian and international norms. Due to the malpractices concerning age-assessment, children are detained in asylum detention facilities in innumerable cases. As these children are not identified as minors, they have no access to any form of education or leisure activities.

1. General information

HHC researchers carried out five monitoring visits to asylum detention facilities between July 2013 and March 2014, where they were informed by reliable sources that unaccompanied minors were detained. These detainees were visibly much younger than other detainees. Many of them officially claimed to be minors, but their age was not properly assessed, and they were not released from detention. The facilities visited were: Békéscsaba on 18 July 2013, Nyírbátor on 24 July 2013, and repeated follow up visits to Békéscsaba on 12 February 2014, Nyírbátor on 26 February 2014 and Debrecen on 20 February 2014.

During its visits under the present project, HHC interviewed about 100 asylum-seekers in detention. Of these, 30 claimed to be under 18. This phenomenon clearly illustrated the shortcomings in the current age assessment practice of the police and the Office of Immigration and Nationality (hereinafter: OIN).

HHC's experience in the area of monitoring immigration (and asylum) detention facilities for over a decade shows that children, arriving in Hungary without valid travel documents confirming their identity, may be detained based on incorrect age assessment. Erroneous and unreliable age assessment results in unlawful asylum detention. The problem has been summarised by HHC as follows:¹

According to HHC's long-standing experience based on individual cases, age assessment practices in Hungary are not of a multidisciplinary character and ignore the differences between various populations of the world regarding pubescence, the psychological and emotional development of the child, as well as their cultural background.

In most cases, age assessment is based on a simple physical observation of the foreigner by a doctor (sexual maturity, facial hair, teeth) or the X-ray examination of the wrist, col-

¹ Hungarian Helsinki Committee (2014), *Information Note on Asylum Seekers in Detention and in Dublin Procedures in Hungary*, p. 12.

larbone or pelvis. The OIN confirmed¹ that if a police doctor at the border issues an opinion confirming that the person is an adult, a second, more detailed, forensic expert's opinion can only be obtained by the OIN, if the proceeding authority doubts the results of the first medical examination. If this is not the case, the detained asylum-seeker has the right to request a repeated examination, but they must bear the costs thereof (at least cca. EUR 100). The HHC believes that this OIN practice is not in line with the relevant Hungarian regulation, which stipulates that *"if the applicant seeking recognition declares, after the ordering of detention, that they are an unaccompanied minor, the asylum authority shall contact the medical service provider, who has jurisdiction at the place of detention, in order to immediately establish the age of the applicant."*²

In addition, Hungarian law exempts asylum-seekers from bearing the costs related to the asylum proceedings (in case of the first asylum claim).³ The applicant's age is a crucial factor to be considered in the asylum procedure, therefore, the costs of proceedings related to age assessment should be borne by the state, at least in the case of the first asylum claim.

This practice excludes detained children, who lack the financial means to seek remedies against unlawful detention through a repeated age assessment. This is in violation of Hungary's international and domestic obligations.⁴

2. Material conditions

All three asylum detention facilities started to operate in this capacity in July 2013, although the buildings accommodating the facilities were not new. All of them had been formerly used as either immigration detention facilities or open refugee reception centres. These asylum detention centres are maintained by the OIN; however, the police are in charge of guarding the detainees and employ armed security guards, who perform in this task under the supervision of uniformed police officers.

Article 36(D) of Government Decree 301/2007 (XI. 9) lists the requirements an asylum detention facility must fulfil. These are the following:

- a) the living quarters of detained third-country nationals must have at least 15 cubic metres of air space and 5 square metres of floor space per person, and in case of detained families (spouses or families with minor children), they must have at least 8 square metres of floor space;
- b) they must have a common area for dining, for recreational purposes – including for the recreational needs of minor asylum-seekers – and for receiving visitors;
- c) they must have separate washrooms, showers and toilets for men and women, with hot and cold running water, and with sufficient capacity in accordance with the number of detainees;
- d) they must have an infirmary for providing basic health care;
- e) they must have a medical examination room and an isolation room;
- f) they must have sufficient space for outdoor activities;

1 Letter no. 106-Ji-5026/9/2014 of 29 April 2014 by the OIN Director General to the HHC, available on: <http://helsinki.hu/wp-content/uploads/BAH-valasz-menekultugyi-orizet-gyakorlatarol-20140429.pdf>.

2 Government Decree No. 301 of 2007 (XI. 9) (2007), Art. 36/B.

3 Act LXXX of 2007 on asylum (2007), Art. 34.

4 Convention on the Rights of the Child, Art. 3, Art. 22 (1) and Art. 37(b) and (d); Act XXXI of 2007 on child protection (2007), Art. 2(1) and Act LXXX of 2007 on asylum (2007), Art. 4(1), all reaffirming among others the best interest of the child as a guiding principle throughout any procedures.

- g) they must have sufficient lighting to satisfy the standards laid down in the national requirements concerning regional development and construction;
- h) they must have uninterrupted power supply;
- i) they must have a separate room for receiving visitors;
- j) they must have telephone and internet facilities;
- k) they must have natural ventilation in the living quarters of third-country nationals, staff rooms, medical rooms, visitors' areas, kitchen and dining room, and in the common areas."¹

HHC found that the general atmosphere in all three asylum detention centres was tense and dispirited. Asylum-seekers can move around freely during the day in the closed areas of the asylum detention centres and have access to the outdoor courtyard.²

- The detention facility in **Debrecen** is located within an open refugee reception facility, creating tension and frustration between detainees and those enjoying personal liberty. The facility does not offer a community room with chairs and tables, detainees have to sit on the floor when watching television. It has to be noted that OIN made foreign – Arabic, English, French etc. – TV channels available, which is much appreciated by the detainees. Four to six detainees are accommodated in a room on simple beds. Basic shelves are provided for storing personal belongings, but the furniture is very simple. The common bathrooms are in a bad state, hygiene standards are not met and, according to the detainees interviewed, toilets are frequently broken and they do not have sufficient sanitary facilities. In the Debrecen asylum detention facility, the small courtyard cannot be used for any meaningful leisure time activity, as it is only a small fenced area without benches or trees to provide shade on a warm summer day. In addition to this, the security guards' watchtowers loom over the outdoor area in an intimidating manner.
- During its visits, HHC found that the courtyard of the **Békéscsaba** asylum detention facility, which until a few years ago used to be an open reception centre, is spacious enough for sports activities. The yard has a table tennis table, badminton racquets and balls. Also, benches and chairs are available. Since this facility used to be an open reception centre for families, it is better equipped than the other facilities. It has separate little flats for four to eight persons in two rooms sharing a bathroom. There are TV-rooms with tables and chairs, where detainees can spend their time if for any reason they cannot use the outdoor facility. Due to an arson incident, caused by some detainees in November 2013, this facility had partially been renovated by the time of the visit in February 2014.
- The detention facility in **Nyírbátor** has large and spacious rooms allowing to play table tennis indoors and a spacious outdoor courtyard with possibilities to play football and basketball. This, otherwise spacious, courtyard has no benches or shade-providing trees, limiting outdoor activities in sunny weather. HHC's researchers found that the bathrooms were in poor state of hygiene.

1 Government Decree No. 301 of 2007 (XI. 9) (2007) available on (up-to-date official English translation is not available): http://www.complex.hu/jr/gen/hjegy_doc.cgi?docid=A0700301.KOR#lbj82param.

2 Ministry of Internal Affairs (2013), Decree No. 29 of 2013 (VI. 28) on the Rules Implementing Asylum Detention and Asylum Bail.

3. Overcrowding

HHC found that the criteria set forth by Article 36(d) of Government Decree 301/2007 (XI. 9) are met. In general, no overcrowding could be reported as in the indicated period the facilities visited were not running at their full capacity.

Table 9: Number of foreigners in asylum detention facilities

Date of the visit	Facility visited	Maximum capacity	Number of detainees	Percentage (overcrowding)
18 July 2013	Békéscsaba	200	200	100%
27 July 2013	Nyírbátor	132	121	91,6%
12 February 2014	Békéscsaba	185	81	43%
20 February 2014	Debrecen	182	152	83%
26 February 2014	Nyírbátor	132	87	65%

Source: Hungarian Helsinki Committee

4. Personnel/guards and treatment

“While the HHC found no general pattern of physical ill-treatment in asylum detention, asylum-seekers detained in the Debrecen asylum detention centre complained to HHC about verbal abuse and incidents of physical abuse by the armed security guards working in the asylum detention centres.

A number of detainees in Debrecen, complained to HHC, that they had been ill-treated by armed security guards in the doctor’s surgery room as “there is no camera there”. Several detainees alleged that one specific member of the medical staff (a male nurse) was present and did not intervene to stop the abuse. Detainees were sceptical about reporting these incidents to the authorities or feared retaliation by the guards.”¹

Many of the above mentioned problems arise from the guards’ lack of intercultural skills and capabilities. In addition, their initial training does not sensitize them to issues concerning detainees. Xenophobia and intolerance are everyday phenomena, according to detainees.

Given the precarious situation of the detainees, none of them was willing to report the abusive acts and to press charges. Hence, all these incidents go unpunished.

5. Education

The 30 detainees, who claimed to be minors, did not have access to any form of education. This is because they were not even identified and recognised as minors due to the deficient age assessment examination, carried out by police at the border upon apprehension.

6. Recreational activities

HHC found that one of the biggest concerns about life in detention for the exclusively male detainee population is the **lack of daily activities leading to boredom**, which builds tension and frustration. Apart from lingering outdoors, the three asylum detention facilities offer very few possibilities for meaningful recreational activities and most detainees pass the time in an idle manner.

¹ Hungarian Helsinki Committee (2014), *Information Note on Asylum Seekers in Detention and in Dublin Procedures in Hungary*, p. 18.

7. Contacts with the outside world

Despite the purpose of this type of detention, which is to gather the necessary data to decide on the merits of the asylum claim, and the fact that they have not committed anything more severe than a petty offence by entering the country in an irregular manner (which remains unprosecuted in all cases), detainees in asylum detention are not entitled to retain their mobile phones with them while in detention. There are public payphones in each detention centre, which may be called from outside as well, but detainees have to buy phone cards at their own expense to be able to use them.

There is no library, and newspapers are not available in any of the visited facilities. All asylum detention centres are now equipped with computer rooms where detainees are able to use the Internet to communicate with the outside world for 20-30 minute periods. However, the capacity (speed) of the Internet connection seems to be insufficient as detainees frequently complain that by the time their email or Facebook account loads, their time is already up.

3. KEY FINDINGS AND CONCLUSIONS

1. Petty offence confinement of juveniles

Petty offence confinement of juveniles gives rise to several theoretical and practical problems.

HHC believes that petty offence confinement of juveniles is not only **wrong** and extremely **harmful**, but also clearly contravenes the **international norms** by which Hungary is bound. Thus, the domestic rules contravene the Convention on the Rights of the Child, ratified by Hungary in 1991, several resolutions of the UN General Assembly and the General Comment of the Committee on the Rights of the Child. Under Article 3(1) of the Convention on the Rights of the Child, in “all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.

The principle of the best interests of the child is one of the general fundamental principles of the Convention on the Rights of the Child, the content of which is elaborated in detail in the further articles of the convention. The petty offence confinement of juveniles does not comply with the content of this fundamental principle as detailed by the further articles of the convention. In this regard, HHC would like to stress that Article 37(c) of the Convention on the Rights of the Child sets out the following: “Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of their age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so [...]”.

According to Rule 17.1 of the UN General Assembly Resolution 40/33 on the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, adopted on 29 November 1985 (“The Beijing Rules”), deprivation of the personal liberty of a juvenile “shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response.”

The practice of petty offence confinement in the case of adults also entails several deficiencies, but the **petty offence confinement of juveniles is particularly problematic for several reasons**.

By law, the longest possible period of petty offence confinement is 30 days in juvenile cases – as opposed to the general rule allowing a maximum of 60 days confinement – while, for a cumulative sentence the maximum length may be 45 days.¹ A fine may be imposed only if

¹ Act II of 2012 on Petty Offences, the Petty Offence Procedure and the Petty Offence Registry System (2012), Art. 27(2).

the juvenile accepts to pay it,¹ while community work may be imposed only if the juvenile is at least 16-years- old.² An on-the-spot fine may not be imposed on juveniles in the absence of their statutory representatives.³

The HHC believes that the above sanctioning system **does not comply with the fundamental principles enshrined in international documents**. HHC's concerns are shared by several organisations. For example, the National Judicial Office stated in a related submission that "the sanctioning system applied in petty offence procedures conducted against juveniles is not differentiated enough" and because of that, it proposed giving preference to "measures aimed at the protection of children, along with pushing punishments into the background".⁴ In April 2012, the Commissioner for Fundamental Rights (the Ombudsperson of Hungary) turned to the Constitutional Court, requesting⁵ that the provisions allowing the petty offence arrest and confinement of juveniles be abolished, claiming that they violate the juveniles' right to liberty and personal security and the right to protection and care. The Constitutional Court rejected the submission, and concluded that "juveniles' respect for the law has seriously declined, which endangers the evident social aim of them becoming law-abiding adults".⁶ The Constitutional Court also stated that "the confinement of juveniles was justified by the legislator by a pressing need to safeguard property, ensure public safety and facilitate the proper development of juveniles".

By allowing for the petty offence confinement of juveniles, the legislator fails to take into account the children's special needs. The respective provisions in force not only violate the international convention on children's rights as pointed out above, but also cause several theoretical and practical problems. Petty offence confinement may lead to the unnecessary and **disproportionate limitation** of rights, which may have serious consequences for juveniles who have an immature personality and tend to be impulsive, and **places significant burden on the authority responsible for executing the petty offence confinement**.

The penitentiary system is vested with the task of executing the deprivation of liberty of persons under petty offence confinement (and confinement replacing a fine, on-the-spot fine or community work); and the petty offence confinement of juveniles **shall also be executed in a penitentiary institution**.

Penitentiary institutions executing petty offence confinement are determined by the Government Decree 173/2013 (V. 30) on the Designation of Institutions Executing Confinement and Petty Offence Confinement. According to the government decree, petty offence confinement of juveniles shall be primarily executed in three designated institutions. However, if upon deducting the length of petty offence short-term detention from the length of petty offence confinement, there are less than 15 days left, petty offence confinement may also be executed in one of the other 18 institutions listed by the law. This should correspond to the residence area of the juvenile.

According to HHC, petty offence confinement execution in a penitentiary institution gives rise to concerns regardless of the separation rules and other guarantees enshrined in the legal provisions. No differences can be identified in practice between the petty offence confinement and imprisonment served in a less strict regime, and **in some aspects serving a petty of-**

1 *Ibid.*, Art. 27(3).

2 *Ibid.*, Art. 27(5).

3 *Ibid.*, Art. 27(3).

4 Submission of the National Judicial Office in relation to the amendment of Act II of 2012 on Petty Offences, the Petty Offence Procedure and the Petty Offence Registry System and further related laws, 30.148-33/2012 OBH, available on: <http://www.birosag.hu/obh/obh-szerv-dontesei/2012/szabalysertesi-javaslat-30148332012>

5 Commissioner for Fundamental Rights (2012), Submission to the Constitutional Court.

6 Constitutional Court (2013), Decision 3142/2013 (VII. 16).

fence confinement is even worse than serving an imprisonment imposed for committing a criminal offence. For example it follows from the nature of the confinement (theoretically involving a short period of deprivation of liberty) that it is difficult or even impossible to ensure the participation of detainees in activity programmes, work and education. As a human rights NGO, HHC believes that this cannot be justified, despite underlying factors such as the following: 1) the penitentiary institutions and the units executing petty offence confinement are not separated, thus, the two types of detainees are similarly dealt with in terms of limitations, and 2) **the overcrowding rate of the institutions affects the detention conditions in terms of the petty offence confinement.** The execution of petty offence confinement in penitentiaries gives rise to numerous other problems, since such institutions are typically not designed to execute such short-term deprivation of liberty.

On the basis of the monitoring visits and taking into account the comments of penitentiary staff members, HHC deems the following issues to be significant, **practical problems** in relation to the execution of the petty offence confinement of juveniles:

- A juvenile may only be released if they are picked up by their statutory representative. However, statutory representatives often fail to show up, and the efforts of the penitentiary staff members to contact them also tends to be futile, resulting in the juvenile being handed over to the child protection service after the end of their confinement.
- It is problematic for both juveniles and adults if they are arrested by the police during the weekend. Even though there is no stand-by unit in the penitentiaries, the admission procedure shall also be conducted outside working hours. In these cases, the security officer is obliged to check the length of the petty offence confinement, and if there is a holiday, the penitentiary staff members, responsible for the admission and release process, shall be ordered in. The admission procedure takes approximately three hours. Such cases often place a significant burden on the institutions.
- Since there is no stand-by unit in the penitentiaries, extra staff members should be ordered in for the tasks related to petty offence confinement. Because of the lack of a stand-by unit, there is also a high risk that petty offenders are not released in time, resulting in unlawful detention. At the time of writing the study, the problem only concerned adult offenders because their number was much higher.
- The fact that the police measure deprivation of liberty in hours, while the penitentiary system - in days, creates further complications
- Authorities bring in the offender in the clothes, in which they were arrested, resulting in many instances whereby the clothing of the detainee is inadequate (e.g. they are in slippers and shorts) or does not correspond to the season. There have been cases where the offender was brought in without shoes. For the institution, this is both a financial problem (since they must provide the detainee with clothes) and a problem with regard to the rights of the detainee (the situation entails the breach of the institution's rules on clothing).
- Because of limited means and the relatively short length of the petty offence confinement, juvenile offenders cannot be involved in primary education. A further reason for the lack of education is the difficulty in obtaining a school certificate, verifying the last grade attended by the juvenile, within the very short period available. In some cases, the parents will try to conceal the real reason for their child missing school by avoiding to communicate to the school that their child has been placed in a penitentiary.
- Petty offenders serving a confinement sentence may request that their relatives, parents, and siblings are registered as their contact persons. Registration forms are mailed to the contact persons by the detainee at their own cost. Contact persons are registered after they send back the signed forms to the institution. This procedure is much longer than

the usual length of confinement, and establishing a contact person in these cases is often never realised.

- Although at the time of writing the study, the number of juveniles serving petty offence confinement at a given moment was not substantial (the average number on a particular day being 2-5), it is important to emphasise that penitentiary institutions in Hungary are overcrowded and physical conditions are usually bad. In addition, in some of the penitentiary institutions, the overcrowding rate is exacerbated by the fact that petty offence confinement is executed in penitentiaries, since institutions have to maintain an adequate number of cells for petty offenders even if, at a given point, there are fewer petty offenders than free places.
- A juvenile detainee requires continuous attention, which – taking into account that in a particular moment there is only one educator, who deals with detainees serving a petty offence confinement – may often only be realised by making significant sacrifices.

CASE STUDY

The following case is a telling example of how the law works in practice. A 15-year-old child, together with two of his or her peers, tried to steal goods valuing HUF 1,800 or 6 EUR 6 from a shopping mall. Two of the perpetrators got off with a warning, but the third perpetrator, who had been caught travelling on the public transport using her friend's pass more than a year prior to the incident, got off worse. The court concluded that society's disapproval may only be expressed adequately by imposing a petty offence confinement, and that no other punishment or measure would be appropriate. The child was clearly not prepared for going to prison and for what awaited her there; she could not go to school for one week. Staff members at the penitentiary institution paid special attention to her and tried to ease the girl's fear and anxiety as far as possible.

One of the penitentiary institutions submitted examples of offences serving as a basis for petty offence confinement of detainees at the facility over the past two years. There was, for example, a child who had stolen wood: he went to chop wood together with his father, a fine was imposed on the child, one he could not pay, so it was transformed into confinement. Another juvenile, who failed to wear a visibility vest, while cycling likewise ended up in petty offence confinement. It is common that a fine is imposed for prostitution, which the juvenile prostitute cannot pay, and so the fine is transformed into confinement.

According to child protection experts, the new practice of “preventive supervision” may offer a solution to some of the problems in this regard. (See Research methodology)

It is the joint responsibility of the criminal justice system and the respective branch of the government that the system of petty offence sanctions applying to juveniles and the practice of petty offence confinement complies with the standards enshrined in international conventions.

In the course of the project, HHC submitted Freedom of Information (FOI) requests to a range of different institutions, also responsible for the execution of petty offence confinement. This is how the practice, fortunately rarely applied, was revealed that **juvenile detainees**, struggling with a mental disorder or suspected of having a mental disorder, with a **petty offence confinement sentence** are transferred to the **Judicial and Observation Psychiatric Insti-**

tute (hereinafter: IMEI). They may be detained there for a considerable amount of time, even for more than a week. In 2014, only one such case was registered. Although HHC knows only about one case, it is still considered to be a significant problem. This should be remedied by the legislator and the authorities applying the law and the execution. Not only does it violate international and domestic requirements pertaining to the deprivation of liberty of juveniles, but it is also inhuman and unreasonable.

Currently, Article 122(2) of the Penitentiary Code sets out the following: “Confinement and petty offence confinement shall be executed in a penitentiary institution determined in a separate law.” An earlier version of the Penitentiary Code, in force on 1 July 2013, went as follows: “Confinement and petty offence confinement shall be executed in a penitentiary institution determined in a separate law. If the mental or physical state of the offender, sentenced to confinement or petty offence confinement, requires special care, then it may be justified that the confinement and the petty offence confinement be executed in a special penitentiary institution.” However, the latter sentence was in force for only one day, and the text was replaced by the current version by Article 1(9) of Act LXXVIII of 2013. The reasoning behind the law provides clear guidance as to the placement of detainees in a mental or physical state requiring special care: “Due to the fact that institutions are overburdened, further differentiation aimed at the separation of persons requiring separate care is not possible in the course of executing confinement. Before admission, persons sentenced to confinement are subject to a medical examination, and if it is established that the affected person is not suitable for admission, then measures are taken to ensure another form of placement (hospital, in-patient special care).”

HHC considers it problematic that a detainee, particularly a juvenile, may be detained in an institution, which is not designated as a place of detention in juvenile cases either by Government Decree 173/2013 (V. 30) on the Designation of Institutions Executing Confinement and Petty Offence Confinement or its predecessor, Government Decree 42/2012 (III. 20) on the Designation of Institutions Executing Petty Offence Confinement. What is more, the IMEI is not even mentioned by the decrees.

As elaborated above, HHC considers the **petty offence confinement of juveniles problematic on its own**. The situation is further exacerbated by the problems revealed by HHC in the IMEI. Since the number of juvenile detainees is very low in the institution, the total separation of the juveniles from the adult detainees **usually cannot be fulfilled**, also in order to avoid the even more detrimental effects of total isolation in some cases. HHC believes that the placement of juveniles due to an offence of low gravity in the IMEI not only undermines the goal of the petty offence confinement sanction but is also unreasonable. Due to the conditions prevailing in the IMEI, there is no need for **any further investigation to conclude that the rights of the child required to be guaranteed by the international convention are violated** if a child is placed in an institution for having committed a petty crime, where the vast majority of inmates have committed serious criminal offences and have significant mental health problems, and where it is difficult or even impossible to separate the juveniles.

Juveniles sentenced to petty offence confinement, but having a mental disability or other condition requiring special care, should be placed in a **civil institution**, as also made possible by Paragraph 17 of Measure 1-1/20/2013 (V.27) OP on the tasks related to prevent the suicidal action of detainees, issued by the Head of the National Penitentiary Headquarters. The document sets out that if a detainee, who has attempted to commit suicide, persists to have suicidal episodes, they must be transferred to the IMEI upon a physician’s recommendation and after receiving critical care, those with a petty offence confinement measure shall be transferred to the regionally competent psychiatric ward.

It shall be guaranteed through the legal provisions that detainees, especially juveniles serving a petty offence confinement, cannot be placed in the Judicial and Observation Psychiatric Institute solely on the basis of their mental state.

2. Ordering pre-trial detention

The CPC clearly stipulates that in juvenile cases pre-trial detention may only be ordered if the necessary conditions, applicable to adult cases, prevail and if it is necessary due to the **serious gravity of the criminal offence**.¹ The “Extensive Commentary” of the CPC states that “analysing the material side of the offence has priority over analysing the subjective side, and it should be examined whether the expected length of the imprisonment to be imposed in the framework of the criminal law for juveniles would exceed the applicable median.” In contrast, another commentary of the CPC² elaborates that when deciding in practice whether the criminal offence is of serious gravity, “not only the characteristics of the material side shall be examined,” but the latter ones “shall be assessed in conjunction with the **circumstances that may be revealed on the subjective side.**”

The statements of the experts interviewed within the framework of the project were in line with the latter explanation. According to the opinion of professionals interviewed by HHC, **pre-trial detention may be ordered only in exceptional cases** for juveniles, and the reasons for forcibly separating the child from their normal environment should be examined thoroughly in every case. The judge’s decision may be influenced by several factors, typically including the existence of a family environment and the characteristics of the home environment before and after the juvenile committed the offence. The decision takes into account **education** and the aim of pushing the juvenile in the right direction. Thus, if the home environment exercises adequate control over the child and has sufficient supervision over them, then, according to the professionals interviewed, ordering pre-trial detention is not considered justified – irrespective of the gravity of the offence committed. As stated by one of the experts, they do not look at the defendant as a criminal case, but as a child. One of the interviewees was of the opinion that if the family environment is appropriate, then pre-trial detention is almost never ordered. However, if the family is already strongly criminalised and does not ensure an adequate environment for the child, or if the child does not live in a family but in some kind of an institution, then the judge may deem it justified to order the coercive measure. According to the expert, interviewed by HHC, in the latter case pre-trial detention may be justified either by in the interests of the child or the fact that the child is essentially not raised in a family anyway. It is also likely that pre-trial detention is ordered when the juvenile defendant commits offences of a smaller gravity (e.g. theft for a lower value), but reoffends numerous times, almost as a way of living.

However, HHC’s research and that of other human rights organisations and experts, working in the field of child protection, has revealed that in contradiction with the requirements discussed above, **pre-trial detention is ordered and often results in detention of excessive length also in cases of less serious offences and sound family background**. Some illustrative cases are listed below.

¹ Act XIX of 1998 on the Criminal Procedure (1998), Art. 454(1).

² Közlönykiadó, M. H. (2008) *Commentary on the Act XIX of 1998 on the Code of Criminal Procedure*, Volume VI, pp. 77-78.

³ Hungarian Civil Liberties Union (2013), Application before the ECtHR of the Hungarian Civil Liberties Union on behalf of G.M.F., available on: http://tasz.hu/files/tasz/imce/tasz-strasbourggi_kerelem_nm_anonim.pdf.

CASE STUDY

A 17-year-old juvenile from the town of Piliscsaba, suspected of committing a robbery in a group, was in pre-trial detention for more than a year. The boy made a confession in the course of the procedure, had an address where the summons could be sent to, lived under sound circumstances with his family and had no criminal record. In the course of a confrontation, the alleged victim himself stated that nobody was hurt during the incident underlying the criminal procedure, and that the boy in pre-trial detention had not threatened anyone. There was no evidence, which would have substantiated the danger of absconding and threatening the witnesses, but the defendant was still kept in pre-trial detention for more than a year. His pre-trial detention was prolonged even after the investigation was closed citing exactly the same reasons as above. With HHC's help, the young man submitted an application to the European Court of Human Rights, claiming that his detention was unjustified.

...

A 15-year-old boy attending a secondary school in Miskolc was in pre-trial detention for 392 days because one of his schoolmates stated that the defendant, together with two of his peers, stole a box of cigarettes from him by force in the schoolyard.¹ The court ordered the defendant's pre-trial detention by referring to the outstanding gravity of the offence and the personal circumstances of the boy (referring to the fact that he was in the care of his statutory representative and "had no income of his own"). The court also claimed that even though the defendant denied committing the offence and that both him and his co-defendants had a previous criminal record, there was another ongoing procedure against them. The case ended before the European Court of Human Rights, where the defendant is represented by the Hungarian Civil Liberties Union.

...

A 17-year-old boy had been in pre-trial detention for more than six months for theft when he met HHC researchers. He stole tobacco products valuing more than one million HUF (3,278 EUR) with his co-offender; he confessed to committing the crime. He had a criminal record: earlier on, he received a reprimand for forging personal documents.

...

A 16-year-old boy stole iron pipes valuing less than HUF 20,000 (65 EUR) in such a way so that he removed the bars on the window of the storage building. His girlfriend was pregnant, and they needed money and heating material. The court substantiated the danger of reoffending on the basis of the boy's previously committed thefts, qualifying as petty offences.

These are only a few examples from cases HHC encountered during its research and monitoring visits. On the basis of HHC's monitoring and research work and the respective judgments of the European Court of Human Rights regarding pre-trial detention cases where Hungary has violated the European Convention on Human Rights, several problems emerge in relation to ordering, upholding and reviewing the pre-trial detention of juveniles. These problems are briefly presented below.

- When deciding whether the criminal offence is of serious gravity in relation to ordering pre-trial detention, the sentence applicable to the given offence as enshrined in the Criminal Code and the upper limit of the sentence that may be imposed are taken into

consideration. Mitigating circumstances and other aspects of sentencing are not assessed properly or not assessed at all.

- Decisions on ordering, extending or upholding pre-trial detention are often **not individualised** and their reasoning is often **repetitive** – sometimes repeating the previous decisions word by word – and **do not take into consideration the personal circumstances of the defendant**, the **time passed** since the procedure was launched, or that the procedure has progressed and e.g. the danger of eliminating or forging evidence has significantly deteriorated.
- As revealed by interviews with juveniles in pre-trial detention and by HHC’s earlier research work, the **defence** of juvenile defendants is **not effective**, partly due to the deficiencies of the **system of appointing ex officio defence counsels**.

The pre-trial detention of juveniles should be a measure of last resort, and stakeholders deciding on pre-trial detention should take into account both the domestic legal provisions and international norms to the fullest extent.

Table 10: Coercive measures applied, broken down by the age of defendants

	2008	2009	2010	2011	2012
Short-term arrest	536	637	537	576	525
<i>out of which</i>					
14 years old		92	56	81	61
15 years old	140	136	132	126	110
16 years old	194	191	173	167	170
17 years old	202	218	176	202	184
Pre-trial detention	298	344	338	360	304
<i>out of which</i>					
14 years old	50	44	31	57	40
15 years old	66	78	90	83	62
16 years old	102	113	106	95	88
17 years old	80	109	111	125	114
Geographical ban	20	32	36	41	28
<i>out of which</i>					
14 years old	4	3	3	2	5
15 years old	5	9	13	13	4
16 years old	6	10	14	14	9
17 years old	5	10	12	12	10

3. Determining the place of executing pre-trial detention

The law is quite vague about establishing the place of executing pre-trial detention: it sets out that if pre-trial detention is inevitable, it is the court, which determines the pre-trial detention place with regard to the juvenile’s personality and the nature of the respective criminal

offence.¹ There is only one exception in this regard: the pre-trial detention of juveniles under the age of 14 shall be executed in a juvenile reformatory, thus they cannot be placed in a penitentiary institution.

According to the reasoning supplemented by the CPC, “the placement of the juvenile in a penitentiary institution may be necessary [...] with a view to conducting procedural acts [...] also if the pre-trial detention is otherwise executed in a juvenile reformatory.” In practice, if there is no juvenile reformatory in the vicinity of the defendant’s place of residence or the place, where the criminal offence was committed, and the defendant’s pre-trial detention is ordered, the coercive measure will be executed in a penitentiary institution, which decreases the costs of the procedure. Thus, considerations related to procedural economy may overrule the best interests of the child, theoretically having priority. Because the number of juvenile reformatories is low, it is common practice that if there is no juvenile reformatory at the location of the proceeding investigation authority, prosecution or court, the juvenile pre-trial detainee is placed in a penitentiary institution even if that is not justified by the personality of the juvenile and by the nature of the criminal offence committed. Such a placement may be justified in certain cases, in the first phase of the procedure, but research shows that it is not applied solely under such circumstances. In practice, the address of the defendant and the proceeding authority’s location are much more important when deciding on the place of executing pre-trial detention than the above provision of the CPC.

During the course of the project, HHC conducted several interviews with professionals working in the criminal justice system. The general opinion was that only juvenile pre-trial detainees whose personal history shows that there is no hope of reform, or those who would disrupt the juvenile reformatory population, should be placed in a penitentiary institution. Usually, the juvenile reformatory will indicate if a child is not suitable for the reformatory, for example, because they have been criminalised to such an extent (e.g. they have committed robberies practically since childhood, and continue to do so as juveniles) that they see very little chance that the juvenile reformatory will have a determining influence on them.

On the basis of interviews conducted with professionals, the prevalence of the principle of incremental degree is particularly important in this regard. It often happens that juvenile offenders receive a reprimand the first time (which is often preceded by measures of the guardianship authority), and later on, if considered suitable, they are sentenced to education in a juvenile reformatory. If, after their release from the juvenile reformatory, the child commits another criminal offence, they are usually placed in a penitentiary institution, even if theoretically there would be a possibility to place them in a juvenile reformatory, since reoffending after release proves that education in the juvenile reformatory has not fulfilled its goal. In the latter cases, the placement in a penitentiary institution for juveniles is deemed to be the adequate solution.

In the course of monitoring, HHC gathered data regarding particular institutions and types of institutions and based on that data some comparisons can be drawn. Such a comparison is especially interesting in respect to the different institutions accommodating pre-trial detainees, since, as explained above, in the juvenile cases, it is the court, which decides whether the pre-trial detention shall be executed in a penitentiary institution or in a juvenile reformatory.²

On the basis of HHC’s research gained within the framework of the project, it seems clear that there are significant differences between the two types of institutions, and that the chances of those who are placed in a juvenile reformatory are different from the chances of those who spend a significant part of their pre-trial detention in a penitentiary institution. The

1 Act XIX of 1998 on the Criminal Procedure (1998), Art. 454(3).

2 *Ibid.*, Art. 454.

prevalence of the **right to education** may be mentioned as an example in this regard: in the penitentiary institutions, juveniles participate in education until they reach the upper limit of the compulsory school age (i.e. 16), while all children accommodated in juvenile reformatories participate in education almost without exception. For example, while juvenile girls detained in the Bács-Kiskun County Penitentiary Institution are “private students” (i.e. they do not attend classes but should study on their own), and even then only until they turn 16, in the Rákospalota Juvenile Reformatory, every girl goes to school every day, which according to HHC’s opinion also operates on a very high pedagogical level. A similar parallel may be drawn between the Penitentiary Institution for Juveniles in Tököl and the Budapest Juvenile Reformatory regarding boys.

HHC cannot stress enough that the possibility of participating in education should be ensured to the widest scope possible for juvenile detainees. Educating detainees is the most important method for reintegration, since it is their education and schooling, which primarily provides an opportunity to supplement – at least partly – their incomplete or missing socialisation process. Education is also particularly important because according to earlier data on the penitentiary system from 2006 (included in a report on the school year 2005/2006 and the preparation for the school year 2006/2007), more than half (52%) of juveniles between 14 and 18 had not completed primary education, and a further 37% had only completed primary education.

Regarding the education of juveniles, the possibilities in the penitentiary system are limited also in terms of human resources. While in the juvenile reformatories one or two professionals are employed per juvenile, in the penitentiary institutions it is not unusual that one educator has to work with 60 juveniles. Furthermore, the system of **legal requirements pertaining** to staff employment and **qualification** also help to form the view that pre-trial detention focuses mainly on retributive criminal justice.

Monitoring visits also showed that there are huge differences between the two types of institutions also in terms of **material conditions and rules**. For details in this regard, see Chapter 3, Sections A.1. and B.1.

On the basis of comparing the statistics from the penitentiary system and the juvenile reformatories, more juveniles spend their pre-trial detention in juvenile reformatories than in penitentiary institutions. According to the estimation of professionals, 60% of affected juveniles are detained in juvenile reformatories and 40% of them in penitentiaries.¹ However – or at least the management of certain reformatories told HHC researchers – juvenile reformatories will have capacity to accommodate more juveniles. Affected professionals believe that the above proportions will change in the near future, since in 2015 a new juvenile reformatory will be opened in Western Hungary, in Nagykanizsa.

Cooperation between the different types of institutions, e.g. when the penitentiary institution itself requests that a child is transferred to a juvenile reformatory is considered a good practice. For example, the Borsod-Abaúj-Zemplén County Penitentiary initiated the transfer of a “victim type” juvenile, who had just reached a punishable age to the Debrecen Juvenile Reformatory.

¹ On 16 September 2014, altogether 364 juveniles were held in pre-trial detention, 190 of them placed in juvenile reformatories and 156 of them placed in penitentiary institutions.

During the course of the pre-trial detention of juveniles, the best interests of the child shall be taken into consideration, which should have priority over considerations related to procedural economy. Taking into account the significant differences between detention conditions in the different types of institutions, the aim should be to ensure that juveniles spend their pre-trial detention in a juvenile reformatory.

During the course of the project, HHC also asked different stakeholders whether in their view legislators and those applying the law are fully aware of the differences between juvenile reformatories and penitentiary institutions. The National Judicial Office indicated that, upon its initiative, the Hungarian Justice Academy deals with the issue and “places special emphasis on the training of judges trying criminal cases in order to ensure that when the court reaches an in-merit decision establishing criminal responsibility, the education and protection of juveniles prevails, and the measure applied facilitates the development of the juvenile in the right direction and becoming a useful member of society.”

Judges, interviewed by HHC, also deemed it important that they get to know the places where they send juveniles. However, several players within the criminal justice system are not obliged to get acquainted with detention conditions if they deem the issue unimportant. As a result, it may occur that a stakeholder has not visited a penitentiary institution since university education. HHC is convinced that at least those who deal with the detention of juveniles as legislators, as stakeholders applying the law or deciding on related matters, should regularly visit detention facilities to reach informed decisions.

It is essential that those players within the criminal justice system, who deal with juveniles, in particular those who apply the law, visit places of detention regularly (at least once a year) to have up-to-date information on juvenile detention conditions and the different types of institutions. These visits cannot be voluntary. The National Judicial Office should make it a mandatory element of judges’ training.

4. The practice of handcuffing

On the basis of the monitoring visits and discussions with professionals, HHC considers the **use of handcuffs, almost without any discretion**, an important and widespread problem. For example, in one of the juvenile reformatories more juveniles indicated that they deem it degrading that they are handcuffed during medical examinations or when attending other events outside the institution, including e.g. relatives’ funerals. Some children stated that they decided not to attend their relative’s funeral due to the degrading practice of handcuffing, or delayed medical or dental examinations for as long as possible.

Other juvenile reformatories also confirmed this tendency. In cases involving attendance of a funeral, a subsequent visit to the cemetery, in cooperation with the police, was usually granted. In penitentiary institutions, the above tendency is less typical or detectible: juvenile detainees attend funerals more often, disregarding the possible stigmatisation. Regarding medical examinations, female detainees, who required prenatal care, found it very degrading when visiting the gynecologist in handcuffs and escorted on a leash. Staff members try to mitigate the situation by arranging that detainees are examined at the beginning or end of consulting hours. Staff members also submitted that in their experience, pre-trial detainees are always handcuffed. In the case of low-risk detainees serving a final sentence, who have

good conduct, the staff members are able to arrange with the police escorting the detainees that no coercive means used.

Act XXXIV of 1994 on the Police (hereinafter: Police Act) requires **proportionality** as a fundamental principle, by which if “*there are several possible and suitable police measures or coercive means, the one shall be chosen that causes the least restriction, injury or damage to the person affected by the measure, while effectiveness is maintained.*”¹ In addition, the Police Act sets out that coercive means may be applied only **under the conditions set out by law** and in accordance with the principle of proportionality. Furthermore, even the use of coercive means applied lawfully shall be terminated if the person affected **has ceased to resist** and the effectiveness of the police measure can be ensured without the use of the coercive means.² The Police Act limits the use of these means also for detainees: **the rights of a detainee may be restricted only to prevent escape or hiding, alteration or destruction of evidence and the perpetration of another criminal act, or to maintain the security of custody and the order of the detention facility.**³

Furthermore, handcuffs may be used only to prevent a person, whose personal freedom is or is to be restricted to prevent self-destruction, from attacking or escaping, and to overcome their resistance.⁴ According to Decree 30/2011 (IX. 22) on the Service Rules of the Police (hereinafter: Police Service Rules), “the use of handcuffs, in the instances provided for by Article 48 of the Police Act, is justified in particular for a person

- who shows violent, truculent behaviour and cannot be compelled to stop by using physical force,
- who attacks the police officer applying a measure, the police officer’s aider and the person contributing to the measure;
- who is captured on the basis of a well-founded suspicion that they committed a criminal offence and whose escape may not be prevented without the use of handcuffs;
- whose resistance against a lawful measure cannot be overcome by using physical force;
- who shows self-destructive conduct or threatens to do so;
- whose escort was ordered during detention, and the dangerousness of the person escorted warrants the use of handcuffs, and
- who is arrested and brought before the authorities by a police officer carrying out a measure alone.”⁵

In addition, a senior police officer “*may also order the handcuffing of a detained person while being escorted outside the unit for arrestees or the police cell, if the detainee’s escape cannot be prevented without using handcuffs.*”⁶ The Police Service Rules sets out among other things that if the person escorted is dangerous then they shall be handcuffed.⁷ The ministerial decree on the order of police cells currently in force sets out that with respect to detainee’s anticipated behaviour, their hand may be handcuffed in front of them or behind their back, and, if necessary, foot-shackles may also be used. The detainee shall be handcuffed without delay if they attempt to escape. After the procedural action is concluded, the detainee shall be handcuffed before

1 Act XXXIV of 1994 on the Police (1994), Art. 15(2).

2 *Ibid.*, Art. 16.

3 *Ibid.*, Art. 18(3).

4 *Ibid.*, Art. 48.

5 Ministry of Internal Affairs (2011), Decree No. 30 of 2011 (IX. 22) on the Police Service Rules, Art. 41(1)

6 *Ibid.*, Art. 41(2).

7 *Ibid.*, Art. 76.

being escorted back to the police station and their clothing shall be searched.¹ Furthermore, under the regulation applying to penitentiary institutions, also including pre-trial detainees, when escorting detainees outside the penitentiary institution, after a search, detainees shall be cuffed according to the respective instructions received (handcuffs, belt used to fix handcuffs, foot-shackles, etc.). The measure restricting the individual's movement applies until the task of bringing somebody before an authority is completed, or until arriving back at the police cell.²

Under Section 75 of the respective instruction issued by the Head of the National Police Headquarters,³ instructions pertaining to the escort of the detainee may be given by a senior police officer entitled to order detention, who also determines which coercive means should and may be used. In contrast to the above rules, the respective provision (Section 14) of the instructions issued by the Head of the Budapest Police Headquarters (thus, by the head of a county-level police organ) on the secure execution of the escorting of detainees,⁴ as in force until 12 November 2012, set out that *"in the course of executing escorting, the detainee shall always be handcuffed. With respect to the detainee's anticipated behaviour, their hands may be handcuffed in front of them or behind their back, and, if necessary, foot-shackles may also be used."* According to related opinions issued by the Independent Police Complaints Board, the above provision was finally amended by Instruction 58/2012 (IX. 12) BRFK of the Head of the Budapest Police Headquarters. Since then, Section 14 – now in compliance with the higher level norms – says the following: *"in the course of executing escorting, the detainee may be handcuffed, if the conditions enshrined in the Police Act and the Police Service Rules prevail. With respect to the detainee's anticipated behaviour, their hands may be handcuffed in front of them or behind their back, and, if necessary, foot-shackles may also be applied."*

HHC and some of the experts interviewed still believe that, despite the amended legislation, handcuffs are still used while escorting detainees as coercive means **without discretion** and unreasonably, often in the case of weak and harmless persons, including juveniles or children under the age of 14. Certain police officers told the HHC that they deem the non-discretionary use of handcuffs justified because of certain individual cases. The police officers strive to decrease the chance of unexpected events and their own responsibility in a possible violent action.

HHC believes that the use of coercive means during an arrest is also often questionable, but the arrangement presented above regarding escorting has led or leads to **disproportionate measures** in even more cases.

1 Ministry of Internal Affairs (1995), Decree No. 19 of 1995 (XII. 13) on the Order of Police Cells, Art. 34(2).

2 Deputy General of the Head of the National Penitentiary Headquarters (2004), Instruction 2-1/1/2004. (IK Bv. Mell. 12.) OPáh on Issuing the Methodological Guidelines on the Bringing Detainees Before an Authority Outside the Institution.

3 Head of the National Police Headquarters (1996), Instruction 19/1996 (VIII. 23) ORFK on Issuing the Regulation on Police Cell Rules.

4 Head of the Budapest Police Headquarters (2010), Instruction 37/ 2010 (VI. 17) BRFK.

CASE STUDY

The following case may be mentioned as a typical example. In a procedure, launched following the alleged abuse of a child from Sajókaza, 8-10 police officers surrounded the Dr. Ámbédkár School located in the town 10 days after the alleged incident was reported, and brought four, Roma juveniles between the ages of 14 and 16, suspected of committing the offence to the police station, handcuffed, even though the defendants had been cooperative during the procedure. The Ombudsperson launched an investigation into the case and concluded that the police officers caused a disproportionate harm to the juveniles, especially since the police measures took place in front of their teachers and school-mates. According to the Ombudsperson, the arrest of the juveniles was also calculated to incite fear in the students witnessing the series of police measures. Under the CPC, the juvenile defendants should have been summoned to an interrogation instead of being arrested. Police officers proceeding in the case failed to take into consideration not only the principle of proportionality, but also the principle of gradualness, and used handcuffs automatically. Thus, according to the Ombudsperson, the use of handcuffs was unlawful.¹ In the case of one of the affected juveniles, the Independent Police Complaints Board also established that the police measure seriously violated the juvenile's fundamental rights.²

Police representatives ended the above unfavourable practice and also partly amended the text of the instruction, issued by the Head of the Budapest Police Headquarters, from former Police Service Rules from 1995, which made the non-discretionary use of handcuffs compulsory in certain cases. On the other hand, they added that, according to their knowledge, no rules were issued by the police in the other counties of Hungary, which stipulate similar rules to the criticised instruction, issued by the Budapest police.

The European Court of Human Rights (hereinafter: ECtHR) dealt with the issue of handcuffing several times. The applicant in the *Erdogan Yagiz v. Turkey* case³ had been employed as a doctor by Istanbul police. He was arrested in the courtyard of the police building, and even though he begged police officers not to handcuff him in front of so many people, he was handcuffed and arrested, and was taken in handcuffs to his workplace and home, where police carried out searches. He was released the same month he was arrested, and was subsequently cleared of the charges. The ECtHR established in the case that the ban on degrading treatment (Article 3 of the European Convention on Human Rights) was violated, because wearing handcuffs in public can affect a person's self-esteem and cause them psychological damage.

In the *Gorodnitchev v. Russia* case,⁴ the ECtHR found a violation of Article 3 of the European Convention on Human Rights because the applicant, arrested under the suspicion of committing a non-violent criminal offence, was taken before the court hearing in handcuffs, even though there was no evidence that the applicant planned to abscond, cause damage or commit violent actions, requiring the necessary use of handcuffs. In addition, there were no indications that leaving him unchained would have endangered the normal operation of the justice system. Similar to the previous case, the ECtHR attached great importance to the public wearing of handcuffs, and even though the use of the coercive means had not aimed to humiliate the applicant, the ECtHR concluded that because of the circumstances of the case the measure violated the prohibition of degrading treatment.⁵

1 Commissioner for Fundamental Right (2012), Report of the Commissioner for Fundamental Rights in the case no. AJB-2860/2012.

2 Independent Police Complaints Board (2012), Opinion 215/2012 (VI.19).

3 ECtHR, *Erdogan Yagiz v. Turkey*, No. 27473/02, Judgment of 6 March 2007.

4 ECtHR, *Gorodnitchev v. Russia*, No. 52058/99, Judgment of 24 May 2007.

5 See also: Kádár, A., Tóth, B., Tihanyi, M. (2013) *The Social Control of Police*. Nemzeti Közszoelgálati Egyetem, Budapest.

It is regrettable that in spite of the domestic rules and the decisions of the ECtHR **no fundamental change in the practice of the Hungarian police can be seen**. Although the respective problematic legal provision has been amended in the wake of recurring complaints, no significant change can be seen in the practice. This is particularly problematic in cases when the police escort a juvenile or a child under 14, for example, from a juvenile reformatory to a certain criminal justice or medical facility.

The police should enforce domestic laws and international law with regard to escorting detainees. Using handcuffs should be resorted to automatically, but should be used only in exceptional cases, under conditions set out by law.

5. Problems related to detention conditions – with special regard to penitentiary institutions

In the course of the project, HHC's researchers were able to visit every juvenile reformatory in Hungary and several penitentiary institutions executing the detention of juveniles thanks to the National Penitentiary Headquarters, the Ministry of Human Resources and the Social and Child Protection Directorate. HHC summarised the main conclusions in monitoring reports and reported several problems to the adequate authorities and those presiding over institutions in relation to detention conditions.

In the course of monitoring visits, HHC concluded that the material and hygienic circumstances are of a much **higher standard in the juvenile reformatories** than in the penitentiary institutions. The researchers encountered much fewer and less serious problems in juvenile reformatories in terms of material conditions.

In contrast, HHC encountered **severe and recurrent problems** during monitoring visits to **penitentiary institutions**: the state of the showers and toilets, the lack of adequate hygienic conditions and the inadequate washing of bed linen resulted in an alarming health situation in certain institutions.

In the **Penitentiary Institution for Juveniles in Tököl**, bed linen, towels and clothing should be changed every two weeks. Nevertheless, according to complaints received from detainees, in reality this often does not happen. Juvenile detainees explained that they received different clothes after each laundry, because they wished to retain their personal clothes, the result was a risky practice: almost all juveniles did their own laundry, even though the conditions for this were not adequate, namely, there was no hot water, no washing machine and, according to the statements of the detainees, the washing detergent was also insufficient, so they used e.g. shower gel for the laundry. Furthermore, the penitentiary provided only one basin per cell for laundry, which was used by all the detainees in the cell. This partly explains why **infectious skin diseases** spread in the institution. The badly washed clothes and linen, coupled with the overcrowding, may have spread a skin disease involving suppuration (**pyoderma**).

Following HHC's visit and recommendations made in the monitoring report, a physician concluded that altogether 15 juvenile detainees were infected with pyoderma in the institution. Detainees received the necessary treatment; four detainees were even separated from the others in the interests of more effective medical treatment. The institution acquired new mattresses, uniforms, bed linen and blankets. A washing machine will be installed on every floor for those detainees, who wish to do their own laundry, and basins were distributed among the juveniles. The **poor state of the showers and toilets** in the institution also raised concerns, and detainees also stated that the time available for showers was too short, the number of

working showers was low, and hot water ran out before everybody could take a shower. As a consequence of the monitoring visit, the state of the showers and toilets was reviewed and where necessary, old sinks and taps were replaced. Furthermore, both toilets and cells were whitewashed. Finally, the practice of opening and closing the cell doors, which was reviewed and altered following HHC's visit, should be mentioned: according to the detainees, preceding HHC's visit, cell doors were open in practice only between 10.00 CET. and noon and between 15.00 CET. and 17.00 CET, even though the organisational provided that cell doors shall be open 12 hours a day.

According to monitoring visits at juvenile reformatories, it unfortunately occurs that juveniles arriving from the penitentiary institutions have scabies. In order to prevent the spread of a disease, one of the juvenile reformatories places children transferred from other institutions in quarantine for four days after they arrive.

In the juvenile unit of the **Bács-Kiskun County Penitentiary Institution**, the HHC's researchers found more cells where the door of the toilet was missing, and e.g. was substituted in one of the cells with a curtain. According to information provided by the penitentiary institution, the cells in question were to be renovated in 2014. The HHC encountered deficiencies also in this institution regarding the **practice of closing and opening cell doors**. Several detainees stated unanimously that cells often remained closed for longer periods both in the morning and in the afternoon. The cell doors were open only during breakfast and lunch and for one-and-a-half hours in the afternoon; and cells were closed before 18.00 CET. According to information provided by the institution, this was a result of lack of sufficient staffing. The guards also often had to carry out additional tasks such as bringing detainees before the respective authority or supervising the detainees of other blocks spending their daily period outside, and while they were away, they had to close the cells. There were also detainees who complained that certain cells were closed during the day as a punishment, which is an unacceptable practice. The National Penitentiary Headquarters also stated in its reaction to the draft monitoring report that the practice of shutting down the cells in breach of the institution's written daily routine is unacceptable. The Head of the National Penitentiary Headquarters instructed the warden of the institution to take the necessary steps to terminate irregularities. It also stated that logistical steps should be undertaken to ensure that the low number of guards does not entail that the cells of juveniles are closed for a much longer period than envisaged in the daily routine of the institution. The National Penitentiary Headquarters also stated that the practice of shutting down cells as a punishment should be terminated.

In the **Baranya County Penitentiary Institution**, researchers noted essentially adequate physical conditions.

It is the joint task and responsibility of the criminal justice system and the respective branch of the government to ensure that the detention conditions of juveniles comply with international standards. The resources necessary to create adequate conditions must be guaranteed.

6. The lack of supervision in the institutions executing detention and certain institutions belonging to the child protection system

HHC believes that with the current number of detainees assigned to one educator and guard in the penitentiaries and under the often very difficult working conditions, regular supervision of penitentiary staff members and those working in the child protection system is essential. Recreational possibilities should be available for everyone, especially for those staff members who are in direct and daily contact with children detained or accommodated in child protection institutions. In most institutions monitored by HHC, there are no such opportunities at all or they are only available very rarely. An HHC research report¹ concluded in 2014 also confirmed that, according to penitentiary staff members, bad working conditions partly explain why the penitentiary system performs poorly in preventing a high staff turnover. Many of them believe that working in a penitentiary is unappealing.

As stated above, staff members of penitentiary institutions and certain child protection institutions do not have access to external supervision, i.e. regular case discussion involving an external supervisor. In some institutions, staff members try to replace supervision with regular internal discussions and hold meetings every week or month. There are penitentiary institutions, where staff members may also see the institution's psychologist, but this does not constitute a solution according to HHC, since the same psychologist should also decide on the psychological suitability of the staff members, who they could go to see if they have psychological problems or difficulties in their private life. Thus, in practice, staff will avoid seeking consultation with the psychologist at the institution e.g. about their depression or aggression control issues, and will not seek their advice, since discussing these problems could lead to them being considered unsuitable for their job.

HHC indicated the above problem in its report on the monitoring visit conducted in the Bács-Kiskun Country Penitentiary Institution. The National Penitentiary Headquarters responded that one of the psychologists in the institution deals with the issues of the detainees, while the other deals with staff issues, and there is no possibility to establish a third status. However, later on, in connection with HHC's visit to the Borsod-Abaúj-Zemplén County Penitentiary Institution, the Head of the National Penitentiary Headquarters shared the concerns of HHC about the psychologist of the institution having to assess also the suitability of their own colleagues, which would be a conflict of interest, and instructed the warden of the penitentiary to address the situation. The National Penitentiary Headquarters also informed HHC in its response that the rotational model proposed by HHC was already applied to three penitentiary institutions, which cooperate with each other to ensure that an institution's psychologist carries out a review of the suitability of the staff members of another penitentiary.

The possibility of group and individual supervision shall be established both for staff members of the penitentiary system and child protection institutions, along with ensuring the necessary resources.

1 Bárdits, A., Kádár, A., Novoszádek, N., Simonovits, B., Szegő, D., Vince, D. (2014) *Last Among Equals – The equality before the law of vulnerable groups in the criminal justice system*. Hungarian Helsinki Committee, Budapest, p. 98, available on: http://helsinki.hu/wp-content/uploads/HHC_Last_Among_Equals_2014.pdf.

7. Recommendations related to age assessment practices

The assessment of the age of asylum-seekers has long been debated in EU member states with few tangible results and concrete guidance for authorities on the appropriate methodology. HHC, therefore, organised a roundtable discussion and side meetings with international and domestic experts and practitioners to seek further avenues to improve age assessment in the Hungarian context in June 2014.

At the roundtable representatives of the police and the OIN, practitioners and experts all agreed that there is no uniform method followed during age assessment examinations. This inevitably leads to inconsistencies in the practice, which could weaken procedural safeguards for minors.

The roundtable came to the conclusion that the most pressing issues in age assessment practices are the following:

- To decide where to accommodate the person, the police must make a preliminary decision on the apprehended foreign minor's age within 24 hours following interception at the border, which does not allow them to carry out a thorough examination. These medical opinions are based on the physical appearance of the child and are carried out by non-trained (or specialised) doctors.
- The OIN often does not accept the assessment made at the border by the police doctor and another medical age assessment examination is carried out once the child is already accommodated in the designated child care facility for migrant or asylum seeking children (for the latter it happens typically in Fót). However, the motivation of the OIN's case officer and the exact reasons why certain minors fall under age assessment and others do not is unclear.
- Age assessment is not multidisciplinary at the moment. Child care specialists and social workers dealing with the children concerned have no word in age assessment; they cannot even express their opinion or views on the child. Furthermore, no psychologists or other experts are involved. At present, age assessment is exclusively based on medical opinions. The emotional, cognitive maturity of the child is not assessed, only their physical and sexual development are taken into account.
- The result of the age assessment cannot be directly contested. The assessment can be contested only in the final decision on the merits of the asylum application. This practice is clearly not in line with the recommendations of the European Asylum Support Office (hereafter: EASO) and the Separated Children in Europe Programme (SCEP)¹.

Based on recent literature on age assessment and the recent collection of good practices by the EASO in December 2013,² ten recommendations may be put forward to improve the quality of age assessment practices in Hungary and to thus, decrease the possibility of the unlawful detention of underage migrant and asylum seeking children.

1 Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, available on: <http://www.refworld.org/docid/4ff535f52.html>.

2 European Union: European Asylum Support Office (EASO), *EASO Age assessment practice in Europe*, December 2013, available on: <http://www.refworld.org/docid/532191894.html>.

Recommendation no. 1: The government and decision making authorities should initiate a professional discussion with all stakeholders dealing with migrant and refugee children, competent courts, medical and non-medical experts, who may be involved in age assessment based on the SWOT analysis of various age assessment methods elaborated by the EASO.

Recommendation no. 2: Age assessment should be based on a holistic approach and rely on multidisciplinary methods, not exclusively on medical grounds. Social workers, teachers, psychologists should also be consulted when assessing age.

Recommendation no. 3: The government should elaborate a procedural protocol (standard operating procedure) of authoritative force to ensure that age assessment practices are standardised.

Recommendation no. 4: Age assessment shall not be an automatism and should only be ordered if serious doubts arise that the age as stated by the child is not correct.

Recommendation no. 5: Children under age assessment examination should be properly informed and interviewed about their previous life experience in a child-friendly and inter-culturally sensitive manner.

Recommendation no. 6: Those children who are subject to age assessment examination should have their guardian or legal representative present during the examination as a procedural safeguard.

Recommendation no. 7: When carrying out age assessment, authorities and experts should avoid invasive methods (X-ray) and should aim at using non-medical methods as well.

Recommendation no. 8: The result of the age assessment should be subject to appeal to an independent body (court) without undue delay. The child shall receive free legal aid to lodge the appeal.

Recommendation no. 9: When deciding on the age of the child, authorities should first consider the best interest of the child and apply the legal principle “in dubio pro reo” (benefit of the doubt). If the estimated age interval even partly falls under 18 (e.g. 16-20), the child should always be considered a minor.

Recommendation no. 10: Children under age assessment examination should be considered as minors and benefit from the services children are otherwise entitled to until it is established that they are not minors.

CHAPTER 4

Country report: Poland

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LIST OF ABBREVIATIONS

CAT	Convention Against Torture
CC	Criminal Code
CPC	Civil Procedure Code
CPT	Committee for the Prevention of Torture and Inhuman and Degrading Treatment and Punishment
CrPC	Criminal Procedure Code
ECHR	European Convention on Human Rights
ECPT	European Convention for the Prevention of Torture and Inhuman and Degrading Treatment and Punishment
ECtHR	European Court of Human Rights
HFHR	Helsinki Foundation for Human Rights
JJA	Juvenile Justice Act
YEC	Youth Educational Centre

EXECUTIVE SUMMARY

The current report aims to draw an overall picture of the status and circumstances of children deprived of liberty in Poland. For this purpose, the report provides an introduction to the juvenile justice system in Poland, the results of case file research concerning juvenile proceedings and experiences gained by the Helsinki Foundation for Human Rights (hereinafter: HFHR) during human rights monitoring visits carried out within the project.

The first part of the report presents the research methodology. It addresses issues regarding how agreements were established with the relevant authorities that enabled HFHR to carry out monitoring visits, the criteria used in selecting the visited institutions, a list of the facilities themselves and how the research visits were carried out. A considerable part of the chapter details the criteria used in assessing the respect of juveniles' rights and freedoms.

Chapter 1 provides a detailed description of the juvenile justice system in Poland. Special attention is given to the legal status of juveniles. Under Polish law, offenders under 17 are considered juveniles. As a rule, juveniles cannot be held criminally responsible.

The chapter presents the basic principles of the Juvenile Justice Act. In particular, the report describes the principle of protecting the juveniles' best interests.

The next part of the chapter outlines the legal basis of juvenile proceedings and presents summaries of legal framework reforms in this area. The report also introduces a draft of a bill amending the Juvenile Justice Act (hereinafter: JJA) that was sent for public consultation in October 2013. It disappointed many scholars and practitioners who had been calling for enactment of a new legal framework governing juvenile justice.

Special focus is given to providing a detailed analysis of juvenile proceedings and the central role of the Family Court. As a rule, juvenile justice proceedings are governed by the provisions of the Civil Procedure Code (hereinafter: CPC) applicable to guardianship and custody cases. Provisions of the Criminal Procedure Code (hereinafter: CrPC) apply only to the following aspects of juvenile proceedings: 1) The collection, recording and obtaining of evidence by the police and the appointment and acts of defence lawyers; 2) Instances of obtaining evidence which involve minors other than the juvenile; 3) Items seized in the course of proceedings; 4) Handling the victim.

The chapter also presents a range of educational and correctional measures that can be applied to juvenile delinquents.

The chapter provides statistical data to present a reliable picture of the number of juvenile justice proceedings in Poland.

Section 5 provides a general overview of the juvenile detention facilities. The section also presents constitutional and international standards for the treatment of children. It describes in detail the legal position of various types of detention facilities for children. According to Polish law, there are seven types of institutions for juveniles: young offender institutions, youth shelters, police remand homes for children, psychiatric hospitals, hostels, youth educational centres and nursing homes. They are placed within the purview of a total of five executive departments: the Ministry of Justice, the Ministry of Interior, the Ministry of National Education, the Ministry of Health and the Ministry of Labour and Social Policy. As a result, the coordination and application of legislative reform is difficult.

Chapter 2 presents an analysis of fairness in juvenile justice proceedings. The basis for this assessment are the findings from the case file research conducted within the project. The emphasis is on the right to information and the right to defence and legal assistance. This part also includes the verification of the reasonable time of the proceedings. According to the research findings, the current measures provided under JJA can come under criticism because they result in courts hearing cases that should never have gone to court in the first place. By their very nature, judicial proceedings should be considered a last resort. It would be far better to solve problems, such as enforcing the compulsory education requirement, within the minor's own environment. The tendency to involve courts in resolving such issues seems to be a sign of helplessness and inability to solve them in the environments concerned, especially schools.

Chapters 3 describes the results of research visits conducted within the project. Special attention during the visits was placed on the respect of rights and freedoms, living conditions, the right to privacy, the right to contact with the outside world, the complaints mechanism and the right to education. These components were assessed from the perspective of the prohibition of inhuman and degrading treatment. The chapter also presents good practices and recommendations in the context of each type of detention facility. Research revealed that the functioning of an establishment is largely dependent on its manager. Thus, the day-to-day functioning of a young offender institution, a youth shelter or a youth educational centre often reflects all the virtues and faults of the manager. The degree to which juvenile rights are observed is also largely correlated with the manager.

Chapter 4 presents the project conclusions. The chapter proves that after more than 30 years JJA is one of the least legislatively coherent and readable legal enactments among the key Polish normative acts. This leads to difficulties in its interpretation by practitioners who apply it on a daily basis.

RESEARCH METHODOLOGY

1. Preparation of monitoring visits and limitations

Research visits were carried out between June 2013 and September 2014. A number of formal requirements had to be satisfied beforehand. Visits to young offender institutions and youth shelters required the consent of the Minister of Justice, whereas the Chief Commissioner of the Police had to approve visits to police remand homes for children. The project's staff also requested the appropriate permission from the Minister of Labour and Social Policy (for visits to nursing homes), the Minister of National Education (for visits to youth educational centres) and the Minister of Health (for visits to juvenile psychiatric wards). None of these bodies considered themselves competent to consent to monitoring visits in the above institutions. Some of them expressed only their support for the project objectives and values. This meant that in some cases consent for monitoring in a given institution rested with its managing body. Consequently, there were youth educational centres that, via phone, refused to agree to monitoring visits. Occasionally, this decision was justified with previous repeated inspections by other research bodies or inspection agencies.

2. Methodological tools

In each of the visited facilities, HFHR representatives tried to talk to the head of the institution, selected juveniles and the institution personnel. Each conversation was based on a standardised report form and forms for interviewing the person in charge and juveniles. Juveniles were only interviewed with their voluntary consent, in an unsupervised room and without any officers present.

The objectives of the monitoring visits were to assess the conditions of juvenile facilities from the perspective of national and international standards, especially:

- The Convention on the Rights of the Child adopted by the UN General Assembly on 20 November 1989 (Polish Journal of Laws: Dz.U. of 1991, No. 120, item 526 as amended);
- The Convention for the Protection of Human Rights and Fundamental Freedoms made in Rome on 4 November 1950 (Polish Journal of Laws: Dz.U. of 1993, No. 61, item 284 as amended);
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty adopted by Resolution 45/113 of the UN General Assembly, 14 December 1990;

- Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures.

During monitoring visits emphasis was placed on:

- Living conditions;
- Relations between officers and juveniles;
- Relations between juveniles;
- Contact with the outside world;
- Contact with the defence lawyer;
- Right to privacy;
- Video surveillance;
- Direct coercive measures;
- Health care;
- Complaints procedure;
- System of disciplinary measures and rewards.

After each visit, the research team produced a detailed report. Along with photographs of the facility, the report was used for research purposes. Factual parts of the reports were submitted to the heads of the institutions, who were asked to comment on the report findings. Next, the project team developed a summary report with a concise review of problems pertaining to juvenile detention.

3. Selection of the institutions

HFHR decided to focus on places of deprivation of liberty functioning within the juvenile justice system. For this reason, asylum detention facilities and youth social therapeutic centres were excluded from the research.

There are seven types of institutions for juveniles: young offender institutions, youth shelters, police remand homes for children, youth educational centres, psychiatric hospitals, nursing homes and hostels established under JJA. HFHR stopped visiting psychiatric hospitals because of the relatively low number of children placed there under JJA.

Only one nursing home was visited within the project. Due to the small number of children placed in nursing homes under JJA, HFHR decided to focus on other types of institutions. On the basis of this one visit, it was impossible to present representative remarks for this type of facility.

The report does not summarise the part dedicated to hostels. HFHR visited the young offender institution that established hostels for their wards. These hostels were not formally separated.

Map 1. Facilities visited during research



4. List of visited institutions

The research team visited the following institutions:

A. Police remand homes for children

1. Police Remand Home for Children in Bydgoszcz (Kujawsko - Pomorskie Region)
2. Police Remand Home for Children in Kielce (Świętokrzyskie Region)
3. Police Remand Home for Children in Kraków (Małopolskie Region)
4. Police Remand Home for Children in Łódź (Łódzkie Region)
5. Police Remand Home for Children in Poznań (Wielkopolskie Region)
6. Police Remand Home for Children in Warsaw (Mazowieckie Region)

B. Youth shelters and young offender institutions

1. Young Offender Institution in Białystok (Podlaskie Province)
2. Young Offender Institution and Youth Shelter in Falenica (Mazowieckie Province)
3. Young Offender Institution and Youth Shelter in Głogów (Dolnośląskie Province)
4. Young Offender Institution in Grodzisk Wielkopolski (Wielkopolskie Province)
5. Young Offender Institution and Youth Shelter in Konstancin-Jeziorna (Łódzkie Province)
6. Young Offender Institution and Youth Shelter in Koronowo (Kujawsko - Pomorskie Province)
7. Young Offender Institution in Poznań (Wielkopolskie Province)
8. Young Offender Institution in Szubin (Kujawsko-Pomorskie Province)
9. Young Offender Institution in Świdnica (Dolnośląskie Province)
10. Youth Shelter Warszawa-Okęcie (Mazowieckie Province)

C. Youth educational centres

1. Youth Educational Centre in Kraków-Górka Narodowa (Małopolskie Province)
2. Youth Educational Centre in Kwidzyn (Pomorskie Province)
3. Youth Educational Centre in Puławy (Lubelskie Province)
4. Youth Educational Centre No.1 in Warszawa (Mazowieckie Province)
5. Youth Educational Centre in Wielkie Drogi (Małopolskie Province)
6. Youth Educational Centre in Wierzbica (Mazowieckie Province)
7. Youth Educational Centre in Włocławek (Kujawsko-Pomorskie Province)

D. Nursing home

1. Nursing Home in Goślice (Mazowieckie Province)

1. ANALYSIS OF THE NATIONAL LEGAL FRAMEWORK

1. Legal framework

Under Polish law, offenders under 17 are considered juveniles. As a rule, juveniles cannot be held criminally responsible for committing prohibited acts in the same way as adults. Indeed, pursuant to the Criminal Code¹ (hereinafter: CC), the minimum age of criminal responsibility is 17.²

However, CC establishes an exception to this rule enabling juvenile delinquents aged between 15 and 17 to be held criminally responsible pursuant to the general rules set out in CC if they have committed the most serious criminal offences³ and provided that the circumstances of the case, the level of the delinquent's developmental maturity, their characteristics and personal features justify the application of criminal responsibility, in particular where previous educational and/or correctional measures have proven ineffective.⁴ Notably, according to JJA of 26 October 1982⁵ if any circumstances that justify holding a juvenile delinquent criminally responsible under the rules of CC are discovered in the course of the [juvenile] proceedings, the Family Court shall decide whether to refer the case to a prosecutor. According to the exception in particularly justified cases, where a punishable act committed by a juvenile is closely linked to an act of an adult and both charges may be consolidated in one case without the detriment to the best interests of the juvenile, the prosecutor may launch or conduct an investigation. Upon conclusion of the investigation, the prosecutor either discontinues it or refers the juvenile's case to the Family Court. If it is necessary to jointly examine the cases of the juvenile and the adult, the prosecutor will refer the case, together with the bill of indictment, to the court whose jurisdiction it is to hear the case established under CrPC.⁶ The court applies the provisions of JJA in deciding the juvenile's case.

1 Criminal Code (1997).

2 Criminal Code (1997), Art. 10 (1).

3 Criminal Code (1997), Art. 134 (an attempt on the life of the President of the Republic), Art. 148(1), (2) or (3) (manslaughter), Art. 156(1) or (3) (occasioning grievous bodily harm), Art. 163(1) or (3) (causing a major accident), Art. 166 (financing terrorism), Art. 173(1) or (3) (causing a major accident in land traffic), Art. 197 (3) (a gang rape), Art. 252(1) or (2) (taking a hostage) or Art. 280 (robbery).

4 Criminal Code (1997), Art. 10(2).

5 Juvenile Justice Act (1982).

6 Criminal Procedure Code (1997).

2. Basic principles

The best interests of the juvenile

A fundamental rule for the juvenile justice system is the principle of protecting the best interests of the juvenile. While also taking into consideration the public interest, this rule is relevant for every public body involved in the proceedings. However, the public interest will only be considered in as much as it does not conflict with the juvenile's best interests.

The purpose of juvenile justice

According to the preamble to JJA, the purpose of the Act is to prevent antisocial and delinquent behaviour among juveniles and to provide juvenile offenders an opportunity to return to a normal life. The concept of antisocial and delinquent behaviour (in Polish: *demoralizacja*) is a fundamental tenet of JJA. Again according to preamble, a central element of the design of the Act is that it does not only apply when juveniles commit punishable acts, but when they demonstrate signs of antisocial and delinquent behaviour.

However, the Act fails to give a definition of "antisocial and delinquent behaviour". Instead, it provides a list of factors which, if they appear in a given situation, may suggest that the juvenile is engaged in antisocial and delinquent behaviour, such as truancy, drug or alcohol abuse or prostitution, or loitering. Antisocial and delinquent juvenile behaviour may also be demonstrated by the fact that they commit prohibited acts.

3. Legal basis

3.1. Current regulations

JJA is the main piece of legislation governing juvenile justice in Poland. Its adoption in 1982 aimed to comprehensively regulate the situation of those young people who, for various reasons, were pushed to the margins of society.

According to the original intent of its creators, JJA was to become a catch-all regulation for juveniles who committed acts prohibited by criminal law or were engaged in antisocial and delinquent behaviour. From the very beginning, this objective was impossible to achieve since JJA applied two very different legal judicial procedures – criminal or civil – depending on the type of the procedure concerned (guardianship and educational proceedings or correctional proceedings). For years this procedural dualism has given rise to a complex set of interpretative problems. JJA adopted a mixed model of juvenile justice, which involves guardianship, educational and protective measures. To an extent and in exceptional circumstances, JJA accepts the use of criminal sanctions against juvenile perpetrators of acts classified as criminal offences. A characteristic feature of the act is its uniform treatment of both juveniles who violate criminal laws and those who manifest other types of antisocial and delinquent behaviour.

The juvenile justice model is based on the following objectives: 1) Preventing antisocial and delinquent behaviour among juveniles; 2) Creating conditions which facilitate the return to normal lives for juveniles who have broken the law or the rules of social life; 3) Supporting families in their guardianship and educational role and reinforcing the families' sense of responsibility for raising juveniles as members of society who are aware of their social duties.

The provisions of JJA apply to: 1) Preventing and combating antisocial and delinquent behaviour in persons under 18; 2) Proceedings in cases which involve punishable acts committed by persons who have reached 13 but are under 17; 3) Enforcing educational or correctional measures against persons who have been named in decisions ordering such measures, however

only until such persons reach 21. The measures described in JJA are taken in cases where juveniles demonstrate signs of antisocial and delinquent behaviour or commit a punishable act.

3.2. Legislative reform of JJA

After more than 30 years of the Act's operation, it can be said that it has failed to fully fulfil the expectations placed on it. According to some scholars, JJA no longer performs its function and should be amended. Legal scholars have proposed that a new law is adopted that will govern both the substantive and procedural aspects of the criminal responsibility of juveniles in Poland. Despite these proposals, a new normative act regulating this area is yet to be developed.

Instead, JJA has undergone a number of amendments, which made some of its provisions increasingly vague and ambiguous. As a result, JJA is one of the least legislatively coherent and readable legal acts among the key Polish normative acts. This leads to difficulties in its interpretation by practitioners who apply it on a daily basis.

Over the past two years the Ministry of Justice prepared two proposals for amendments to JJA. The first proposal, embodied in the Act on the Amendment of JJA and Certain Other Acts of 30 August 2013,¹ was enacted on 2 January 2014. The 2013 amendment, the first major change to JJA introduced since the Act was adopted in 1982, has materially re-modelled juvenile justice proceedings. The second proposed amendment to the JJA was presented by the Ministry of Justice in autumn 2013. The latter proposal outlines modifications that are materially less far-reaching than those introduced in the previous amendment.

3.2.1. Amendment to the JJA of 30 August 2013

The Act on the Amendment of the JJA and Certain Other Acts of 30 August 2013 partially entered into force on 8 October 2013. Its key provisions became law on 2 January 2014. According to the Ministry of Justice, which authored the amendments, the changes were introduced to adjust Polish law to the European Court of Human Rights (ECtHR) judgment in *Adamkiewicz v. Poland*.²

Moreover, the Act – originally drafted in the Ministry of Justice and then passed by Parliament – had to ensure compliance of JJA with proposals of the Human Rights Defender³ (hereinafter: HRD), which were submitted to the Minister of Justice in connection with National Prevention Mechanism inspections at police remand homes for children, young offender institutions, youth shelters and youth educational centres.

The HRD noted, among other things, the absence of a legal regulation that would protect juveniles against unlawful extension of their placement at police remand homes for children after the issuing of a ruling on the placement at a youth shelter or a youth educational centre.⁴ The HRD also addressed the lack of a statutory regulation regarding disciplinary measures and incentives for juveniles placed at youth shelters and young offender institutions. This issue was also reviewed by the Constitutional Tribunal, which had found a number of provisions of the Regulation of the Ministry of Justice on young offender institutions and youth shelters unconstitutional. The challenged provisions governed a system of disciplinary measures and

1 Act on the Amendment of the Juvenile Justice Act and Certain Other Acts (2013).

2 CEDH, *Adamkiewicz c. Pologne*, No. 54729/00, Arrêt du 2 mars 2010.

3 Human Rights Defender is a Polish Ombudsman. Detailed information available on: <http://www.rpo.gov.pl/en/content/defender> (All links were last accessed on 5 September 2014).

4 Human Rights Defender (2012), *Statement from 20 January 2012 to the Minister of Justice concerning the long-lasting detention of juveniles in Police Remand Homes for Children*, available on: <https://www.rpo.gov.pl/sites/default/files/1619585.pdf>.

incentives for juveniles placed at youth shelters or young offender institutions.¹ According to the Tribunal, the system was created by the regulation issued without an explicit statutory authorisation. Poland's constitutional court also held that the provisions should have been given a statutory footing. The amending act has transferred the topics previously governed by the Regulation to JJA, introducing an expanded and more detailed scheme of disciplinary measures and incentives (in the new Chapter 4a).

New model of juvenile proceedings

The key change implemented by the above-mentioned amending Act concerned the unification of the procedural model used in juvenile justice cases. The dual-stage proceedings, comprising the investigation and judicial examination phases, were abolished. Similarly, the amended Act merged the two forms of the latter procedure – the guardianship and educational proceedings and correctional proceedings – into a single juvenile justice procedure conducted by the Family Court which, as a rule, applies *mutatis mutandis* the provisions of CPC applicable to guardianship and custody cases (Article 20(1) of the JJA). Notably, the amendment in question introduced to the main body of the JJA some of the procedural guarantees also afforded to defendants in criminal proceedings. Above all, juveniles were given the right to defence, the right to be assisted by a defence lawyer and the right to refuse to testify or answer individual questions. Furthermore, the principle of mandatory defence was introduced to the Act (Article 18a and Article 32c of the JJA).

Psychiatric evaluation

The amending Act also modified the provisions for ordering a juvenile's psychiatric evaluation (Article 25a of the JJA). A psychiatric evaluation of a juvenile in a treatment facility may be ordered by the court only if expert psychiatrists state there is such a need and only if the collected evidence indicates that there is a high probability that the juvenile had been involved in serious antisocial and delinquent behaviour or had committed a punishable act. The amended Act sets a maximum period for a juvenile's psychiatric evaluation (four weeks). The evaluation may be extended for a specified period necessary for its completion, but only at the request of a treatment facility. The total duration of a psychiatric evaluation ordered in a given case may not exceed six weeks.

Access to case files

The amending Act proposed a change in the rules governing access to case files by juveniles and their defence lawyers (Article 32d of the JJA). Before the reform, juveniles and their defence lawyers were allowed to read and copy case files only with the permission of a Family Court judge. Currently, the parties and the defence lawyers and attorneys can review case files and make their copies with the proviso that the Family Court may deny a juvenile's request to be granted such access to the files if this is justified with the need to reform the juvenile's behaviour. Thus, obtaining access to case files does not depend on receiving, on each occasion, the consent of a Family Court judge as was the case before the amendment.

Detention in police remand homes for children

The Act in its current wording sets a maximum period for a juvenile's placement at a police remand home for children in the event a ruling is issued that places the juvenile at a youth shelter, a youth educational centre, with a professional foster family or in a psychiatric hospital (Article 32g of the JJA). In such cases, a juvenile may stay at a police remand home

¹ Constitutional Tribunal, Judgment of 2 October 2012, application no. U 1/12.

for children for the period necessary for their transfer to an appropriate institution but not longer than five days. Juveniles who have left a youth shelter, a youth educational centre or a young offender institution without permission may also be placed at a police remand home for children for the period required for their return transfer to the appropriate shelter, centre or institution, but not longer than five days.

The amended Act also enables courts to order certain educational measures at an in-camera hearing instead of a regular court session.

Application of direct coercive measures

Another issue which lawmakers had to address in enacting the amendment was the application of direct coercive measures against juveniles placed at youth shelters or young offender institutions. The issue was raised in the Prosecutor General's application to the Constitutional Tribunal (case no. K 3/12). The Prosecutor General requested a ruling that Article 95c(1) of JJA violates Article 92(1) and Article 41(1), read in conjunction with Article 31(3) of the Constitution of the Republic of Poland. He argued that the use of direct coercive measures must be governed by a statute. Accordingly, it was alleged that the inclusion of the relevant provisions in a ministerial regulation violates the Constitution. The case has not yet been adjudicated by the Constitutional Tribunal.

The above scope and nature of the introduced changes was significant enough to consider the mode of the draft's development.

Juveniles' right to defence

During the parliamentary session eminent experts in the field of juvenile justice Wanda Stojanowska, Jerzy Słyk and Marianna Korcyl-Wolska expressed criticism of the draft in opinions commissioned by the Parliament's Bureau of Research, but this was not taken into consideration. The pre-amendment law imposed the requirement for mandatory legal representation of juvenile delinquents in correctional proceedings. The provision in question was later revoked as a consequence of the abolition of the two distinctive types of judicial examination proceedings in juvenile justice cases (the correctional proceedings and the guardianship and educational proceedings) and their replacement by a single, unified proceeding governed, as a rule, by the provisions of CPC applicable to guardianship and custody cases.

As of 2 January 2014, assistance from a court-appointed defence lawyer may be obtained in the uniform proceeding in juvenile justice cases, however, only if certain other conditions are met. Under Article 32c(1) and (2) of the JJA, appointment of a court-appointed defence lawyer is required in the event that: 1) The interests of juveniles and those of their parents or guardian are contradictory and the juvenile has no lawyer; 2) The juvenile has visual, hearing or speech impairments; 3) There is reasonable doubt as to whether the juvenile's mental condition allows them to act in the proceedings or conduct their own defence in an independent and reasonable manner; and/or 4) The juvenile has been placed at a youth shelter. In the event of any of the above circumstances, the president of the court appoints a free defence lawyer for the juvenile unless the latter has already retained a lawyer of their choice.

In other cases, a juvenile may file a motion for a court-appointed defence lawyer. The president of the court is obliged to grant the motion, but only if they consider that the participation of a lawyer is necessary and that the juvenile and the juvenile's parents are unable to afford a lawyer of their choice without detriment to their ability to provide means of subsistence for themselves and their family. This means that one's inability to afford a lawyer of one's choice is not sufficient ground for the appointment of a free defence lawyer. Such an appointment also requires the consent of the president of the court, who grants it on a discretionary basis, namely their conviction that the appointment of a defence lawyer is "necessary".

The comparison between the previous and current law concludes that the amendment to the JJA has lowered the standard of juveniles' right to defence. Notably, in the uniform proceedings juveniles may be held responsible for prohibited acts classified as criminal or tax offences. So far, responsibility for punishable acts was frequently enforced in correctional proceedings, in which – as it was stated above – the juvenile was always awarded mandatory defence. The standard of the right to defence set forth in the amended provisions is lower also in comparison to that established in CrPC. Indeed, under Article 78(1) of CrPC, defendants who do not have a lawyer of their choice, may request the appointment of a free defence lawyer provided that they reasonably prove that they are unable to afford a lawyer without detriment to their ability to provide means of subsistence for themselves and their family. Notably, CrPC does not require defendants to demonstrate that the participation of a defence lawyer is “necessary”.

Applicability of CrPC

Doubts are also raised in relation to the exclusion of the applicability of CrPC to juvenile justice proceedings and the regulation that brings these proceedings within the scope of CrPC, which provides weaker protection than that afforded by its criminal law counterpart. Exclusion of the rule that the CrPC is to be applied *mutatis mutandis* to juvenile justice proceedings results in these proceedings being left outside the scope of application of such basic principles of criminal procedure as the substantive truth principle, presumption of innocence, or the principle that all doubts must be resolved in favour of the accused (in dubio pro reo). Another unfortunate development was the transfer of all juvenile justice proceedings (in both instances) to the jurisdiction of civil courts which have no requisite experience and expertise in deciding cases of de facto criminal nature (such as cases involving ruling if a juvenile has committed rape or manslaughter).

3.2.2. Draft amendment to the JJA of October 2013

Even during the *vacatio legis* period of the amendment to the JJA of 30 August 2013, the Ministry of Justice commenced work on another amendment to this Act. In October 2013 a draft of the legislative bill amending the JJA was sent for public consultation. The proposed amendment disappointed many scholars and practitioners applying the JJA on an everyday basis who have been calling for new legislation governing juvenile justice. The key premises of the amendment are the following:

- Relaxation of eligibility requirements for candidates for the director position of young offender institutions and youth shelters. The draft abolishes the requirement for a university degree in education.
- Establishment of a list of rights and duties of juveniles placed at young offender institutions or youth shelters in JJA. So far, such a list has been included in a regulation of the Minister of Justice.
- Modification of the supervision system of young offender institutions and youth shelters. The draft proposes to introduce a centralised supervision scheme operated by the Ministry of Justice *in lieu* of supervision exercised by presidents of regional courts.

According to the schedule of legislative bills adopted by the Ministry of Justice, the new bill will be enacted into law on 1 July 2015. Still, the date must be considered quite unlikely considering the fact that once the bill has been prepared, it must pass all the stages of the legislative process within the Government and in Parliament before being enacted, signed by the President and given a proper *vacatio legis* period.

4. Proceedings

4.1. Purpose of the proceedings

The purpose of the proceedings in a juvenile delinquency case is to establish if there are circumstances which demonstrate the juvenile's antisocial and delinquent behaviour or if a juvenile has committed a punishable act. The proceedings also aim to establish if there is a need to apply measures set forth in the Act against the juvenile.

4.2. Central role of the Family Court

All proceedings in juvenile cases are heard before a Family Court,¹ which presides over the proceedings taking measures to ensure that the outcome takes into account the best interests of the juvenile. The Family Court may decide to apply educational or correctional measures. It is also entitled to impose certain obligations on the juvenile's parents.

The police play a limited role in the juvenile justice system. They are responsible for collecting and preserving evidence in case of urgent need and for carrying out orders of the Family Court. When necessary, the police should be able to detain a juvenile. Having done so, the police are obliged to refer the case to the Family Court immediately.

4.3. Confidential nature of the proceedings

As a rule, juvenile case proceedings are externally confidential which means that court sessions are closed to the public. This assessment is made in the light of Article 45 of the Constitution.² However, an open court hearing may be allowed by special legal provisions. Hearings are held *in camera* unless holding an open hearing serves an educational purpose.

4.4. Procedural guarantees in juvenile justice proceedings

The JJA provides a number of procedural guarantees for juveniles similar to those available to adult suspects (defendants) in criminal proceedings. Juveniles are entitled to: 1) The right to defence, including the right to be assisted by a defence lawyer; 2) The right to refuse to testify or answer individual questions. Juveniles should be formally informed of these rights before the start of the hearing (this applies both to a standard, the interrogation (*przesłuchanie*) and the hearing (*wysłuchanie*), a less formal mode which may be used in certain types of civil cases).

The JJA also provides that during the informal juvenile hearings attempts should be made to enable juveniles to speak freely. Informal juvenile hearings should take place in a setting resembling the natural environment of a juvenile and, if the need arises – at the juvenile's residence. The JJA suggests avoiding multiple hearings involving a juvenile on the same factual circumstances that have been established by other evidence and are beyond doubt. Moreover, the parties, the defence lawyers and the attorneys can review case files and make their copies, except in the case where a Family Court denies a juvenile's request to access the case file if this is justified with the need to reform the juvenile's behaviour.

1 In Poland, Family Courts are situated in the structure of District Courts (first instance) and Regional Courts (appellate courts). In District Courts, the juvenile cases are heard either in juvenile justice departments or civil departments depending on the size of a particular court. In Regional Courts, these cases are heard in civil departments.

2 Constitution of Republic of Poland (1997), Art. 45:

1. Everyone shall have the right to a fair and public hearing of his case, without undue delay, before a competent, impartial and independent court.
2. Exceptions to the public nature of hearings may be made for reasons of morality, State security, public order or protection of the private life of a party, or other important private interest. Judgments shall be announced publicly.

4.5. Mandatory defence

The JJA affords juveniles the right to defence, including the right to a defence lawyer. However, the applicability of the mandatory defence principle is limited and it may happen that – for various reasons – a juvenile will be unable to access a defence lawyer. First, the mandatory defence principle applies in cases of contradictory interests between juveniles and their parents or guardians and the juvenile has no lawyer. In these cases, the president of the court appoints a free defence lawyer for the juvenile. Second, the president of the court is obliged to appoint a defence lawyer for a juvenile if the latter does not have a lawyer and: 1) has visual, speech or hearing impairments and/or 2) there is a reasonable doubt as to whether the juvenile’s mental condition allows them to act in the proceedings or conduct their own defence in an independent and reasonable manner, and/or 3) the juvenile has been placed at a youth shelter. Third, a juvenile may file a motion for a court-appointed defence lawyer. The president of the court is obliged to grant the motion only if they consider that the lawyer’s participation in the case is necessary and that the juvenile and the juvenile’s parents are unable to afford a lawyer of their choice without detriment to their ability to provide the means of subsistence for themselves and their family.

The JJA provides that a juvenile’s defence lawyer may perform procedural acts only to the benefit of the juvenile, taking into account the latter’s equitable interest.

4.6. Application of the provisions of CPC

As a rule, juvenile justice proceedings are governed by the provisions of CPC¹ applicable to guardianship and custody cases. The provisions of CPC apply only to the following aspects of juvenile proceedings: 1) the collection, recording and obtaining of evidence by the police and the appointment and acts of defence lawyers; 2) instances of obtaining evidence which involves minors other than the juvenile; 3) items seized in the course of the proceedings; 4) handling of the victim.

4.7. Course of proceedings

Juvenile justice proceedings are initiated by a Family Court. The Court issues a ruling which identifies the person concerned and the subject matter of the proceedings. A ruling amending the original ruling is issued if new circumstances come to light which prove the juvenile’s antisocial and delinquent behaviour or new punishable acts. During the proceedings, the court collects information on the juvenile, their upbringing, health and living conditions, and considers other evidence, if appropriate. In particular, the Family Court: 1) hears the juvenile, their parents or guardians; 2) if necessary, orders searches and physical inspections, and performs other procedural acts to gain a full picture of the case.

The Family Court hears the juvenile during a court sitting. The juvenile may comment and submit statements about each piece of evidence taken. Community interviews and evaluation reports regarding the juvenile should be read out in the absence of the juvenile unless ensuring the juvenile’s access to such materials is justified with the need to reform the juvenile’s behaviour.

At the request of a juvenile staying at a youth shelter or a youth educational centre, the Family Court can order the juvenile’s appearance in court, unless the Court decides that the presence of the juvenile’s defence lawyer is sufficient. The juvenile should be informed of the right to request his or her appearance in court. A court sitting may not be held in the absence of the juvenile if the same has given reasons for their absence and requested adjournment of the hearing and the court accepts the reasons given for the juvenile’s absence.

¹ Civil Procedure Code (1964).

In the final ruling issued in the juvenile justice proceedings, the Family Court rules whether or not the juvenile demonstrates signs of antisocial and delinquent behaviour and/or has committed a punishable act, and decides whether to apply educational measures or a correctional measure.

4.8. Educational and correctional measures

A range of educational and correctional measures may be applied toward a juvenile delinquent. Criminal law sanctions may be imposed only if CC so provides and other measures are insufficient to ensure the social rehabilitation of a juvenile.

The JJA provides a list of educational and correctional measures which the court may impose on a juvenile. The court has the power to:

- 1) Issue a caution;
- 2) Impose a duty to act in a certain way, in particular to redress the damage caused, perform certain work or services for the victim or local community, apologise to the victim, take on study or work, attend appropriate educational, therapeutic or training classes, refrain from frequenting certain environments and/or locations, or using alcohol or other psychoactive substances;
- 3) Order the parents or guardian to exercise supervision over a juvenile and report to the court (“responsible supervision”);
- 4) Order a youth organisation or other community organisation, a work establishment or a trustworthy person to supervise a juvenile and give a personal surety of the juvenile’s good behaviour;
- 5) Appoint a juvenile probation officer to supervise the juvenile;
- 6) Refer the juvenile to a probation centre or a community organisation, or an educational, therapeutic or training institution working with juveniles. The court must first arrange the referral with such an organisation or institution;
- 7) Disqualify the juvenile from operating vehicles;
- 8) Order forfeiture of items obtained from conducting a punishable act;
- 9) Place the juvenile at a youth educational centre or with a professional foster family who have completed training in juvenile care;
- 10) Place the juvenile at a young offender institution;
- 11) Apply other measures assigned by the JJA to the jurisdiction of the Family Court or apply measures set forth in the Family and Guardianship Code, with the exception of a placement with a related foster family, a volunteer foster family, at a family children’s home, a day care centre, a custody and care centre or a local care and therapy centre.

4.9. Appeal procedure

Under the Polish model of two-instance judicial proceedings, appeals may be submitted against Court of First Instance decisions in juvenile justice proceedings also. Appeals are heard by a Regional Court (Civil Department) sitting in a panel of three professional judges. A juvenile can appeal against a decision, in whole or in part. The parties to the proceedings (the juvenile, the juvenile’s parents or guardian, prosecutor) may only appeal against the holdings which infringe upon their rights or are detrimental to their interests. The prosecutor may file an appeal both for and against the juvenile.

The juvenile’s appearance in court during the appeal is not mandatory. However, if the appellate court deems it necessary, it may order that the juvenile staying at a youth shelter or youth

educational centre appear in court. The compulsory appearance of the juvenile may also be requested by a party or the juvenile's defence lawyer.

4.10. Statistics on juvenile justice

Statistics developed by the Ministry of Justice present a reliable picture of the number of juvenile justice proceedings in Poland. In the first half of 2014, a total of 47,384 juvenile cases were launched. These are the proceedings conducted in accordance with the new procedure which came into effect in January 2014. By way of comparison, throughout 2013 79,429 juvenile cases were still investigated pursuant to the previously applicable procedure.

Table 1: Number of initiated juvenile proceedings in District Courts (2012-2013)

	2012	2013
Explanatory proceedings regarding:	83,151	79,429
• antisocial and delinquent behaviour	33,811	34,596
• punishable acts	49,340	44,833
Care and educational proceedings:	54,697	51,563
• antisocial and delinquent behaviour	25,347	25,136
• punishable acts	29,350	26,427
Correctional proceedings	830	673

5. General overview of juvenile detention facilities

5.1. Introduction

The JJA of 26 October 1982 is the main piece of legislation and legal basis for the existence of institutions addressed specifically to minors involved in delinquent acts. It also contains authorisations (upoważnienie) for the executive power to regulate the details relating to these institutions in by-laws, most often regulations (rozporządzenia). One of the main goals of the recent draft laws was to update the division between the primary and secondary law regarding juvenile justice and to regulate more issues in the statutes to ensure that it meets constitutional standards on the limitation of rights.

In Poland, juveniles may be detained by a court order placing them in one of the seven types of detention facilities: a young offender institution (zakład poprawczy), a youth shelter (schronisko dla nieletnich), a hostel, a police remand home for children (policyjna izba dziecka), a youth educational centre (młodzieżowy ośrodek wychowawczy), a psychiatric hospital or a nursing home (dom pomocy społecznej).

Each of these institutions plays a different role in the juvenile justice system and is operated and supervised by different governmental departments. Seven types of institutions are placed within the purview of a total of five executive departments: the Ministry of Justice, the Ministry of Interior, the Ministry of National Education, the Ministry of Health and the Ministry of Labour and Social Policy.

Table 2: Types of juvenile detention facilities and supervisory authorities

	Supervisory authority	Legal basis
Young offender institution	Ministry of Justice	Article 10, 85 and 95 of JJA; regulation of the Ministry of Justice of 2001
Youth educational centre	Ministry of National Education	Article 12 and 81 of JJA; regulation of the Ministry of National Education of 2011
Youth shelter	Ministry of Justice	Article 27 and 95 of JJA; resolution of the Ministry of Justice of 2001
Police remand home	Ministry of Interior	Article 32g, 32h of JJA; Regulation of the Police Commander-in-Chief
Nursing home	Ministry of Labour and Social Policy	Regulation of the Ministry of Article 82 of JJA
Psychiatric hospital	Ministry of Public Health	Medical law; Article 12 of JJA

5.2. Constitutional standards

The Polish Constitution stipulates standards for the treatment of children. It states that the deprivation of liberty of the individual is a breach of the physical integrity of the person, and also refers to a variety of other issues relating to underage persons. The institutional framework for the rights of children deprived of their liberty has been provided in a number of legal regulations.

Children's rights were not specifically developed in the Polish Constitution. Article 18 of the Constitution establishes the principle that "marriage between a man and a woman, the family, motherhood, and parenthood are under the security and care of the Polish Republic".

The key provision regulating children's rights is Article 72 of the Constitution which provides that the Republic of Poland is obliged to ensure protection of children's rights. According to the second sentence of the Article, "everyone shall have the right to demand of public authority organs that they defend children against violence, cruelty, exploitation and actions which undermine their moral sense". These are fundamental rights and they are directly connected to the key principle in the Polish legal system of respect for the dignity of the individual.

Legal literature indicates that the scope of the government's responsibilities in terms of protecting children is broadly established to ensure children a proper physical and moral upbringing. The above-cited regulations are principles that should guide the legislator. However, under the current stipulations of Polish law, they cannot be determined as concrete legal rights of children.

Regarding the issue of deprivation of liberty, the Polish Constitution contains multiple guarantees of *habeas corpus*. According to Article 41 of the Constitution, all people, including children, are assured physical security and individual freedom. Denial of, or limiting, freedom can only occur for reasons and procedures stipulated by law. Anyone who is deprived of their liberty by a court order has the right to appeal to the court to immediately determine the legality of the deprivation. If there is a deprivation of liberty, it is necessary to speak out immediately to a family member or person who has been designated by the person whose has been deprived of liberty.

These guarantees also apply to persons who have been detained. In accordance with Article 41(3) of the Constitution, every detained person must be informed without delay, and in a way that they may understand, about the reasons of detention. The detainee should be held for no more than 48 hours from the time of the submission of the arrest to the court. The detainee must be released from detention if they are not served a court order along with charges within 24 hours from the submission to the court. The abovementioned regulations shall be applied accordingly in the procedure for detaining underage persons and depriving them of liberty for the procedural purpose.

5.3. International standards

The 1997 Constitution of the Republic of Poland sets out that Poland observes international law binding upon her and that international agreements (including the ECHR) are part of domestic legislation and are applied directly unless their execution is dependent on the enactment of a separate law. According to Article 91 of the Constitution after promulgation in the Journal of Laws of the Republic of Poland, a ratified international agreement shall

constitute part of the domestic legal order and shall be applied directly, unless its application depends on the enactment of a statute. An international agreement ratified upon prior consent granted by statute shall have precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes. If an agreement ratified by the Republic of Poland, establishing an international organisation so provides, the laws established by it shall be applied directly and have precedence in the event of a conflict of laws.

5.3.1. Convention on the Rights of the Child

Poland ratified the Convention on the Rights of the Child in 1991. Since then several reports of the Committee on the Rights of Child (CRC) on Poland have been published. In its 1995 report CRC pointed out that Poland lacks a systematic monitoring mechanism and a system for data collection. The Committee believed there was also insufficient coordination between Ministries, central and local authorities. CRC recommended that Poland establish a multidisciplinary monitoring mechanism and strengthen cooperation with human rights NGOs.

In its 2002 report CRC recommended that Poland should:

- (a) Ensure the full implementation of juvenile justice standards, in particular Articles 37, 39 and 40 of the Convention, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“the Beijing Rules”) and the United Nations Guidelines for the Prevention of Juvenile Delinquency (“the Riyadh Guidelines”), in light of the Committee’s day of general discussion on the administration of juvenile justice held in 1995;
- (b) Enforce regulations allowing a maximum stay of three months in emergency blocks;
- (c) Use deprivation of liberty only as a measure of last resort and protect the rights of children deprived of their liberty, including those pertaining to conditions of detention.

In its 2009 report, CRC expressed concern about the situation of the Polish Ombudsman for Children and stated that Poland should provide the office of the Ombudsman for Children with sufficient financial and human resources to monitor the implementation of the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography. According to CRC, Poland should also encourage collaboration with civil society in the areas of policy formulation, planning and budgeting government programs related to Second Optional Protocol.

According to the last Report of the Republic of Poland on the implementation of the Convention on the Rights of the Child in the years 1999-2010 pursuant to the § 57 and 86 of the Regulation of the Minister of Justice on young offender institutions and youth shelters

juvenile delinquents and juveniles residing in young offender institutions are provided with: respect for their personal dignity, protection against violence, exploitation and abuse and all manifestations of cruelty. They should also have access to information about applicable internal regulations, awards and disciplinary measures, resocialisation activities available in the establishment, a resocialisation process, food adapted to their developmental needs, clothes, underwear, shoes, school materials and textbooks, personal care products, access to health care and rehabilitation services, including, in particular, pregnant juveniles, during and after delivery, protection of family relations, sending and delivering correspondence, subject to limitations prescribed in law (see below), possibility for contacting a juvenile attorney or legal representative at the establishment and without the presence of any other people, psychological care and help, procedures for submitting complaints, requests and proposals.

In assessing the topic of a juvenile's deprivation of liberty, consideration should be given to the wording of the European Convention on Human Rights (ECHR). According to Article 5(1) of ECHR, a person may be deprived of liberty only in the cases provided in the Convention itself. One such case is the detention of a minor for the purpose of educational supervision (Article 5(1)(d)). Interpreting this provision in *D.G. v. Ireland*,¹ the European Court of Human Rights (ECtHR) held that a country which implemented a system of educational supervision was obliged to put in place appropriate institutional facilities which met the security and educational demands of that system. Any deficiencies in this regard, such as an over-restrictive system of juvenile care or the absence of such supervision or care, may lead to the Court's finding a violation of Article 5(1)(d) of the Convention.

A significant number of guidelines to define the concept of deprivation of liberty have been developed in the extensive ECtHR case law on Article 5 of ECHR. In *Storck v. Germany*,² ECtHR held that a person could only be considered to have been deprived of their liberty within the meaning of the Convention if two elements of such deprivation exist – the objective and the subjective. The former is a person's confinement in a particular restricted space. The latter is the absence of the person's valid consent to the confinement in question. Moreover, ECtHR has developed in its jurisprudence a number of criteria that are intended to assist in the assessment of the objective nature of the confinement. These include, but are not limited to, the physical ability to leave the place of one's stay, the type of supervision and control exercised, a degree of confinement, as well as a person's ability to maintain regular social contact with the outside world.

In the judgment *P. and S. v. Poland* ECtHR analysed the standards of "educational supervision" performed by the State. On 9 April 2008 P. (hereinafter: the first applicant) went with a friend to the Public University Health Care Unit in Lublin. She said that on 8 April 2008 she had been raped by a boy her own age. The medical staff told her that they could neither examine, nor provide medical assistance to her because she was a minor and the consent of her legal guardian was necessary.

Dr E.D. reported the case to the police and notified the first applicant's parents. Later that day, after reporting that an offence of rape had been committed, the applicants went to the Public University Hospital no. 4 in Lublin accompanied by a female police officer. S. gave her consent for her daughter's examination. The first applicant was in a state of emotional shock. At the hospital she was offered psychological help. A general practitioner confirmed the bruises on her body several days after the alleged event took place, between 9 and 14 April 2008. The rape resulted in pregnancy. The applicants decided together that an abortion would be the best option, considering that the first applicant was a very young minor, that the pregnancy was the result of forced intercourse and that she wanted to pursue her education.

¹ ECtHR, *D.G. v. Ireland*, No. 39474/98, Judgment of 16 May 2002.

² ECtHR, *Storck v. Germany*, No. 61603/00, Judgment of 16 June 2005.

On 19 May 2008 the first applicant was questioned by the police. Her mother and the alleged perpetrator's defence lawyer were present during questioning. The first applicant stated that the perpetrator had used force to hold her down and overcome her resistance. On 20 May 2008, the District Prosecutor, referring to Section 4(a) item 5 in fine of the Law on Family Planning (Protection of the Human Foetus and Conditions Permitting Pregnancy Termination) ("the 1993 Act") issued a certificate stating that the first applicant's pregnancy had resulted from unlawful sexual intercourse with a minor under 15. The applicants were questioned at the police station the same day, from approximately 4 p.m. until 10 p.m. No food was offered to them. The officers showed the applicants the Family Court decision which the police had received by fax at about 7 p.m. from the Warsaw hospital. That decision delivered by the Lublin Family Court restricted the second applicant's parental rights and ordered the first applicant to be placed in a youth shelter immediately. Subsequently, the police took the first applicant to a car. She was driven around Warsaw in search of a youth shelter that would accept her. The second applicant was not permitted to accompany her daughter. As no place was found in Warsaw, the police drove the girl to Lublin, where she was placed in a shelter at approximately 4 a.m. on 6 June 2008. She was put in a locked room and her mobile phone was taken away.

On 6 June 2008 priest K.P. visited the first applicant at the shelter and told her that he would lodge an application with the court requesting to have her transferred to a single mother's home run by the Catholic Church. It was not disputed among the parties that the first applicant was "deprived of [her] liberty" within the meaning of Article 5(1). The Court reiterates that the exhaustive list of permitted deprivations of liberty set out in Article 5(1) must be interpreted strictly.

The Court observed that the first applicant was placed in the youth shelter pursuant to Article 109 of the Family and Custody Code. It can therefore accept that the decision of the Family Court was lawful in terms of domestic law. As to Convention legality, the government justified her detention on the grounds of "educational supervision" within the meaning of Article 5(1)(d) of ECHR. The Court therefore considered whether the detention complied with conditions imposed by that subsection. The Court accepted that, in the context of the detention of minors, the words "educational supervision" must not be equated rigidly with notions of classroom teaching: in the context of a young person in local authority care, educational supervision must embrace many aspects of the exercise, by the local authority, of parental rights for the benefit and protection of the person concerned. The Court observed that the Family Court imposed detention on the first applicant, having regard to her pregnancy and referring to the doubts as to whether she was under pressure to have an abortion. The Court already acknowledged, in the context of Article 8 of ECHR, that there was a difference in the way in which pregnancy affected the situation and life prospects of the first and second applicants. It was therefore legitimate to try to establish with certainty whether the first applicant had had an opportunity to reach a free and well informed decision about having recourse to an abortion. However, the essential purpose of the decision on the first applicant's placement was to separate her from her parents, in particular from the second applicant, and to prevent the abortion.

The Court believes that by no stretch of the imagination can the detention be considered to have been ordered for educational supervision within the meaning of Article 5(1)(d) of the Convention if its essential purpose was to prevent a minor from having recourse to an abortion. Furthermore, the Court believes that if the authorities were concerned that an abortion would be carried out against the first applicant's will, less drastic measures than locking up a 14-year-old girl in a situation of considerable vulnerability should have at least been considered by the courts. It has not been shown that this was indeed the case.

Accordingly, the Court concluded that the first applicant's detention between 4 and 14 June 2008, when the order of 3 June 2008 was lifted, was incompatible with Article 5(1) of the Convention.

At this point, it is worth explaining why the placement of a juvenile at one of the above institutions should be considered a form of deprivation of liberty. Article 11b of the “Havana Rules”¹ provides that the deprivation of liberty means any form of detention or imprisonment by order of any judicial, administrative or other public authority. Detention may take place either in a public or private setting. Yet the necessary condition of detention is that the person concerned is not permitted to leave the institution at will. A similar definition of detention has been adopted in the rule 21.5 of the Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures.²

5.3.2. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) of 10 December 1984 was adopted and ratified by Poland on 21 October 1989 (promulgated in the Journal of Laws – Dziennik Ustaw – Dz.U. of 1989; No. 63; items 378, 379). Poland, by virtue of a resolution of the Council of Ministers of 30 March 1993, has recognised the competence of the Committee against Torture in respect of receiving and examining complaints submitted by States and individuals. Until the present day no complaints have been reported.

The Concluding observations on the combined fifth and sixth periodic reports of Poland were published by the Committee on 23 December 2013. The most important of them relevant to juvenile justice are outlined below.

The Committee recommended that the State party develop specific methodologies to guarantee more objective and comprehensive evaluation of training and education courses on the absolute prohibition of torture and ill-treatment that are provided to law enforcement and medical personnel, judges, prosecutors and persons working with refugees, migrants and asylum seekers.

The Committee was concerned by reports that police use illegal methods and abuse their power during interrogations, and that few criminal proceedings are conducted into such allegations, most cases being discontinued by the prosecution authorities. It is also concerned that lengthy court proceedings have created a backlog of cases in the court system. Furthermore, while noting the statistics provided on convictions under Articles 231 (abuse of power), 246 (obtaining testimony using force) and 247 (tormenting a person deprived of liberty) of CC, the Committee regretted the lack of information provided on the number of complaints filed, criminal proceedings brought, persons acquitted and the length of sentences handed down for these crimes (Articles 2, 12, 13 and 16).

5.3.3. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT) was signed by Poland on 11 July 1994 and came into force on 1 February 1995. Poland has been visited by the Committee for the Prevention of Torture (CPT) five times:

-
- 1 United Nations Rules for the Protection of Juveniles Deprived of their Liberty, GA resolution 45/113 of 14 December 1990, Rule 11b (hereinafter: Havana Rules).
 - 2 European rules for juvenile offenders subject to sanctions or measures, Recommendation CM/Rec (2008)11 of the Committee of Ministers of the Council of Europe of 5 November 2008 (hereinafter: European Rules for Juvenile Offenders).

- 1) 30 June 1996 – 12 July 1996;
- 2) 08 May 2000 – 19 May 2000;
- 3) 4 October 2004 – 15 October 2004;
- 4) 26 November 2009 – 08 December 2009;
- 5) 5 June 2013 – 17 June 2013.

During the last CPT visit in 2013 the delegation visited four police establishments for children (PID).

- Police establishment for children, Bydgoszcz;
- Police establishment for children, Lublin;
- Police establishment for children, Szczecin;
- Police establishment for children, Warsaw.

In all visited establishments the material conditions of detention were generally satisfactory, especially in terms of living space (e.g. bedrooms for four juveniles measuring between 18 and 28 m²), lighting and ventilation, equipment, sanitary and washing facilities, food and cleanliness. That said, according to CPT, the bedrooms had a somewhat austere appearance (absence of pictures, posters, plants, etc.).

The delegation noted that juveniles were provided with tracksuits (and no longer pyjamas as had previously been the case) which they wore during the day. The delegation was pleased to note that, unlike in 2009, juveniles detained at all PIDs visited were able to take daily outdoor exercise. However, the exercise yards, although sufficient in size and fitted with some seating and sports equipment, were not protected against inclement weather. The Committee invited the Polish authorities to remedy this deficiency.

5.4. Types of institutions

5.4.1. Youth shelters

Youth shelters are institutions for temporary detention of juveniles suspected of committing a punishable act. A court ordered placement of a juvenile at a youth shelter is comparable to pre-trial detention of an adult suspect in criminal proceedings.

Article 27 of JJA sets forth the grounds and procedure for the placement of a juvenile at a youth shelter. The court may place a juvenile at a youth shelter if circumstances are discovered which justify the juvenile's placement in a young offender institution. There also has to be a reasonable risk that the juvenile will hide or conceal traces of the punishable act or if the juvenile's identity cannot be determined.

Placement of a juvenile at a youth shelter may be exceptionally ordered also if circumstances are discovered which justify the juvenile's placement in a young offender institution and the juvenile has been accused of committing a serious punishable act which is a criminal offence under the provisions of CC. The term of the juvenile's stay at a youth shelter prior to their case being referred to a court hearing may not exceed three months; the term of the placement must be determined in the placement order. If, due to exceptional circumstances, a need appears to extend the placement of a juvenile at a youth shelter, the extension may be given for a period of a maximum three months. Extension of the juvenile's placement at a youth shelter is ordered by the Family Court. The parties concerned and the juvenile's defence lawyer must be notified of the date and time of the session. Before the date of the first instance court's ruling,

a juvenile may be placed at a youth shelter for no longer than 12 months. The above period does not include any period of a juvenile's unexcused absence from a youth shelter which lasts for longer than three days or any period of psychiatric evaluation.

In exceptionally justified cases, at the request of the court hearing the case, the Regional Court may extend the period of a juvenile's placement at a youth shelter.

Youth shelters are supervised by the Minister of Justice who may also set up and close the facilities.

Youth shelters are divided into two categories:

- 1) ordinary youth shelters, and
- 2) emergency youth shelters.

5.4.2. Young offender institutions

Placement at a young offender institution is the most severe correctional measure that can be applied against a juvenile. A decision to place a juvenile in such an institution is taken when the desired educational goal of the juvenile justice proceedings cannot be reached through other means and where the juvenile in question is engaged in serious antisocial and delinquent behaviour. Under Article 10 of JJA, the Family Court may order a juvenile to be placed at a young offender institution if:

- 1) The juvenile has committed a punishable act which is a criminal or tax offence;
- 2) Such placement is justified by the seriousness of the juvenile's antisocial and delinquent behaviour and the circumstances and nature of the act in question;
- 3) In particular, other educational measures proved ineffective or failed to show a reasonable prospect that the juvenile will be socially rehabilitated.

Juveniles aged between 13 and 17 may be placed at young offender institutions, but they can only remain there until the age of 21. There is a set of additional instruments aimed at shortening the time juveniles are deprived of their liberty:

1. **Conditional suspension of placement in a young offender institution¹** – can be ordered if the overall circumstances of the case show that the educational objectives will be achieved despite the placement into the young offender institution not being executed; additional probation shall be ordered (from 1 to 3 years) as well as educational measures; in case of further deprivation, the court may order placement in a young offender institution; such placement is obligatory if the juvenile commits a prescribed crime;
2. **Conditional release under probation for 3 years²** – the juvenile can be conditionally released from the young offender institution if the progress of their rehabilitation shows that upon release they will abide by the law; probation shall be ordered between 1 and 3 years; if the minor becomes “demoralised again” his or her release can be cancelled.
3. **Conditional withdrawal from execution of placement³** – can be applied by the court if the juvenile's behaviour changes after the issue of the placement decision.

All the above procedures which allow the release of the minor before they turn 21,⁴ are crucial in ensuring that the law on juvenile proceedings guarantees the proportionality and flex-

1 Juvenile Justice Act, Art. 11.

2 *Ibid.* Art. 86.

3 *Ibid.* Art. 88.

4 *Ibid.* Art. 73.

ibility required by international law. Even more important is the fact that, according to pedagogical research, such tools may strengthen and encourage progress, bringing more positive results than punitive steps.¹

In general, a young offender institution consists of the residential unit, a school (schools) and school workshops. The functioning of the young offender institutions is supervised by the Minister of Justice. The Minister has the power to set up or close youth shelters or young offender institutions.

The Minister of Justice's Regulation of 17 October 2001 on young offender institutions and youth shelters² provides a detailed legal framework for the functioning of young offender institutions. This Regulation describes the types of young offender institutions, their internal organisation, manner of performing proper supervision, as well as detailed rules of the management of the institutions' operations, and those governing admissions, transfers, releases and stays of juveniles in the institutions. The Regulation sets out safety rules applicable within these institutions. The functioning principles of young offender institutions and youth shelters are stipulated in their bylaws. Bylaws are drawn up by the head of a given institution and then submitted for the approval of the President of the respective Regional Court.

Pursuant to the above Regulation, there are several types of young offender institutions:

- 1) Rehabilitation-type young offender institutions (*resocjalizacyjne*):
 - a) open-door institutions – youth social adaptation centres
 - b) semi-open institutions
 - c) closed institutions
 - d) institutions with a reinforced educational supervision regime
- 2) Rehabilitation and revalidation institutions (*resocjalizacyjno - rewalidacyjne*);
- 3) Rehabilitation and therapeutic institutions (*resocjalizacyjno – terapeutyczne*);
- 4) Readaptation institutions (*readaptacyjne*).

Each of the above institutions serves a different function, offers different types of educational services and imposes a different level of access restrictions.

Open-door rehabilitation institutions are designed for juveniles who:

- 1) have never stayed in detention centres or prisons;
- 2) have not committed a specific punishable act described in CC;³
- 3) have expressed willingness to take part in the social rehabilitation process and their attitude and conduct in the youth shelter justify their placement in an open-door institution;
- 4) do not identify themselves with a criminal subculture.

Inmates of other types of rehabilitation institutions may be placed at open-door facilities provided their behaviour, attitudes or indications given by the diagnostic and correctional team support such a placement.

1 Konarska-Wrzosek, V. (2013) "Zakład poprawczy czy zakład karny dla nieletnich", [in:] A. Rzepliński, I. Rzeplińska, P. Wiktorska, M. Nielączna (red.), *Pozbawienie wolności-funkcje i koszty*. Księga Jubileuszowa Profesora Teodora Szymanowskiego, Wyd. Wolters Kluwer, Warszawa, p. 896.

2 Regulation of the Minister of Justice's on young offender institutions and youth shelters (2001).

3 Criminal Code (1997), Art. 134 (an attempt on the life of the President of the Republic), Art. 148(1), (2) or (3) (manslaughter), Art. 156(1) or (3) (occasioning a grievous bodily harm), Art. 163(1) or (3) (causing a major accident), Art. 166 (financing terrorism), Art. 173(1) or (3) (causing a major accident in land traffic), Art. 197 (3) (a gang rape), Art. 252(1) or (2) (taking a hostage) or Art. 280 (robbery).

Semi-open rehabilitation institutions are designed for juveniles whose placement at open-door rehabilitation institutions is unreasonable because of punishable acts they have committed and unfavourable changes in their behaviour. The following categories of inmates may be placed at semi-open facilities:

- 1) Inmates of open-door rehabilitation institutions whose behaviour does not justify their further stay in open-door facilities;
- 2) Inmates of closed rehabilitation institutions and institutions with a reinforced educational supervision regime who have been assessed as suitable for further rehabilitation in a semi-open rehabilitation institution.

Closed rehabilitation institutions are designed for juveniles who have a history of multiple instances of running away from open or semi-open rehabilitation institutions.

Rehabilitation institutions with a reinforced educational supervision regime are designed for juveniles whose placement in the institution was ordered by a court. This category of rehabilitation institution may admit juveniles who reached 16 (and, in exceptional cases, 15) with a history of disrupting work in other facilities.

Rehabilitation and revalidation institutions are designed for juveniles with a mental disability.

Rehabilitation and therapeutic institutions are designed for juveniles who:

- 1) have a personality disorder caused by organic damage to the central nervous system;
- 2) are addicted to intoxicants or psychoactive substances;
- 3) are HIV positive.

Readaptation institutions are designed for juveniles who:

- 1) during their stay at a youth shelter have refused to participate in education, study and therapy processes,
- 2) during their stay at a youth shelter have run away from the facility or, on at least two occasions, failed to return from temporary leave on time and there are reasonable grounds to believe that this conduct will continue in future,
- 3) on at least two occasions during their stay at a youth shelter have committed prohibited acts,
- 4) during their stay in a young offender institution of a different type have refused to participate in education, study and therapy processes,
- 5) during their stay in a young offender institution have run away from the facility or, on at least two occasions, failed to return from temporary leave on time or a leave of absence and there are reasonable grounds to believe that this conduct will continue,
- 6) on at least two occasions during their stay in a young offender institution of a different type have committed prohibited acts.

Number of young offender institutions and youth shelters

There are currently four independent youth shelters and eleven establishments that combine the young offender institution with the youth shelter. Seventeen facilities operate as young offender institutions only.¹

¹ Ministerstwo Sprawiedliwości, "Zakłady poprawcze, schroniska dla nieletnich", available at: <http://ms.gov.pl/pl/dzialalnosc/zaklady-poprawcze-schroniska-dla-nieletnich/>.

Most institutions are for male offenders. Out of 32 currently existing establishments, only four are designed for girls.

The overall capacity of the young offender institutions and youth shelters is 1,769 beds, including 1,596 beds for boys and 190 for girls. The predominant share of beds, 72%, are located in the young offender institutions. 492 young people can be accommodated in the youth shelters (including 60 girls). The juvenile hostels have a capacity of 24 beds, all of them designed for boys.

In 2013, there were 902 juvenile delinquents in the young offender institutions, including 103 girls. At the same time, there were 269 young people in youth shelters, including 30 girls. There were 12 minors placed in juvenile hostels.

Table 3: Placements in young offender institutions (2013 - first half of 2014)

Year	Young offender institutions		Young offender institutions for girls		Young offender institutions for boys	
	Number of beds	Number of juveniles	Number of beds	Number of juveniles	Number of beds	Number of juveniles
2013	1,277	902	130	103	1,147	799
H1 2014	1,277	925	130	110	1,147	815

Table 4: Placements in youth shelters (2013 - first half of 2014)

Year	Youth shelters		Youth shelters for girls		Youth shelters for boys	
	Number of beds	Number of juveniles	Number of beds	Number of juveniles	Number of beds	Number of juveniles
2013	492	269	60	30	432	239
H1 2014	492	276	60	32	432	244

5.4.3. Hostels

Hostels are units for juveniles placed in a young offender institution that aim to facilitate the process of juveniles' transition to independent lives and preparation them for leaving the institution. A decision to place a juvenile in a hostel is made by the head of a given young offender institution, provided that such a placement is justified by the prospects of the juvenile becoming independent and leaving the institution. The hostel placement option is conditional upon juveniles' work or study while staying at the hostel. Juveniles placed at hostels remain *ex lege* inmates of a young offender institution, despite the fact that they live in a different type of institution.

Juveniles staying at hostels, which provide them with temporary accommodation, are under 24-hour educational supervision. Juveniles residing at a hostel are obliged to partially cover their living expenses (up to 25% of the total cost).

A hostel is usually a ward of a young offender institution. However, hostels can also be run by associations, foundations or any other social organisations which operate to support the social readaptation of juvenile delinquents. Expenses related to juveniles' stay at hostels can be paid from the state budget. In each case, detailed terms of the payment of living costs in respect of juveniles staying at a given hostel are stipulated in a contract signed between the Ministry of Justice and the entity which runs the hostel.

Map 2. Young Offenders Institutions, Youth Shelters and Police Remand Homes for Children



The key legal framework of the juveniles' placement at hostels is provided by the Regulation of the Minister of Justice on the rules of juveniles' admission to, stay in and release from, hostels, conditions of their stay at hostels and supervision over juveniles staying at hostels, dated 13 January 2012.¹ Detailed conditions of juveniles' stay in hostels are set out in laws adopted by the directors of individual hostels.

Table 5: Placements of juveniles in hostels (2013 - first half of 2014)

Year	Hostels		Hostels for girls		Hostels for boys	
	Number of beds	Number of juveniles	Number of beds	Number of juveniles	Number of beds	Number of juveniles
2013	24	12	-	-	24	12
H1 2014	24	13	-	-	24	13

5.4.4. Police remand homes for children

Police remand homes for children are institutions for short-term juvenile detention that operate as part of regional police headquarters. The facilities are set up, closed and supervised by the Minister of Interior. They can be set up and closed by provincial police commissioners and the Chief Commissioner of the Warsaw Police, in agreement with the Chief Commissioner of the Police.

Articles 32 and 32h of the JJA set forth the grounds and procedure for the placement of juveniles at police remand homes for children. Juveniles may be placed in these facilities in a number of situations.

First, juveniles can be placed at a police remand home for children if the placement is necessary for any of the following circumstances:

1. There is a reasonable suspicion that a juvenile in question has committed a punishable act; and
2. There is a reasonable risk that the juvenile will hide or destroy the evidence; or
3. The juvenile's identity cannot be identified.

A juvenile detained in any of the above circumstances must be released within 48 hours of the Family Court of the local jurisdiction being notified of the detention unless the Court pronounces a ruling on the juvenile's placement at a youth shelter or temporary placement at a youth educational centre, with a professional foster family or in a treatment facility.²

However, if a juvenile has been ordered by the court to be placed at a youth shelter, they may stay at a police remand home for children for a period necessary for their transfer to an appropriate institution, however not longer than for a further five days.

Second, juveniles who have left a youth shelter, a youth educational centre or a young offender institution without permission may also be placed at police remand homes for children for the duration required for their return transfer to the appropriate shelter, centre or institution, but not longer than five days.

Third, juveniles may be placed at a police remand home for children also for the duration of a justified break in the process of them being transferred or escorted to appear in court. The

¹ Regulation of the Minister of Justice on the rules of juveniles' admission to, stay in and release from hostels, conditions of their stay at hostels and supervision over juveniles staying at hostels (2012).

² Juvenile Justice Act (1982), Art. 32g(7)(4).

length of such a placement, however, may not exceed 24 hours.

Fourth, a juvenile may be placed at a police remand home for children at an order of the Family Court, issued in the form of a ruling, for the period necessary for the performance of certain procedural acts, however not longer than 48 hours.

Conditions for compliance by police remand homes for children are set out in Chapter 6 of the Minister of the Interior's Regulation of 4 June 2012 on facilities designated for persons detained or escorted for the purpose of recovering from alcohol abuse, interim rooms, temporary interim facilities and police remand homes for children, rules governing such facilities, rooms and homes and the handling of images and visual recordings from such facilities, rooms and homes.¹

Police remand homes for children in numbers

Until 1 October 2013 there were 29 police remand homes for children in Poland with a total capacity of 543. Most facilities were situated in the Provinces Śląskie (4), Dolnośląskie (3) and Mazowieckie (3). After that date, the number of facilities was reduced and currently 19 are in operation.

Table 6: Occupancy in police remand homes for children (2012 - first half of 2014)

Total	General Occupancy in a year	Number of Boys	Number of Girls
2012	8,853	7,179	1,404
2013	8,501	6,909	1,592
I-VI 2014	3,773	3,065	708

Table 7: Occupancy in police remand homes for children, per facility (2012 - first half of 2014)

Police Remand Home for Children	General Occupancy in a year	Number of Boys	Number of Girls
Legnica			
2012	140	121	19
2013	179	145	34
I-VI 2014	closed	closed	closed
Wałbrzych			
2012	290	257	33
2013	250	220	30
I-VI 2014	130	108	22
Wrocław			
2012	440	357	83
2013	659	514	145

¹ Regulation of the Minister of the Interior on facilities designated for persons detained or escorted for the purpose of recovering from alcohol abuse, interim rooms, temporary interim facilities and police remand homes for children, rules governing such facilities, rooms and homes and the handling of images and visual recordings from such facilities, rooms and homes (2012).

Police Remand Home for Children	General Occupancy in a year	Number of Boys	Number of Girls
I-VI 2014	319	246	73
Bydgoszcz			
2012	161	144	17
2013	503	403	100
I-VI 2014	256	211	45
Lublin			
2012	414	336	78
2013	357	281	76
I-VI 2014	143	116	27
Gorzów Wlkp.			
2012	243	219	24
2013	194	160	34
I-VI 2014	105	93	12
Zielona Góra			
2012	0	0	0
2013	0	0	0
I-VI 2014	closed	closed	closed
Łódź			
2012	442	379	63
2013	446	387	59
I-VI 2014	190	156	34
Kraków			
2012	390	304	86
2013	381	294	87
I-VI 2014	226	181	45
Tarnów			
2012	104	82	22
2013	0	0	0
I-VI 2014	closed	closed	closed
Radom			
2012	199	167	32
2013	73	64	9
I-VI 2014	closed	closed	closed
Płock			
2012	104	90	14
2013	102	85	17

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Police Remand Home for Children	General Occupancy in a year	Number of Boys	Number of Girls
I-VI 2014	closed	closed	closed
Warszawa			
2012	1,101	839	262
2013	1,027	815	212
I-VI 2014	463	362	101
Opole			
2012	218	187	31
2013	203	175	28
I-VI 2014	84	64	20
Rzeszów			
2012	178	128	50
2013	209	158	51
I-VI 2014	103	76	27
Białystok			
2012	321	188	33
2013	307	243	64
I-VI 2014	148	122	26
Gdańsk			
2012	326	281	45
2013	347	289	58
I-VI 2014	216	179	37
Słupsk			
2012	50	43	7
2013	21	20	1
I-VI 2014	closed	closed	closed
Katowice			
2012	848	733	115
2013	908	772	136
I-VI 2014	542	464	78
Będzin			
2012	303	257	46
2013	339	270	69
I-VI 2014	closed	closed	closed
Bielsko-Biała			
2012	516	442	74
2013	267	216	51

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Police Remand Home for Children	General Occupancy in a year	Number of Boys	Number of Girls
I-VI 2014	127	102	25
Częstochowa			
2012	309	273	36
2013	158	130	28
I-VI 2014	closed	closed	closed
Kielce			
2012	191	175	16
2013	287	253	34
I-VI 2014	152	136	16
Elbląg			
2012	183	146	37
2013	126	107	19
I-VI 2014	closed	closed	closed
Olsztyn			
2012	328	270	58
2013	297	236	61
I-VI 2014	130	100	30
Poznań			
2012	235	198	37
2013	381	302	79
I-VI 2014	209	174	35
Ostrów Wlkp.			
2012	164	150	14
2013	121	108	13
I-VI 2014	closed	closed	closed
Koszalin			
2012	121	109	12
2013	29	20	9
I-VI 2014	108	85	23
Szczecin			
2012	364	304	60
2013	330	242	88
I-VI 2014	122	90	32

5.4.5. Youth educational centres

A juvenile's placement at a youth educational centre is one of the means that may be ordered by court in a juvenile delinquent's case, after the proceedings are conducted.

Youth educational centres are designed for socially maladjusted children and adolescents who need to study in a special academic setting, and require special working, educational and social rehabilitation methods.

Youth educational centres are tasked with, among other things, eliminating the causes and effects of social maladjustment, and preparing their wards to live within society's social and legal norms.

Youth educational centres are designated exclusively for those juveniles whose placement at the centre was ordered by the Family Court under JJA as an educational measure.

These facilities are set up by a resolution of a local government authority. The Education System Act¹ allows for the establishment of such centres also by non-public bodies (Article 5). Youth educational centres are supervised by the Ministry of National Education (Article 2, para. 5 of the Education System Act).

The activities of youth educational centres are governed primarily by the Regulation of the Minister of National Education on the detailed rules of managing the youth educational centres' operations, and the admissions, transfers, releases and stay of juveniles placed in the centres from 27 December 2011.² The other key piece of legislation applicable to the centres is the Regulation of the Minister of National Education on the types and detailed regulations of operations of public institutions, the conditions of children and adolescents' stay in such institutions and the amount and terms of payment made by parents for their children's stay in such institutions from 12 May 2011.³

The regulations governing the operations of youth educational centres have failed to address the issue of visual monitoring in these facilities.

There are two basic types of youth educational centres:

- 1) For social rehabilitation and education – these centres are run for children and youth who are socially maladjusted and who require special organisation of instruction, methods of work, education and social rehabilitation, and
- 2) For social rehabilitation and revalidation – those centres are geared towards children and youth with mild intellectual disabilities.

As a rule, there are separate centres for boys and girls within those two types of institutions. There are, however, seven mixed-sex youth educational centres in Poland. There are also institutions that combine the two functions – social rehabilitation and education with social rehabilitation and validation.

Overall, there are more male-only institutions – 61, compared to only 25 youth educational centres for girls.

Below is a breakdown of the different types of youth educational centres in Poland:

¹ Education System Act (1991).

² Regulation of the Minister of National Education on the detailed rules of managing the youth educational centres operations, and the admissions, transfers, releases and stay of juveniles placed in the centres (2011).

³ Regulation of the Minister of National Education on the types and detailed regulations of operations of public institutions, conditions of children and adolescents' stay in such institutions and the amount and terms of payment made by parents for their children's stay in such institutions (2011).

- social rehabilitation and education centres for girls – 20;
- social rehabilitation and education centres for boys – 49;
- mixed-sex social rehabilitation and education centres – 7;
- social rehabilitation and revalidation centres for girls – 1;
- social rehabilitation and revalidation centres for boys – 5;
- social rehabilitation and education and social rehabilitation and revalidation centres for girls – 4;
- social rehabilitation and education and social rehabilitation and revalidation centres for boys – 7.

Youth educational centres in numbers

Youth educational centres in Poland are generally located in all 16 provinces. However, there are significant differences in the numbers of youth educational centres across the provinces. For example, there is only one youth educational centre in Lubuskie province, and as many as 19 in Mazowieckie province.

Table 8: Numbers and capacity of youth educational centres (2012-2014)

School year ¹	Young offender institutions		Youth educational centres for girls	Youth educational centres for boys
	Number of centres	Number of beds	Number of beds	Number of beds
2012/2013	85	5,135	1,521	3,587
2013/2014	93	5,598	1,684	3,890

Source: Centre for Education Development

According to the Centre for Education Development at 5 April 2014 there were 5,450 juveniles in youth educational centres, including 3,798 boys and 1,654 girls. The occupancy rate was over 97%.

5.4.6. Psychiatric hospitals

The operations of psychiatric hospitals are governed by a number of legal acts, among them the Mental Health Act of 19 August 1994 and the Health Care Act of 15 March 2011.¹

Pursuant to Article 12 of JJA, in cases where at least two court-appointed psychiatrists diagnose a mental disability or mental condition, addiction to alcohol or other intoxicant or any other mental disorder in a juvenile, the court may order the juvenile's placement in a psychiatric hospital.

Furthermore, juveniles can be placed in a psychiatric hospital in circumstances described in the Mental Health Act. Under this Act, a juvenile may be placed in a psychiatric hospital on an involuntary basis (against their or their legal guardian's will) if their behaviour, induced by the juvenile's psychiatric condition, poses a threat to the life or health of others.

5.4.7. Nursing homes

Nursing homes are institutions providing assistance for people requiring 24-hour care due to their old age, health conditions or disabilities. As part of the provided services, nursing homes deliver resources to meet the basic living needs of their residents and also guarantee

¹ Mental Health Act (1994), Health Care Act, (2011).

Map 3. Youth Educational Centres in Poland



them proper conditions of care, support and education. Apart from being operated and funded by the state, nursing homes can be run by private entities such as foundations or religious associations.

The setting up and operation of a nursing home requires the prior permission of the competent administrative body. Such permission may be obtained also by private organisations.

JJA allows for the placement of a juvenile with a severe mental disability in a nursing home as long as there is a need to provide the juvenile with educational care. In these cases, the head of the nursing home is obliged to inform the court, at least once every six months, about the juvenile's condition and progress in their treatment. The head of the nursing home is obliged to inform the court immediately upon noticing that a juvenile's stay in the nursing home is no longer necessary due to a change in their health status. The court must consider whether or not an extension of a juvenile's stay in a nursing home is required on the basis of an expert medical opinion, such review being made at least once every six months.

Detailed regulations concerning the operation and organisation of nursing homes are set forth in the Social Welfare Act of 12 March 2004.¹ Rules for juvenile placement in nursing homes were established in the Regulation of the Minister of Labour and Social Policy of 5 May 2011 on the detailed manner and procedure of juvenile referrals, admissions, and transfers to and releases from nursing homes, and on the juvenile stay in nursing homes.²

Table 9: Numbers of juveniles in nursing homes and psychiatric institutions (2008-2012)

Year	Number of juveniles placed in nursing homes and psychiatric hospitals under Article 12 of JJA
2008	231
2009	244
2010	304
2011	351
2012	341

¹ Social Welfare Act (2004).

² Regulation of the Minister of Labour and Social Policy on the detailed manner and procedure of juvenile referrals, admissions, and transfers to and releases from nursing homes, and on the juvenile stay in nursing homes (2011).

2. FAIRNESS IN JUVENILE JUSTICE PROCEEDINGS – FINDINGS OF CASE FILE RESEARCH

Wojciech Jasiński, Artur Pietryka

1. Introduction: Purpose and assumptions of the case file research in juvenile justice

JJA of 26 October 1982 has been in force for over 30 years. Over the years, not only has this piece of legislation been subject to numerous fundamental amendments, but the social and legal realities in Poland have evolved significantly. Despite continuous efforts to adjust JJA to the ever-changing reality, the key solutions applied therein have been and still are subject to criticism. Even though the criticism focused on different aspects at different times,¹ it essentially touched on all the cornerstones of Polish juvenile law, from the model assumptions² through the key notions used in JJA (“juvenile”, “anti-social and delinquent behaviour”) to the manner of shaping and regulating the issues related to the legal procedure.³ Additionally, the fact that JJA is subject to permanent amendments is also being objected to, and rightly so, as this act should be replaced with a new one that would suit the needs of the contemporary juvenile justice system.⁴ It is symptomatic that even the most recent extensive amendment to JJA, which was effected by way of the Amendment to JJA and Certain Other Acts of 30 August

1 Stańdo-Kawecka, B. (2007), “Prawo karne nieletnich. Od opieki do odpowiedzialności”, Warsaw, p. 326.

2 For general information concerning the juvenile responsibility models cf. Stańdo-Kawecka, B. (2007), “Prawo karne nieletnich. Od opieki do odpowiedzialności”, Warsaw, Walczak-Żochowska, A. “Modele postępowania z nieletnimi” [in:] Bieńkowska, B. T., Szafrński, D. (2013) (eds.), *Problemy prawa polskiego i obcego w ujęciu historycznym, praktycznym i teoretycznym*, Vol. 4, Warsaw, pp. 251-264

3 Gaberle, A. (2009) “O wykładni i stosowaniu art. 16 u.p.n., czyli jak nie należy konstruować przepisów prawnych” [in:] Hofmański, P., Waltoś, S. (eds.), “W kręgu prawa nieletnich. Księga pamiątkowa ku czci Profesor Marianny Korcyl-Wolskiej”, Warsaw, pp. 269-284, Konarska-Wrzošek, V. (2013), “Prawny system postępowania z nieletnimi w Polsce”, Warsaw, pp. 282-307, Konarska-Wrzošek, V., “Rozważania de lege ferenda w kwestii wieku odpowiedzialności karnej i systemu postępowania z nieletnimi” [in:] Gardocki, L., Królikowski, M., Walczak-Żochowska, A. (2005) (eds.), “Gaudium in litteris est. Gaudium in litteris est. Księga jubileuszowa ofiarowana Pani Profesor Genowefie Rejman z okazji osiemdziesiątych urodzin”, Warszawa, pp. 209-220, Korcyl-Wolska, M. (2001) “Postępowanie w sprawach nieletnich w Polsce”, Kraków, pp. 424-433, “Eadem, Uwagi o konstytucyjnie gwarantowanych prawach obywatelskich nieletnich w świetle rozwiązań przyjętych w ustawie o postępowaniu w sprawach nieletnich z dnia 26 października 1982 r.” [in:] Kardas, P., Sroka, T., Wróbel, W. (2012) (eds.), “Państwo prawa i prawo karne. Księga Jubileuszowa Profesora Andrzeja Zolla”, Vol. 2, Warsaw, pp. 147-163, Mudrecki, A. (2008), “Prawo nieletniego do rzetelnego procesu przed sądami rodzinnymi”, Opole, pp. 155-160.

4 Stojanowska, W., Słyk, J., “Ekspertyza prawna dotycząca rządowego projektu zmiany Ustawy o postępowaniu w sprawach nieletnich oraz ustawy – Prawo o ustroju sądów powszechnych” (*Druk nr 1130*), pp. 1-4 and the extensive bibliography list cited therein - <http://orka.sejm.gov.pl/rexdomk7.nsf/Opdodr?OpenPage&nr=1130>

2013¹ (hereinafter: Act of 30 August 2013) and which introduced a fundamental change of the model of procedure and a number of regulations to reinforce the juvenile's right to defence, has not avoided criticism at certain core areas.²

While criticism of existing solutions is normal and desirable, its intensity and extent is a cause of concern. As is the fact that proposals for an all-embracing reform of Polish juvenile law prepared by experts have never been translated into law.³

While assessing JJA, one cannot overlook the fact that Polish normative solutions give rise to misgivings from the perspective of international law. Accusations that flout international standards, which shape the child's position in proceedings of a repressive nature, have been frequently raised in the juvenile law doctrine.⁴ In 2010 ECtHR also criticised the functioning of procedural guarantees in the juvenile justice system and found in *Adamkiewicz v. Poland*⁵ that proceedings against the applicant violated Article 6(1) of ECHR due to the failure to ensure the impartiality of the court that examined the applicant's case and in violation of Article 6(3)(c) taken in conjunction with Article 6(1) ECHR on account of the fact that the applicant had not obtained the proper aid of a defence lawyer during the investigation and that the applicant's statements made during the preliminary investigation had been admitted by the courts at the trial. One should bear in mind that it was not the task of ECtHR to give an abstract evaluation of Polish legislation governing juvenile justice, a fact explicitly emphasized by the panel of judges.⁶ ECtHR only examined the manner in which proceedings against the applicant were actually conducted. Nevertheless, one cannot really overlook the fact that violations found by ECtHR were, to at least some extent, a consequence of laws effective in Poland.⁷

Adamkiewicz v. Poland is just one of the manifestations of ECtHR's growing interest in juvenile justice. ECtHR referred extensively to this issue in its judgement of 14 November 2013 in *Blokhin v. Russia*⁸ where the Court examined legal measures applied in Russia towards juvenile offenders who commit delinquent acts before reaching the statutory age of criminal responsibility (the applicant was 12). In that case, ECtHR examined the manner in which law enforcement bodies dealt with detained juvenile offenders, the conditions in which they were questioned (including, in particular, access to professional legal assistance⁹), the lawfulness

1 Amendment to the Juvenile Justice Act and Certain Other Acts (2013).

2 Stojanowska, W., Słyk, J., "Ekspertyza prawna dotycząca rządowego projektu zmiany Ustawy o postępowaniu w sprawach nieletnich oraz ustawy – Prawo o ustroju sądów powszechnych", Korcyl-Wolska, M., "Opinia w przedmiocie projektu ustawy o zmianie ustawy o postępowaniu w sprawach nieletnich oraz ustawy" – *Prawo o ustroju sądów powszechnych* available at: <http://orka.sejm.gov.pl/rexdomk7.nsf/Opdodr?OpenPage&nr=1130>.

3 As regards efforts taken in recent years to reform juvenile law in Poland, cf. V. Konarska-Wrżosek, *Projektowane zmiany w zakresie postępowania z nieletnimi w Polsce*, PiP 2011, issue 4, pp. 18-34, M. Korcyl-Wolska, *Uwagi na temat rozwiązań przyjętych w projekcie ustawy – Prawo nieletnich z 2008 r.* [in:] P. Hofmański (ed.), *Węzłowe problemy procesu karnego*, Warszawa 2010, p. 188-192.

4 Cf. e.g., Korcyl-Wolska, M. "Opinia w przedmiocie projektu ustawy o zmianie ustawy o postępowaniu w sprawach nieletnich oraz ustawy", p. 3, Eadem, "Postępowanie w sprawach nieletnich w Polsce", pp. 357-423, A. Mudrecki, "Prawo nieletniego do rzetelnego procesu przed sądami rodzinnymi", p. 105-108, Stojanowska, W., Słyk, J., "Ekspertyza prawna dotycząca rządowego projektu zmiany Ustawy o postępowaniu w sprawach nieletnich oraz ustawy – Prawo o ustroju sądów powszechnych", p. 9-10.

5 CEDH, *Adamkiewicz c. Pologne*, No. 54729/00, Arrêt du 2 Mars 2010.

6 Cf., § 106.

7 It had been actually noted by the Council of Ministers who – as a result of the judgement in the *Adamkiewicz* case, among other things – prepared an amendment to the Juvenile Justice Act, which was eventually adopted as the Act Amending the Juvenile Justice Act and Certain Other Acts of 30 August 2013. Regarding the defects of Polish legal regulations and their consequences in *Adamkiewicz v. Poland* also compare: Stojanowska, W., Słyk, J., "Ekspertyza prawna dotycząca rządowego projektu zmiany Ustawy o postępowaniu w sprawach nieletnich oraz ustawy – Prawo o ustroju sądów powszechnych", pp. 7-9.

8 ECtHR, *Blokhin v. Russia*, No. 47152/06, Judgment of 14 November 2013.

9 ECtHR, *Dayanan v. Turkey*, No. 7377/03, Judgment of 13 October 2009.

of the juvenile offender's placement in detention (in the case in question, the applicant was in detention for 30 days), and the fairness of the proceedings concerning his detention (the issue of relying on evidence for which the applicant was denied the opportunity to attend and examine the witnesses).

Noting the circumstances outlined above, it would seem reasonable to perform a thorough analysis of regulations concerning juvenile justice proceedings. This study does not, however, present the issue of juvenile justice proceedings in a comprehensive manner. The purpose of this study is only to give a diagnosis of the course of the proceedings from the perspective of the standards of judicial fairness. Therefore, only a fraction of the vast area of juvenile law was examined as part of the research. Authors focused on the practical aspects of proceedings in juvenile justice.

The juvenile case file research aims at enriching the scientific reflection on the functioning of that area of justice system. With the primary goal being the examination of the actual course of proceedings in juvenile cases, the analysis performed as part of the present project covered 105 proceedings in juvenile cases before seven district courts in Poland.

The juvenile case files were examined between August and November 2013 by HFHR volunteers¹ and Artur Pietryka, attorney-at-law. Research was conducted in the following district courts: 1) for the Capital City of Warsaw in Warsaw, 2) for the Śródmieście District in Łódź, 3) for the Śródmieście District in Wrocław, 4) for the Grunwald and Jeżyce Districts in Poznań, 5) for the Gdańsk-Południe District in Gdańsk, 6) in Gdynia, and 7) in Białystok.

Fifteen cases selected at random were examined in each of the above mentioned district courts. All proceedings selected for research were closed by the court of first instance in 2012. Ten cases concluded in the guardianship and educational proceedings were selected at random in each of the courts, including five cases concerning anti-social and delinquent behaviour of the juvenile and five cases concerning the juvenile's responsibility for committing a punishable act. Moreover, five cases selected at random that concluded in correctional proceedings were examined.

Two factors were taken into account when selecting the district courts for the research. First of all, the cases selected for the research originated from district courts in large cities with a population in excess of 240,000. The cities selected for the study are among twelve cities with the highest population in Poland. The additional criterion that was decisive for choosing a district court for the research was the inflow of cases which were closed in 2012 in correctional proceedings. It needs to be pointed out that the number of cases in 2012 which were closed in the first instance in correctional proceedings was lower than five in the absolute majority of district courts in Poland.

The purpose of the research was to comprehensively analyse the mainstream of the juvenile justice system. It is for that very reason that researchers focused on proceedings that ended before the Family Court in the guardianship and educational proceedings and in the correctional proceedings. Those proceedings conducted before the criminal court, in keeping with JJA (Articles 16(2) and 18(1)), are outside the scope of analysis.² With the research area so defined, researchers examined all the procedural acts³ taken until the case had been resolved by

1 The authors wish to express their gratitude to Wojciech Dzedzej (Gdynia), Adrian Jastrzębowski (Gdynia, Gdańsk), Piotr Kowalski (Wrocław), Anna Mathews (Poznań), Tymoteusz Mądry (Poznań), Paweł Nobis (Gdańsk, Gdynia), Radosław Parzych (Łódź), Katarzyna Wiktorzak (Białystok) and Marcin Wolny (Warszawa) for their time and dedication while examining the juvenile case files.

2 In that type of proceedings the juvenile over 15 is treated like an adult and can be punished according to the Criminal Code provisions.

3 Procedural act is any type of action undertaken by the state organ (e.g. Police officer, prosecutor, court) or a party in the

the court of first instance. Thus, the analysis first focused on the acts of urgent need, provided such acts had been taken in a given case. Under Article 32e(1) of JJA, the police are empowered to gather and record evidence of anti-social and delinquent behaviour or commission of punishable acts in the cases of urgent need, and also to apprehend the juvenile offender, if necessary.¹ The next step was to focus on the preliminary investigation conducted by the family judge as part of the case. The purpose of that phase of the procedure is to determine whether or not there is any evidence to prove the juvenile's anti-social and delinquent behavior. Also to establish whether or not the punishable act was actually committed by the juvenile if the case concerns such an act, and also whether there is any need to apply guardianship and educational measures or correctional measures towards the juvenile delinquent.

The final element of the research was the judicial proceedings which may be conducted by the Family Court either as guardianship and educational proceedings or as correctional proceedings.² The proceedings are conducted by the family court with a view to decide on the anti-social and delinquent behaviour of the juvenile delinquent or on the commission of a punishable act. As previously stressed, research generally focused on the stage leading to the family court of first instance entering its ruling. However, to complete the review, researchers also examined whether or not the ruling given in the case had been appealed by the eligible parties. That fact is undoubtedly of major importance for the parties' evaluation of the reasonableness of the ruling.

For the analysis of the above mentioned proceedings in juvenile justice, the questionnaire form for the case file research was sub-divided into 8 sections. The first three sections concerned the basic details of the case subject to analysis (the court hearing the case, the court division, the case number and the subject matter) and the manner of obtaining information on the suspected punishable act or anti-social and delinquent behaviour of a juvenile. Section four of the form contained questions concerning acts of urgent need. Section five referred to the stage at which the decision was taken to open the proceeding referred to in Article 21 of JJA. Section six contained questions concerning the preliminary investigation, whereas the remaining sections covered the judicial proceedings (section seven), including the guardianship and educational proceedings and correctional proceedings (section eight).

The course of the proceedings which were subject to analysis was examined from the viewpoint of the fair trial standards arising primarily from Article 42(2) and (3) and Article 45 of the Constitution of the Republic of Poland³ and from the sources of international law, notably Article 14 of the International Covenant on Civil and Political Rights (ICCPR), Articles 47 and 48 of the EU Charter of Fundamental Rights and Article 6 of ECHR. Special attention was paid to the latter treaty. It goes without saying that the European Convention is of special importance within the European legal framework, not only because of the importance of ECHR as such, but also because of the judicial activity of ECtHR which interprets the Convention provisions and ensures that they are complied with. As ECtHR itself emphasizes, its role is to guarantee that the individual's rights and freedoms regulated in ECHR are not theoretic-

scope of the proceedings and according to legal provisions.

- 1 At the time of the research, the issue of acts of urgent need was regulated by Article 37(1) of the Juvenile Justice Act; that article had already been derogated and was only slightly different from the existing regulation in that regard. Under Article 37(1) of the Juvenile Justice Act, the Police or a state administrative body acting pursuant to a special authorisation shall gather and record evidence of punishable acts in cases of urgent need, and apprehend the juvenile offender if necessary.
- 2 With the Act of 30 August 2013 the legislator abolished the distinction between the preliminary investigation and the judicial examination proceedings which existed at the time the case file research was conducted.
- 3 It is worth noting that the constitutional standard of the right to a court is also shaped by the regulations governing the judicial system and providing for two instances of the court proceedings.

cal or illusory, but practical and effective.¹ In its efforts to achieve that goal, ECtHR not only provides a far-reaching interpretation of the Convention's provisions but also builds on the Treaty's language with its own case law.²

An analysis of the wording of Article 45 of the Constitution of the Republic of Poland does not leave any room for doubt – the article does apply to the juvenile justice system, among other things. The regulation indicates specifically that everyone, including a minor, shall have the right to the standards it guarantees.

As regards these standards, Article 45 of the Constitution of the Republic of Poland gives an explicit list of the following rights: 1) the right to a fair hearing of the case, 2) the right to a public hearing of the case (with the exceptions listed in Article 45(2) of the Constitution of the Republic of Poland), 3) the right to a public announcement of the judgement, 4) the right to have the case heard without unnecessary delay, and 5) the right to have the case heard before a competent, impartial and independent court. Under Article 42(2) and (3) of the Constitution of the Republic of Poland, everyone shall have the right to defence at all stages of the proceedings and everyone shall be presumed innocent until their guilt is determined with a final court judgement.

It is impossible to discuss here thoroughly the meaning and the content of the right to a court arising from the Constitution of the Republic of Poland. Therefore, those who are interested in the topic are referred to the extensive bibliography on the issue.³ It is, however, worth emphasising that, apart from the guarantees of a fair hearing which are explicitly expressed in Article 45 of the Constitution, the Constitutional Tribunal also derives from that provision certain guarantees that are not directly evident. For example, in the Constitutional Tribunal's rulings emphasis is given to the issue of the party's attendance at the proceedings which is of significance from the perspective of judicial procedures. The Tribunal argues that "a fair judicial procedure should provide the parties with the procedural rights that are adequate to the subject matter of the proceedings which are being conducted.

The legislator should ensure that the individual has the right to a hearing in each case. Notably, the individual must be afforded the ability to present their arguments and submit evidentiary motions. The party's right to personal attendance at procedural acts is an important element of a fair judicial procedure. The legislator may restrict the parties' attendance at certain procedural acts. However, there should always be a rationale behind such restrictions.⁴ Therefore, while analysing the rights that comprise the constitutional right to a court, one should bear in mind not only the explicit language of the Constitution but also the rights expressed implicitly.

Article 6 of ECHR is of great significance for the determination of the standards of fairness in juvenile justice. Apart from elements that have been outlined here earlier while discussing the constitutional right to a court, Article 6 stipulates that everyone shall have the right: 1) to be informed promptly, in a language they understand and in detail, of the nature and cause of the accusation against them, 2) to have adequate time and facilities to prepare their defence, 3) to defend themselves in person or through legal assistance of their own choosing (or, if they lack sufficient means to pay for legal assistance, to be given it free and when the interests of justice so require), 4) to examine or have examined witnesses against them and to obtain the attendance and examination

1 ECHR, *Alenet de Ribemont v. France*, No. 15175/89, Judgment of 10 February 1995, § 35.

2 Balcerzak, M. (2008) "Zagadnienie precedensu w prawie międzynarodowym praw człowieka", Toruń, p. 146.

3 Wiliński, P. (2011) "Proces karny w świetle Konstytucji", Warszawa, idem (ed.), *Zręczony proces karny*, Warszawa 2009, Chapters VII and VIII.

4 Constitutional Tribunal, Ruling of 11 June 2002, SK 5/02, OTK ZU 2002/A, no. 4, item 41.

of witnesses on their behalf under the same conditions as witnesses against them, 5) to have the free assistance of an interpreter if the defendant cannot understand or speak the language used in court.¹

When interpreting the language of Article 6 of ECHR, ECtHR – in a similar way to the Constitutional Tribunal interpreting the Constitution – points out that the right to a fair trial does not only provide guarantees that are explicitly referred to in that provision but also other guarantees that are referred to therein implicitly. One such right is the right not to incriminate oneself. While this right is not provided for explicitly in ECHR, being an international standard, it is undoubtedly – as ECtHR emphasises – an integral element of a fair criminal trial concept regulated in Article 6 of ECHR.² The right to a reasoned judgment is yet another example of a right which the ECtHR believes derives from Article 6 (1) of the ECHR.³ Therefore, the panel's failure to refer to issues raised by the applicant before a domestic court is a violation of the right to a fair trial, which in turn gives rise to doubts whether or not the court had actually taken into consideration the argumentation provided by a party to the proceedings.⁴

In the context of the analysis of juvenile justice proceedings Article 6 of ECHR applies both to the determination of civil rights and obligations and to the determination of reasonableness of any criminal charges against a person. It might appear at first glance that the standards set out in ECHR do not apply to cases concerning juveniles. It has to be noted, however, that the terms cited above, notably the civil rights and obligations and the criminal charges, are interpreted by ECtHR autonomously rather than within the framework of the meaning ascribed to those terms under domestic law. As a result, the fact that the standards set out in Article 6(1) of ECHR, and, in particular, those set out in Article 6(3), apply to the correctional proceedings did not give rise to any doubts on the part of the judges' panel, e.g. in the above cited *Adamkiewicz v. Poland* judgement. However, there might be some controversy in the case of guardianship and educational proceedings. It is doubtful that the proceedings would be considered criminal proceedings within the meaning of ECHR and it seems equally doubtful when interpreting it within the notion of civil rights and obligations. Regardless of the solution to the above dilemma, one must not forget that guardianship and educational proceedings are covered by the standards of judicial fairness that arise from the Constitution of the Republic of Poland, and that largely coincide with, or even surpass, standards set out in ECHR.

The sheer breadth of the issue of judicial fairness makes it extremely difficult to analyse all its aspects at the same time. It is not only because of the pluralism of rights which derive from the above mentioned provisions of the Constitution and of ECHR. It is also worth noting that nowadays procedural fairness is understood on many levels. Contrary to what may be inferred from the literal reading of Article 6 of ECHR, it does not create standards that are addressed only to the defendant (a party to a dispute under civil law). In the case of repressive proceedings, it is only natural that the person accused of committing a prohibited act remains at the centre of attention. Nevertheless, it is more often the case that victims also benefit from the requirements of procedural fairness.⁵ It is furthermore argued that procedural fairness must

1 For more detailed discussion of the guarantees contained in Article 6 of the European Convention cf. the following in particular: Hofmański, P., Wróbel, A. [in:] L. Garlicki (ed.), "Konwencja o Ochronie Praw Człowieka i Podstawowych Wolności. Komentarz do artykułów 1-18," Vol. 1, p. 241-461, Nowicki, M. A. (2013) "Wokół Konwencji Europejskiej", Warszawa, p. 509-636.

2 ECtHR, *John Murray v. the United Kingdom*, No. 18731/918, Judgment of February 1996, § 45.

3 ECtHR, *B. and P. v. the United Kingdom*, No. 36337/97 and 35974/97, Judgment of 24 April 2001, § 32.

4 ECtHR, *Higgins and others v. France*, No. 20124/92, Judgment of 19 February 1998, §§ 42-43; ECtHR, *Ruiz Torija v. Spain*, No. 18390/91, Judgment of 9 December 1994, §§ 29-30.

5 Wąsek-Wiaderek, M., "Prawo do rzetelnego procesu dla ofiar przestępstw na gruncie art. 6 Konwencji o ochronie praw człowieka i podstawowych wolności – rzeczywistość czy postulat?" [in:] C. Mik (ed.), *Prawa człowieka w XXI wieku – wy-*

account for the best interests of the witnesses who appear in the case. In its case law ECtHR underlines that to evaluate the overall fairness of the proceedings, the Court will look at the proceedings as a whole having regard to the accused's right to defence, but also to the interest of the public and the victims that the crime is properly prosecuted and, where necessary, to the rights of witnesses.¹

In view of the above, it was impossible for the juvenile case file research in district courts under the present project to examine all aspects of the right to a fair criminal trial. The review of case files focused on fairness in juvenile proceedings and the relevant guarantees for minors. This approach remains in line with the project's general objectives and, by extension, results in a need to analyse the guarantees developed for representatives of a minor (defence lawyers) as well as parties to juvenile proceedings, notably the minors' parents and guardians.

The questionnaire devised for research purposes contained questions aimed at determining the practical functioning of the following guarantees which comprise fairness in proceedings: 1) providing the juvenile with information regarding the rights and obligations in trial, 2) the exercise of the right to defence with respect to access to the case files, initiating and participating in procedural acts, as well as the right to appeal judicial decisions, 3) the right to legal assistance, 4) the right to reasoned decisions concerning the juvenile's rights and freedoms, 5) the reasonable time of the proceedings concerning a juvenile, and 6) the admission of the public in juvenile justice. The issues cited above seem to be of key significance for determining the extent to which a minor is a subject rather than the object of the proceedings in the day-to-day practice of the justice system, and the extent to which the juvenile is afforded the ability to be heard and to take an active part in the procedural acts so as to defend their rights. Therefore, the analysis of the above mentioned issues helps to determine whether or not the required level of procedural safeguards has been met, and – by extension – whether or not the proceedings as a whole meet the requirements of fairness. It is for this reason that research focused on the above mentioned aspects of procedural fairness.

To conclude, it is worth noting that the research is one of the few analyses of the practical functioning of juvenile justice proceedings that have been conducted in the last few years and that have been published in the form of reports or scientific studies.² One can only hope that the present research will contribute to a broader observation than to date of the practical aspects of the juvenile judicial system in Poland. This would be most desirable due to the model changes in the course of the juvenile justice proceedings which were introduced by way of the Act of 30 August 2013. Especially that it would be worth looking into and evaluating whether or not the changes have been a step in the right direction.

zwania dla ochrony prawnej, Toruń 2005, pp. 145-159, *Eadem*, "O dostępie pokrzywdzonego do sądu w prawie europejskim i w polskiej procedurze karnej" [in:] P. Kardas, W. Wróbel, T. Sroka (eds.), *Państwo prawa i prawo karne. Księga jubileuszowa Profesora Andrzeja Zolla*, Vol. II, Warszawa 2012, pp. 1825-1840.

1 ECHR, *Al-Khawaja and Tahery v. the United Kingdom*, No. 26766/05 and 22228/06, Judgment of 15 December 2011, § 118.

2 The following prove exceptions in that respect: Czarnecka-Działuk, B., Drapała, K., Więcek-Durańska, A. *Analiza postępowań karnych oraz przed sądem dla nieletnich o wybrane czyny karne popełnione przez osoby w wieku 15-17 lat* - <http://www.iws.org.pl/badania/raporty>; Mudrecki, A. *Prawo nieletniego do rzetelnego procesu przed sądami rodzinnymi*, Opole 2008, pp. 109-160. There were two other studies created at the Institute of Justice which concerned expert witness opinion in juvenile cases: P. Ostaszewski, *Opinie sporządzane przez rodzinne ośrodki diagnostyczno-konsultacyjne w sprawach opiekuńczych i rozwodowych*, idem, *Opinie diagnostyczne w sprawach nieletnich* - <http://www.iws.org.pl/badania/raporty>;

2. Research findings

Only a small number of juvenile cases ended with guardianship and educational proceedings in which the juvenile was represented by a defence lawyer. It may be also concluded that an adult's attendance at the juvenile's examination during proceedings is a rule. Exceptions to that are rare in practice, although one notices that they occur more frequently in correctional proceedings than in guardianship and educational proceedings.

According to the research, the juveniles had not always received accurate information about their rights. Moreover, the parents or guardians of the juveniles had not always been notified of the arrest. What is most striking in the case of the preliminary investigation and judicial proceedings is the almost complete lack of interest of the juveniles and their parents (guardians) when it comes to initiating procedural acts, obtaining information on evidence gathered in the course of the proceedings or questioning decisions taken about the case.

2.1. Right to information on the juvenile's rights and obligations

To analyse the issue of access to information on the juvenile's rights and obligations, it is first necessary to look into the issue of advising the minor about their rights and obligations during questioning in the case of acts of urgent need. The very first questioning is undoubtedly extremely important when it comes to the ability to actually exercise the right to defence.¹ In cases concerning anti-social and delinquent behaviour, the juveniles were questioned in seven cases. In most of these cases (four), juveniles were advised about their rights in writing (with the form known as form MS 82/1). In two cases, there was no evidence on the record of advising the juvenile as to their rights and obligations. In one case, the juvenile was incorrectly advised of the possible application of the measures provided for in JJA, of criminal responsibility for making false statements and concealment of facts, and of the rights provided for under Articles 179-180 (waiver of the state secret privilege, waiver of official or professional secrecy), Article 182 (refusal to testify), Article 183 (evading reply), Article 185 (release from the duty to give testimony), and Article 191(3) of the Polish CrPC (non-disclosure of data). Regarding the cases concerning responsibility for a punishable act which were then closed in guardianship and educational proceedings, juveniles were questioned as part of actions of urgent need in 30 cases. In nearly all those cases, juveniles were advised of their rights and obligations in writing on the above mentioned official form (27 cases).

In one case, the authorities failed to advise all the juveniles appearing in the case, and in 2 cases, there was no evidence in the case files of advising the juveniles of their rights and obligations. In the case of correctional proceedings, it was a rule that juveniles were advised of their rights. In 26 cases, the advice was given based on the abovementioned form MS 82/1, and in one case, the juvenile was only advised of the right to refuse to testify. In two cases, the advice form covered also the rights of the arrested juvenile. In another two cases, there was no evidence on the record of advising the juveniles as to their rights and obligations.

The above data imply that in nearly all cases the juveniles had at least a theoretical possibility of learning their rights. There were, however, cases when they had not been advised of their rights and obligations at all or had been given the wrong advice. Even though such cases are in a clear minority in the research sample, they must not be ignored, especially as there is a standardised template form for such advice. The fact that there were such occurrences indicates that there is a need to provide police officers who deal with juveniles with the required knowledge concerning the course of procedure in such cases.

¹ It is confirmed by the ECtHR case law which underlines very strongly the importance of a lawyer's presence during the questioning of a suspect from the perspective of that person's right to defence. Cf. ECtHR, *Salduz v. Turkey*, No. 36391/02, Judgment of 27 November 2008, §§ 50-55.

The second issue subject to examination as part of the case file research was the right to be informed of the opening of proceedings involving a juvenile, including in particular the advice of the right to appeal against the decision to institute the proceedings. In all of the analysed proceedings (70 guardianship and educational proceedings and 35 correctional proceedings), there was a joint ruling on the opening of a proceeding (Article 21(1)) of JJA¹) and on the opening of the preliminary investigation (Article 34(1) of JJA²). However, only two out of the 70 guardianship and educational proceedings included a clear indication of the extent to which the ruling could be appealed.

Regarding the correctional proceedings, only in two instances did case files contain information forms indicating explicitly the extent to which the ruling could be appealed. In 18 cases there was no indication of the extent to which the ruling to institute the proceedings could be appealed, whereas in 15 cases there was no such advice in the records at all. Having regard to the above, it needs to be pointed out that a complaint against the decision to institute the proceedings was filed in only one out of the total 105 cases, and the complaint was dismissed.

While analysing the issue of giving notice of the opened proceedings against a juvenile, it is worth noting that in the analysed cases, the issue of notifying the parties of the opening of the proceedings was treated differently. The case files concerning anti-social and delinquent behaviour show that the juveniles' parents or guardians were notified of the initiation of the proceedings in 27 out of 35 cases. In nine cases, it was the juvenile who was given the notice. In eight cases, there was no evidence on the record of advising any of the above persons. The case files concerning responsibility for a punishable act show that the parents or guardians of a juvenile were notified of the initiation of the proceedings in 28 out of 35 cases. In 10 cases, it was the juvenile who was given the notice. In six cases, there was no evidence on the record of advising any of the above persons. As regards correctional proceedings, the files of 31 cases contained the information concerning the notice of the opening of proceedings. In 30 of those cases, both parents or one parent, or guardians or foster parents, as the case may be, were notified of the opening of the proceedings. In 10 cases, it was the juvenile who was given the notice.

In general, it can be concluded that the duty to inform was properly fulfilled within the scope discussed herein. It is also worth noting that in some cases it was the juvenile who had been notified of the opening of the proceedings, even though there is no formal obligation to do so under Article 23(1) of JJA. Bearing in mind the above and also the juvenile's right to appeal against the decision to institute the proceedings³ that does not seem to be the right solution.

The third issue worth highlighting is related to the notification of the parties to the proceedings of the manner of closing the investigation part. In cases concerning anti-social and delinquent behaviour, the ruling to that effect was announced or delivered to the juvenile and their parents or guardians in 26 out of 35 cases. In five cases the ruling was only delivered to the juvenile's parents. In three cases there was no information on file concerning the delivery or announcement of the ruling. In one case the ruling had not been delivered to (announced to) the juvenile or their parents. In that case, the parties were only delivered the summons at the hearing of the Family Court including a notice of the ruling.

In cases concerning the juvenile's responsibility for committing a punishable act, the ruling to that effect was announced or delivered to the juvenile and their parents (parent) or guardian in 28 out of 35 cases. In five cases the ruling was only delivered to the juvenile's parents. In one case, the ruling was delivered to the juvenile and his brother. In another case the rul-

1 As worded prior to the coming into force of the Juvenile Justice Act (2013).

2 *Ibid*

3 Arising from the Juvenile Justice Act (1982), Art. 21(3) in effect until 2 January 2014.

ing was only delivered to the juvenile's defence lawyer. As regards the proceedings that ended pursuant to the correctional procedure, there was only one case where the juvenile's parents were not delivered the ruling, whereby the case was referred to correctional proceedings, and there were only five cases when the ruling was not delivered to the juvenile concerned.¹

The practice shows that in most cases the parties had been properly notified of the manner of concluding the preliminary investigation. It has to be noted, however, that there were cases where the juvenile had not been given any notice thereof. Even though the ruling may not be appealed,² such conduct suggests that there is a tendency to treat the participant in the proceedings as an object rather than a subject of the proceedings.

In conclusion, it is worth referring to the issue of the right to be informed while applying arrest as a coercive measure. From among the 70 cases which ended by way of guardianship and educational proceedings, the juveniles were detained in only three cases. In two cases, the juveniles were advised about the reasons for the arrest. The parents or guardians of the juvenile were also advised of the juvenile's arrest. In one case, the police officer prepared an official report which did not show whether or not the juvenile had been advised of the reasons for the arrest and whether the parents had been notified thereof. In the latter case, the arrest was in violation of Article 40(3) of JJA.³ As regards cases that ended in correctional proceedings, the juveniles were arrested in 17 cases.

In all of those cases the juveniles were advised of the reasons for the arrest, and in 13 cases they were also advised about their rights. The advice was usually in conformity with the guidance given on the standard form that is handed to the arrested juvenile. The advice also contained information of the right to notify the school or employer about the arrest. It was usually the parents or guardians of the juvenile who were advised about the arrest. There were only four instances where that was not the case. It can be concluded therefore that the duty to inform the detainee of their rights was usually implemented properly. It does, however, give rise to concern that in a few cases juveniles had not received accurate information about their rights and that their parents or guardians had not always been notified about the arrest.

2.2. The exercise of the right to defence with respect to access to case files, initiating and participating in procedural acts, as well as the right to appeal against judicial decisions

The first issue that needs to be considered when analysing the exercise of the juvenile's right to defence is the course of questioning during the acts of urgent need taken by the police. Juveniles were questioned in seven cases involving anti-social and delinquent behaviour. In all of them, the juveniles were questioned at a police station or in the police headquarters. As a rule, the police ensured that there was at least one parent or guardian present during questioning.

There was only one case where the juvenile was questioned without the presence of their parents or guardians. Regarding cases concerning responsibility for a punishable act, the questioning was held in 30 out of 35 cases. In all of them, juveniles were questioned at a police station or at police headquarters. As a rule, police ensured that there was at least one parent or guardian present during questioning. It has to be noted, however, that there were five cases where neither a parent nor guardian was present during the juvenile's questioning. In each of these cases, the police ensured that one of the following persons was present: child counsellor

1 In the 2 cases which ended with the ruling to refer the case for guardianship and educational proceedings, all the rulings were delivered to the juveniles and their parents.

2 Under the state of law effective until 2 January 2014. Under the existing law, the family court does not give such a decision due to the remodelling of proceedings in juvenile justice.

3 Under the state of law effective until 2 January 2014.

(two cases), form teacher (one case), grandmother and aunt of the juvenile (one case), and the juvenile's brother (one case). It is also worth noting that in one case the questioning was held before a parent and a defence lawyer.

As regards cases concluded in correctional proceedings, it was a rule that there were other persons involved in the questioning apart from the interrogating officer, and the juvenile who was being questioned. That was the case in 26 occasions.¹ Usually (19 cases) it was one of the parents or a guardian of the juvenile. There were also other persons who took part in the questioning: psychologist (one case), school headmaster (one case), form teacher (one case), child counsellor (one number), carer from a children's home (one case), another police officer (one case),² or court-appointed guardian (one case). In all cases, the juveniles were questioned at a police station or at police headquarters.

The analysis reveals that even though the questioning was held by police officers at the police station or at police headquarters, juveniles in guardianship and custody cases were ensured the basic guarantee of their rights, notably that the questioning is attended by an adult. In nearly all cases the questioning was attended either by a parent or a guardian or by another adult. There was only one case where the juvenile was questioned without an adult being present. The situation was slightly worse in cases where correctional proceedings were conducted. In that group of cases, there were as many as seven cases in which the questioning was not attended by an adult person closest to the juvenile. However, there was only one case in which the presence of an adult was not ensured.

The guarantee concerning an adult's attendance during the interrogation of a juvenile was also analysed in the preliminary investigation. Out of 30 cases concerning anti-social and delinquent behaviour there was only one case where the interrogation of a juvenile was attended by neither a parent nor a legal guardian. In cases concerning the juvenile's responsibility for a punishable act, the juveniles were subject to an interrogation in 29 cases. The presence of at least one parent or guardian of a juvenile was ensured in 26 cases. In the remaining three cases, the interrogation of a juvenile was attended by the persons closest to him or her (brother, grandmother) and a carer from the youth educational centre. In 30 cases concluded in correctional proceedings, the juvenile was heard by a family judge. In 19 cases, the interrogation of a juvenile was attended by parents, foster parents or guardians. In two cases, there was no one else other than the juvenile at the interrogation. In nine cases, the interrogation of a juvenile was attended only by people other than the juvenile's parents or guardians.

The data show that while interrogations of juvenile in cases concluded in guardianship and educational proceedings were nearly always attended by adults close to the juvenile, it was not so frequent in cases concluded in correctional proceedings.

The presence of a juvenile's parent(s) or guardian during their examination was ensured in nearly all judicial proceedings. It was the case in 17 out of the 19 examinations of a juvenile in cases concerning anti-social and delinquent behaviour. The juveniles were heard in 20 cases concerning responsibility for a punishable act. The juvenile's parent(s) or guardian attended 19 out of 20 examinations. One examination of a juvenile was attended by a carer from a youth educational centre. In 33 cases that ended in correctional proceedings the juvenile was heard during a court session. It was a rule that they were accompanied by parents or guardians. There were only five cases where the parents or guardians did not attend the court sessions.

1 In one case, the questioning of one of the juveniles was attended by his mother; however, there were no third parties present during the questioning of the other juvenile.

2 In that case, the questioning was attended by a police officer and child counselor.

Having analysed this data, it may be concluded that the guarantee of an adult's attendance at the juvenile's examination held during a trial or at a court sitting during the judicial proceedings was respected. Exceptions to that rule are rare in practice although they seem to occur more frequently in correctional proceedings than in guardianship or educational proceedings.

All hearings before the family judge and Family Court took place in the courthouse. It is evident that Article 19 of JJA which provides that interrogation of a juvenile should take place in a setting resembling the natural environment of a juvenile, and, if the need arises – at the juvenile's residence, is only effective on paper.¹

A significant feature of the preliminary investigation and judicial proceedings is the almost complete inactivity of the juvenile and their parent (guardian) when it comes to initiating procedural acts, obtaining information on evidence gathered in the course of the proceedings or questioning decisions taken about the case. The ruling concerning the opening of juvenile proceedings was appealed in only one of 70 examined cases concerning anti-social and delinquent behaviour and commission of a punishable act. The case concerned a punishable act and the complaint was dismissed. There was no complaint about the ruling to initiate correctional proceedings.

During the preliminary investigation, neither the juveniles nor their parents or guardians complained about the acts violating the juvenile's rights in the guardianship and educational proceedings, including the arrest of the juvenile or the application of the interim measures under JJA.² Neither the juveniles nor their parents or guardians requested the ability to access case files or make a copy thereof. Neither the juveniles nor their parents or guardians complained about the excessive length of the preliminary investigation. As regards correctional proceedings, there was only one case where parents complained about the actions restricting the juvenile's rights – a ruling on the juvenile's placement at a youth shelter. In one case, the parent requested access to the case files and the possibility to make copies thereof; the request was approved. There was only one case where parents complained about the arrest of the juvenile.

Similar to the preliminary investigation, there is a striking complete lack of involvement of the parties in the judicial proceedings, including in particular the juvenile and their parents or guardians. There was not a single proceeding where they would take any steps to carry out any procedural acts. Out of the total 105 cases subject to analysis, there was only one case where the juvenile's mother requested access to the case files. The court granted the request.

It is also worth noting that in some cases neither the juveniles nor their parents attended the court sitting (court session) held at the Family Court. In cases concerning anti-social and delinquent behaviour, juveniles and their parents participated in the Family Court sittings in 25 out of 35 cases. In 10 cases neither the juveniles nor their parents were in attendance. In cases concerning the juvenile's responsibility for committing a punishable act, the juvenile and their parents attended the sittings before the Family Court in 24 out of the 35 examined cases. In five cases neither the juvenile nor their parents were in attendance. In three cases the court sittings were only attended by the parents, and in two cases only the juvenile appeared before court. In one case, the juvenile attended all court sittings and the parents were present only at two out of three sittings. As regards the juvenile's attendance in cases

1 Which confirms the practice outlined in the earlier research Mudrecki, A. (2008) "Prawo nieletniego do rzetelnego procesu przed sądami rodzinnymi", Opole, p. 131.

2 Pursuant to the Juvenile Justice Act, Art. 26, a juvenile may be placed under temporary supervision of a youth organisation or any other community organisation, a work establishment or a trustworthy person; or, should those measures prove insufficient, the juvenile may be placed at a youth educational centre or with a professional foster family who have completed training in juvenile care, or educational and therapeutic measures may be applied as appropriate.

concluded in correctional proceedings, there were often several court sessions in the judicial proceedings. Nevertheless there were only 2 cases in which the juvenile did not attend all court sessions. Furthermore, there was only 1 case where the defence lawyer did not attend all court sessions. As regards the parents, there were only five cases in which the parents did not attend all court sessions. Therefore, the parties were more active in that respect in the case of correctional proceedings.

There was no case concerning anti-social and delinquent behaviour or responsibility for a punishable act where the decision issued in the case was appealed. In five cases concluded in correctional proceedings, the juveniles' defence lawyers filed appeals against the judgement of the court of first instance (the appeal was withdrawn in one case). In one case, the appeal led to a partial amendment of the judgement, and in one case the judgement was reversed and the case was remanded for reconsideration.

The research findings presented above are thought-provoking, to say the least. Bearing in mind the variety of cases examined, it is hard to understand this striking indifference of the parties to the proceedings in juvenile justice proceedings apparent at all stages. While a juvenile may be excused by their young age and scant legal awareness, the inactivity of the closest people to the juvenile cannot be explained in the same way. It would also be too optimistic to believe that the parties did not get involved in the proceedings because of the exemplary handling of the Family Courts and family judges. It is obviously impossible to give an unequivocal and authoritative opinion on the reasons behind this. It does seem, however, that the following factors may have primary impact on the phenomenon described above:

- 1) the unsophisticated nature of at least some cases that ended with the guardianship and educational proceedings (e.g. truancy or minor punishable acts),
- 2) poor legal awareness of the parties to the proceedings (e.g. because of their social background),
- 3) disregard for the signs of anti-social and delinquent behaviour of the juvenile or commission of punishable acts by the same,
- 4) lack of confidence in the effectiveness of the court's reaction to the anti-social and delinquent behaviour or punishable acts committed by the juvenile, or more generally in the effectiveness of educational actions taken towards the juvenile, and
- 5) the inquisitorial system of juvenile justice which does not promote active involvement of the parties.

2.3. The right to legal assistance

During the preliminary investigation there were only two cases which ended with guardianship and educational proceedings in which the juvenile was represented by a defence lawyer. In one case, it was the defence lawyer of the party's choice and in the other case the defence lawyer was appointed by the court. At the stage of the judicial proceedings, there was only one case in which the defence lawyer was chosen and two cases in which the defence lawyer was appointed by the court. In cases that ended with correctional proceedings the juvenile usually did not have a defence lawyer during the preliminary investigation. In total, a defence lawyer was present only in 14 cases, and there was only one case in which the defence lawyer was of the party's choice. In the judicial phase, defence lawyers were involved in all cases; however, there were only two cases in which the defence lawyers were chosen by the party.

In general, what is striking is the lack of any particular activity of the defence lawyers involved in juvenile justice proceedings. Regarding the guardianship and educational proceedings involving a defence lawyer, there was only one proceeding where the defence lawyer

made a request for admission of the medical opinion of the doctors who treated the juvenile, and for the court's decision regarding the physical evidence gathered in the case (the request concerned the juvenile's mobile phone). In the correctional proceedings, there were 5 cases in which the defence lawyer filed a complaint regarding the juvenile's placement at the youth shelter, and 3 cases in which the lawyer requested access to court files.

During the judicial proceedings, there were three cases where the defence lawyer requested access to the court file, one case where they complained about the juvenile's placement at the youth educational centres, one case in which they requested a change of the remedy applied, and one case in which the lawyer made a request for evidence. The activity of the defence lawyers in correctional proceedings was undoubtedly greater than in the case of guardianship and educational proceedings.

Such scant participation of defence lawyers in juvenile cases appears to be rooted primarily in the following factors:

- 1) the conclusion that juvenile cases do not require assistance from a professional lawyer due to their nature, degree of complexity or for other reasons,
- 2) lack of funds to retain a defence lawyer,
- 3) scant legal awareness and lack of knowledge or ability to take advantage of professional legal assistance,
- 4) the advanced stage of correctional proceedings (judicial) which was the moment when the defence lawyer became first involved.

In view of the above it remains to be seen whether the Act of 30 August 2013 will lead to any material improvement of the standard regarding the right to defence in juvenile justice. Along with the change of the model of proceedings, the legislator also departed from the general requirement of mandatory defence which used to be binding with respect to correctional proceedings.¹ Under the existing wording of Article 32(c)(3) of JJA, a juvenile may file a motion to have a court-appointed defence lawyer. The president of the court will grant the motion, but only if they consider that the lawyer's participation in the case is needed and that the juvenile or the juvenile's parents are unable to afford a defence lawyer without detriment to their ability to provide means of subsistence for themselves and their family. The solution is criticised since there is a possibility that the court may formally restrict the right to defence.² Those doubts seem to be confirmed by the situation observed in one of the guardianship and educational proceedings where the court denied the parties' motion for the appointment of a lawyer, arguing that the presence of the lawyer is not necessary.

2.4. The right to be tried within a reasonable time

While analysing the duration of the proceedings in juvenile cases, it is worth taking a close look at the duration of the activities of urgent need.³ Out of the 70 analysed cases that ended under the guardianship and educational procedure, the acts of urgent need were taken in 45 proceedings. In most proceedings concerning anti-social and delinquent behaviour, the activities took up to 15 days (seven cases). In two cases, they lasted in excess of 15 days but less than 1 month. In three cases, they took anywhere between 2 and 3 months, and in one case, they took 8 months and 15 days as shown in the case files.

As regards the analysed cases involving responsibility for a punishable act, the time from the

¹ Juvenile Justice Act (1982), Art. 49 effective until the coming into force of the Act of 30 August 2013.

² Stojanowska, W., Słyk, J., "Ekspertyza prawna dotycząca rządowego projektu zmiany Ustawy o postępowaniu w sprawach nieletnich oraz ustawy – Prawo o ustroju sądów powszechnych", p. 10.

³ The statute provides that those activities shall last no longer than 5 days.

start of the acts of urgent need until the referral of the case to the family judge also differed significantly. In 14 cases, it took up to 15 days. In 7 cases, it lasted in excess of 15 days but less than one month. In five cases, it was anywhere between 1 and 2 months, and in 4 cases it was anywhere from 2 to 3 months. In the remaining cases, the period was, respectively, 4 months and 21 days and 8 months and 2 days.

There were also differences when it comes to the duration of the acts of urgent need in cases concluded in the correctional proceedings. In 19 cases, the acts took up to 15 days; in seven cases, they lasted in excess of 15 days but less than 1 month. In three cases, they lasted between one and two months, and in two cases, the acts lasted more than 2 months.

The data cited above clearly show that the activities taken by the police were quasi-pre-trial proceedings in a considerable number of cases. Police officers took actions aimed at securing evidence in the case without consulting the family judge. It is therefore difficult to find that the activities were within *ratio legis* of Article 37(1) of JJA.¹ One can also observe that considerable differences in the duration of the activities were not due to their radically different nature or due to their number. One can therefore assume that whenever the activities lasted several months it was either related to organisational problems due to, for example, the need to question witnesses or unexpected events, or organisational negligence on the part of police officers.

The duration of juvenile proceedings before the family judge and subsequently before the Family Court also differed. Considering the duration of both the preliminary investigation and the judicial proceedings, three proceedings in cases concerning anti-social and delinquent behaviour of a juvenile were completed within one month. Fourteen proceedings were completed between 1 and 3 months. Ten proceedings were completed between 3 and 6 months. Six proceedings were completed between 6 months and 1 year, and two proceedings lasted more than a year.

As regards the cases concerning the responsibility for a punishable act, the duration of the entire preliminary investigation and judicial proceedings also differed quite significantly. Two proceedings were completed within a month. Fourteen proceedings were completed between 1 and 3 months. Eleven proceedings were completed between 3 and 6 months. Six proceedings were completed between 6 months and 1 year, and two proceedings lasted more than a year. The duration of correctional proceedings also differed. In three cases, it was anywhere between 1 and 3 months, and in 10 cases it was anywhere from 3 to 6 months. In 13 cases, proceedings lasted for 6 to 12 months, and in 9 cases – more than a year.

The course of the above proceedings was very similar in all cases. The actions taken by the family judge in the course of the preliminary investigation included obtaining opinions on the juvenile (usually the opinions of various institutions and community interview) and interrogation of the juvenile in most cases. There was usually one court sitting (court session) during the judicial proceedings. There were only four cases in which there were two or three court sessions. The difference between the guardianship and educational proceedings and the correctional proceedings was that there were more court sessions in the latter case. The proceedings usually ended after one court session (16 cases); in 10 cases, there were two court sessions. Three court sessions were required to resolve the matter in five cases. There were four court sessions in three cases, and in one case there were as many as six court sessions.

In view of the above, it is difficult to believe that significant differences in the duration of proceedings subject to our analysis were due to the complexity of the case. It seems rather that the differences were caused by reasons of a purely organisational nature, including, but

¹ Juvenile Justice Act, Art. 32e(1).

not limited to, the following: the court's (in)ability to examine the case in view of the judge's caseload; the organisational skills of the individual judges; timely delivery of the community interview or opinions of external institutions to the court; or handling of cases during holiday time. Finally, it is worth noting that even if the cases lasted several months or more there was not a single complaint about their excessive length lodged by parties to the proceedings.¹

2.5. Admission of the public to juvenile justice proceedings

As a rule, no public is admitted to proceedings concerning juveniles. The primary reason is the legislator's attempt to protect the juveniles from social stigma. Paradoxically, it may be concluded that dispensing with the exercise of one of the fundamental rights that makes up the right to a fair criminal trial is a rule in the juvenile justice system. It has to be underlined, however, that such a solution complies with the provisions of the Polish Constitution and of international law, as the interests of juveniles are explicitly listed in the sources of international law (ICCPR and the European Convention) as one of the reasons for excluding the public from the trial. The analysis revealed that most of the guardianship and educational proceedings (45 out of 70 cases) were tried *in camera*. Public trials or court sessions were held only in 11 cases. However, the files of those cases did not reveal as to why such a step was taken. Furthermore, in 14 cases there was no information as to the public or non-public nature of the proceedings. There were only eight correctional proceedings that were open to the public. The case files did not, however, contain any reasons for that. That final observation gives reasons for concern as it may imply that little importance is given in practice to the issue of recording the course of the proceedings.

2.6. Overview

In conclusion, it is worth making a general reference to the statutory model of juvenile justice proceedings. While the topic does not explicitly address the rights of the parties to the proceedings, it certainly has a material impact on the issue. There is namely a correlation between the shape of the course of the proceedings and the ability to exercise the rights that make up the standards of fair proceedings. From that viewpoint, it is worth pointing out, first of all, that in a substantial number of proceedings subject to our research the acts of urgent need actually transformed into quasi-pre-trial proceedings. This is clear evidence that the statutory assumptions are not compatible with the reality. This is an issue that has been existing for years, as evidenced by empirical research.² It is therefore difficult to take a favour-

¹ It can obviously be argued that the parties are not entitled to lodge such a complaint because juvenile proceedings are not explicitly listed in Article 3 of the Excessively Lengthy Proceedings Complaint Act of 17 June 2004 (*ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu przygotowawczym prowadzonym lub nadzorowanym przez prokuratora i postępowaniu sądowym bez nieuzasadnionej zwłoki*, also known as *ustawa o skardze na przewlekłość postępowania*) which determines the objective scope of the complaint regarding the excessive length of the proceedings. It is, however, worth noting the approach adopted by the doctrine which shows that when referring to the *ratio legis* of the Act one should permit the ability to lodge a complaint regarding the excessive length of the proceedings in juvenile justice proceedings (cf. W. Jasiński [in:] J. Skorupka (ed.), *Skarga na naruszenie prawa strony do rozpoznania sprawy bez nieuzasadnionej zwłoki. Komentarz*, Warszawa 2010, pp. 116-118 and the bibliography cited therein, A. Pietryka [in:] P. Kładoczny, A. Pietryka, M. Bernatt, B. Grabowska, *Skarga na przewlekłość postępowania. Komentarz do ustawy o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu przygotowawczym prowadzonym lub nadzorowanym przez prokuratora i postępowaniu sądowym bez nieuzasadnionej zwłoki*, Warszawa 2010, p. 95). The case law of the Supreme Court also seems to be in favour of that conclusion as the Supreme Court finds that a complaint may be lodged not only in the proceedings named directly in Article 3 of the Excessively Lengthy Proceedings Complaint Act (cf. Supreme Court's ruling of 14 September 2011, WSP 3/11, OSNKW 2011, no. 10, item 95, wherein it was adopted that "a party to the proceedings conducted pursuant to the provisions of the Act on the Annulment of Convictions of Persons Persecuted for Activities Aimed at Achieving Independence for Poland of 23 February 1991 (*Ustawa o uznaniu za nieważne orzeczeń wydanych wobec osób represjonowanych za działalność na rzecz niepodległego bytu Państwa Polskiego*) (...) is empowered to complain about the excessive duration of those proceedings even though it was not listed among the entities indicated in Article 3 of the Excessively Lengthy Proceedings Complaint Act of 17 June 2004").

² Korcyl-Wolska, M. (2001) "Postępowanie w sprawach nieletnich w Polsce", Kraków, pp. 425-427. Cf. the research find-

able view of the legislator's attitude who keeps ignoring the fictitious nature of the acts of urgent need. The same comment applies to the current shape of JJA which regulates the acts of urgent need in Article 32e after Article 37 was derogated. In fact, there is little difference between the current regulation in that regard and the previous one. The only difference is the enactment of Article 32e(4). This reads that if the circumstances surrounding a case imply that the punishable act was perpetrated by a juvenile but the actions taken by the police did not lead to establishing their identity, then the police must immediately refer the case to the Family Court. The court should refuse to open proceedings and may order the police to take certain actions or actions of a certain scope within a prescribed deadline which should be no longer than 2 months.

It would be right to consider empowering the police, by way of a law, to gather evidence of anti-social and delinquent behaviour or the commission of a punishable act by a juvenile whenever required by the nature of the case in question. The literature on the topic rightly argues that the expectation that the family judges would be able to relieve the law enforcement from that duty is without merit.¹ Obviously such a step should be accompanied by efforts to upgrade the qualifications of the police officers who deal with the cases involving juveniles. There were namely certain deficiencies in that respect in the cases subject to our review.²

The other structural failure of the proceedings subject to analysis is the division into the preliminary investigation and judicial stage (in the guardianship and educational proceedings and in the correctional proceedings). As shown by the research, the distinction is not justified either by the number or the nature of the procedural acts conducted at each of those stages. What is characteristic is that evidence-securing actions were taken only in eight out of the total 70 cases concluded in guardianship and educational proceedings and in 13 out of 35 cases concluded in correctional proceedings. In the remaining cases, the preliminary investigation involved only a court sitting (trial) and an interrogation of a juvenile (if any), usually for the second time. It should also be noted that only one out of the 70 cases ended with guardianship and educational proceedings and 11 out of 35 cases ended with correctional proceedings in which the two stages of proceedings were conducted by different judges.

It is also worth underlining that the distinction between the preliminary investigation phase and the judicial phase, which is being discussed, is conducive to the excessive duration of proceedings in juvenile cases.³ From that perspective, the unification of the proceedings before the Family Court, which was effected by way of the Act of 30 August 2013, is certainly a better solution. While this obviously gives rise to certain doubts due to its extreme inquisitorial nature that does not alter the fact that it is a step forward compared with the legal position before the above mentioned Act came into force.

In conclusion, it is also worth giving a more general comment regarding juvenile justice. One should seriously consider whether or not all juvenile cases being heard before Family Courts in the current legal state should actually be sent there. The language of JJA itself implies that even the legislator notices the value of alternative methods of resolving problems related to anti-social and delinquent behaviour of juveniles and the commission of punishable acts by

ings in: Mudrecki, A. (2008) "Prawo nieletniego do rzetelnego procesu przed sądami rodzinnymi", Opole, p. 126.

1 Korcyl-Wolska, M. (2001) "Postępowanie w sprawach nieletnich w Polsce", Kraków, pp. 426-427.

2 One may note, however, that their scale is much lower than the scale of the infringements revealed during research conducted by A. Mudrecki. It is hard to give a clear-cut definition of the reasons for that situation but the trend is definitely optimistic. Cf. Mudrecki, A. (2008) "Prawo nieletniego do rzetelnego procesu przed sądami rodzinnymi", Opole, pp. 121-128. Against this background, one should take a favourable view of the legislator's decision expressed in Juvenile Justice Act (1982), Art. 18a wherein the legislator explicitly ordered the authorities to advise the juvenile of their right to defence prior to the start of the questioning or hearing, including the right to assistance of a defence lawyer, the right to refuse to testify or to refuse to give answers to individual questions.

3 Mudrecki, A. (2008) "Prawo nieletniego do rzetelnego procesu przed sądami rodzinnymi", Opole, p. 158.

the juveniles (Article 32j(1) of the Act).¹ Unfortunately, the solution remains defunct, as evidenced by empirical research.² The report reveals that not a single proceeding under review involved mediation. This means that no alternative forms of dispute resolution have been used in the area of juvenile justice.

One may criticise the current measures provided under JJA because they result in courts hearing cases which should never end up in court in the first place. By its very nature, a judicial proceeding should be considered only a last resort. It would be far better to solve problems such as enforcing the compulsory education requirement within the minor's own environment. The tendency to involve courts in resolving such issues seems to be a sign of helplessness and inability to solve them in the environments concerned, especially schools. We must also be aware that the court is not necessarily an institution that can effectively solve problems connected to minors' offences or anti-social behaviour.

If people who have regular contact with minors remain uninvolved, even the best prepared Family Courts will fail to perform at the level expected of them. Further, it must be kept in mind that substantial financial outlays are required for the judicial system to operate; the costs would not be incurred if alternative methods of eliminating anti-social and delinquent behaviour and punishable acts were enforced. Therefore, whenever there is a chance that educational measures applied towards juvenile delinquents would prove successful, such cases should be resolved out of court. Every keen observer of judicial proceedings realises that judicialisation of disputes may not be considered as a universal and effective remedy for solving social problems.

1 Prior to the entry into force of the Act of 30 August 2013 – the language of Article 42(4) of the Juvenile Justice Act.

2 Mudrecki, A. (2008) "Prawo nieletniego do rzetelnego procesu przed sądami rodzinnymi", Opole, p. 134.

3. Monitoring results

A. YOUNG OFFENDER INSTITUTIONS, YOUTH SHELTERS AND HOSTELS

The monitoring revealed that the functioning of an establishment largely depends on its manager. The day-to-day functioning of a young offender institution or a youth shelter reflects all the virtues and faults of the person who manages the institution. The degree to which juvenile rights are observed is also largely correlated with the manager.

All establishments visited were in proper condition. Most had been renovated in recent years. Researchers did not observe any indications of improper maintenance of the accommodation in any institution.

However, in some facilities the research team encountered practices that might be recognised as human rights violations. The juveniles complained about infringements of their privacy through vetting their phone calls and monitoring baths and toilets via CCTV system.

Research also revealed that most young offender institutions visited by the team pursued intensive social rehabilitation actions towards their wards. As part of the efforts, the juveniles may take advantage of therapeutic care, recreational groups, trips and holidays.

1. General information

Placement in a young offender institution is the most severe punishment that may be imposed on a juvenile delinquent who has committed a punishable act and may only be applied to young offenders between the ages of 13 and 17. It may be applied only when justified by the seriousness of the juvenile's antisocial and delinquent behaviour and the circumstances and nature of the committed act in question. In such a case, it is also necessary that other measures applied to the juvenile delinquent have proved ineffective.

Youth shelters are institutions for temporary detention of juveniles suspected of committing a punishable act. In such cases the circumstances and nature of the act in question, the degree of the juvenile's antisocial and delinquent behaviour and the ineffectiveness of educational measures applied to date must justify placement in a young offender institution.

Juvenile hostels assist minors with the transition to independent living and prepare them for release from a young offender institution. The hostels provide 24-hour educational care and a temporary residence option. The youth staying at a hostel are required to contribute towards their living costs.

The Juvenile Justice Act (hereinafter JJA), is the primary act of law governing the operations of young offender institutions, youth shelters and juvenile hostels. Detailed rules of their functioning were set out in the Regulation of the Ministry of Justice of 17 October 2001 on young offender institutions and youth shelters, as well as the Regulation of the Ministry of Justice on the procedure for admitting and releasing juveniles from hostels, the conditions of juveniles' stay at hostels and the supervision of juveniles placed in hostels.

The functioning of young offender institutions, youth shelters and hostels is overseen by the Ministry of Justice.

2. Detailed analysis

2.1. Establishments

As part of their research, representatives of the Helsinki Foundation for Human Rights (HFHR) visited 10 social rehabilitation centres for minors. Four of those centres were independent young offender institutions¹. One was a youth shelter only². Five combined the functions of young offender institutions with those of youth shelters.³

Nearly all establishments visited were semi-open facilities with the exception of the Young Offender Institution in Grodzisk Wielkopolski and the Young Offender Institution in Szubin. The first of the establishments was a facility with increased educational supervision for juveniles who pose significant disciplinary problems. The Young Offender Institution in Szubin was an open institution. All youth shelters visited were regular shelters. Two out of nine institutions visited as part of the research were designed for girls.⁴

The average capacity of the institution was around 60 beds. The Young Offender Institution in Grodzisk Wielkopolski, with 24 beds, was one of the smallest. This was, however, related to the nature of the facility. The Young Offender Institution and Youth Shelter in Świdnica was the largest institution visited by researchers; together with the hostel, it can hold as many as 104 juveniles.

However, nearly all the establishments visited were not full. The occupancy rate was usually 70% of all beds. As a consequence, certain living quarters were excluded from use. According to managers of the institutions, that situation was caused mainly by the policy of the family courts who have been less likely, in recent years, to send juvenile delinquents committing punishable acts to young offender institutions.

2.2. Inmates

Nearly all juveniles from the establishments visited as part of the research were placed there for committing a punishable act against property. There were, however, young people who were staying at a social rehabilitation centre for committing a punishable act against sexual freedom or against health and life.

1 Young Offender Institution in Poznań, Young Offender Institution in Grodzisk Wielkopolski, and Young Offender Institution in Szubin.

2 Youth Shelter in Warszawa-Okecie.

3 Young Offender Institution and Youth Shelter in Warszawa-Falenica, Young Offender Institution and Youth Shelter in Świdnica, Young Offender Institution and Youth Shelter in Głogów, Young Offender Institution and Youth Shelter in Konstancinów Łódzki, and Young Offender Institution and Youth Shelter in Koronowo.

4 Young Offender Institution and Youth Shelter in Koronowo, Young Offender Institution and Youth Shelter in Warszawa-Falenica.

According to the establishments' managers, the average amount of time juveniles spent at a young offender institution was around two-and-a-half years.¹ There were, however, juveniles who had been staying at the young offender institution for several years and some who had been released on parole after several months.

According to managers, the average age of the children was around 17 years. It was higher only in the Young Offender Institution in Grodzisk Wielkopolski. However, during their visits the HFHR representatives talked to children, who were 13- and 20-years-old.

Apart from two cases, there were no foreign nationals among the children at the establishments visited.

2.3. Staff

The number of staff (per full time employment) in nearly all visited institutions was higher than the number of juveniles. Educational specialists typically accounted for half of the staff. It is worth underlining that nearly all employees had a university degree and the ones who did not were an exception. The managers of youth shelters and young offender institutions said there were no problems recruiting staff, except for workshop teachers who should hold a degree in social rehabilitation in addition to a degree in their respective area of instruction.

In the establishments visited, managers stated that funds for additional staff training were available and staff were willing to take advantage of that opportunity.

2.4. Living conditions

All establishments visited were in proper condition. Most of them had been renovated recently. Researchers did not observe any signs of improper maintenance of the accommodation in any institution.

Nevertheless, most managers who spoke to the researchers indicated the need for more investment projects to improve living conditions for the juveniles, as well as the quality and effects of social rehabilitation.

The accommodation provided for juveniles was neat and tidy. Bedrooms were usually light and maintained. They were designed to accommodate from two to five people. The bedrooms' furniture included cupboards for the childrens' personal belongings.

In some institutions juveniles kept flowers and pets in the bedrooms and common rooms.

The smoking policy for youth varied from one institution to another. For example, in the Young Offender Institution and Youth Shelter for girls in Warszawa-Falenica, juveniles had the right to use tobacco products, regardless of age. In the Young Offender Institution in Szubin only children who were of age were allowed to smoke. In the Young Offender Institution and Youth Shelter for girls in Koronowo neither juveniles nor staff could smoke.

By contrast, in the Young Offender Institution in Poznań, there were no restrictions on smoking. The institution did, however, use incentives for non-smokers (for example, the right to use the fitness centre). The same principle was emulated by the Young Offender Institution and Youth Shelter in Świdnica where non-smoking juveniles received more pocket money. The total ban on smoking only applied to the youth shelter living quarters. In the young offender institution rooms smoking was not permitted among children.

¹ The average time spent at the youth shelter was around five months.

2.5. Personal hygiene

Rule 65.2 of Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures (hereinafter: European Rules) states¹: “*Juveniles shall have ready access to sanitary facilities that are hygienic and respect privacy*”. In each unit visited there were separate rooms designated as baths, usually part of the living quarters. There were, however, cases where there was one communal bath in the institution.

The condition of the sanitary facilities was assessed as good, except for the communal bath in the young offender institution in Poznań. There was visible mould on the walls and the shower heads were broken. However, the management assured the researchers that the bath would undergo major renovation.

Juveniles who used the sanitary facilities usually enjoyed privacy. There were partition walls between the showers and there were also curtains that juveniles could use to isolate themselves from the rest of the bath.

The bathrooms in the basement of the Young Offender Institution in Konstancin-Jezierna were an exception. There were 12 showers in one room without any partition walls or curtains. A similar picture was found in the Youth Shelter in Warszawa-Okęcie. There were no partition walls or curtains between the showers there. In addition, some of the showers were near a transparent window overlooking the nearby fort. To make things worse, the bathroom doors were covered in only half of the cases.

Researchers were also concerned about the architectural layout of toilets located in the workshop rooms in the Youth Shelter in Warszawa-Okęcie. The toilets there were separated by half walls only so those using them could see each other. One of the toilets was missing a door. The staff toilet located in the same room was separated by a full wall.

The HFHR representatives believe the juveniles using the sanitary facilities lacked privacy because of the architectural solutions described above.

It should be recalled that Rule 65.3 of the European Rules reads that “*adequate facilities shall be provided so that juveniles may have a bath or shower daily if possible*”.

As a rule, juveniles enjoyed unlimited use of showers in the institutions visited by the team. The management did not impose any limits on the frequency or duration of baths, except those in Głogów and Konstancin-Jezierna. In the former, the manager laid out rules of bath taking with shower time limited to three minutes – a measure introduced for financial reasons. However, after the visit by the HFHR representatives, the restriction was scrapped. According to the director’s statement it had not been applied for several years. In the Young Offender Institution in Konstancin-Jezierna juveniles were allowed to take baths three days a week. They did not have the right to an extra bath after physical exertion or dirty work.

2.6. Nutrition

In all institutions visited juveniles were offered at least three meals per day. Some institutions also provided lunch or an afternoon snack. Juveniles often had the opportunity to ask for an extra portion. Organising culinary workshops where the juveniles cooked meals using products provided by the institution was a popular idea in institutions.

The daily food allowance in establishments ranged from PLN 9 to 11 (EUR 2.17 to EUR 2.65)². Some managers indicated that the rate was too low and needed to be raised and that they

1 European Rules for Juvenile Offenders.

2 It should be noted that it constitutes about 200 % of the food allowance in penitentiary unit.

sometimes lacked money to buy fresh fruit for the youth. They claimed that nutrition should be the last thing with which to compromise for financial reasons, juveniles usually approved of the meals they were served. There were, however, some who complained about the serving size and taste and the lack of food variety.

2.7. Education

Each establishment visited by the researchers provided education at the middle school level (*gimnazjum*). Most also offered vocational education. Only selected institutions offered primary school education (the Young Offender Institution and Youth Shelter in Warszawa-Falenica, Youth Shelter in Warszawa-Okęcie and the Young Offender Institution and Youth Shelter in Koronowo).

Managers assured the team that school certificates never indicated in any way that they were issued by a school operated as part of a young offender institution or a youth shelter.

Each of the schools visited was equipped with teaching aids, including audio-visual equipment.

In all cases, the youth were free to pursue vocational education. Sometimes it was provided at the vocational school or as part of vocational training (for juveniles attending primary school and middle school). Training was offered in the following trades, among others: carpenter, locksmith, welder, painter, paperhanger, builder, electrician, or plumber. The young offender institutions for girls offered training in the following trades: hairdresser, tailor or cook.

The equipment in the workshop buildings was usually sufficient. There were, however, some that were equipped with modern machinery. As a rule, there were manuals in the workshop buildings concerning the machinery used there. In one institution there were almost no workplace health and security instructions concerning principles of safe use of machinery in workshop rooms.

Some establishments, such as the Young Offender Institution in Poznań, the Young Offender Institution and Youth Shelter in Warszawa-Falenica, Young Offender Institution in Szubin, the Young Offender Institution in Białystok the Young Offender Institution and Youth Shelter in Świdnica offered juveniles the option to receive education at schools outside the institution.

Juveniles in the social rehabilitation institutions also have access to an extensive array of training courses subsidised primarily by the European Union within the Human Resources Programme. The most popular ones include: driving courses, courses to obtain the skills of a forklift operator, tiler or cook. Courses in the girls' institutions included those for babysitters and bakers.

The juveniles usually gave positive assessments of the classes offered as part of the workshops. Some believed that skills gathered during classes would be useful in the future. Others stated that, while the workshops were interesting, they did not see their future in subjects taught in workshops.

Some youth shelters considered the releasing of juveniles from the shelter during the school year to be a major issue, as it made it much harder for the released juveniles to complete a specific education level, and in consequence, it was a waste of several months of education for the student in a shelter.

The other issue was the absence of diagnosis of learning difficulties such as dyslexia or dysgraphia, among others. A student diagnosed with such disorders is given, among other things, more time during their middle school exams or may write the exam on a computer.

Meanwhile, in compliance with the Regulation of the Ministry of National Education of 18 September 2008 on decisions and opinions given by the multi-disciplinary teams at the public counselling centres, decisions concerning individual instruction of children and youth on account of dyslexia or dysgraphia are only issued at the request of the child's parents or legal guardians¹. Hence, the management of a social rehabilitation unit are unable to issue such a decision themselves. This is a major issue when there are problems contacting the parents of the juvenile or when there is no such contact at all.

2.8. Social rehabilitation actions

All young offender institutions visited by the team pursued intensive social rehabilitation actions for their wards. As part of the efforts juveniles may take advantage of therapeutic courses, recreational groups, trips and holidays. Trips and holidays were only available to juveniles who had good academic results.

Therapeutic activities in the institutions were taken primarily as part of the diagnostic teams as well as the diagnostic and correctional teams. Teams usually comprised of psychologists and child counsellors. Sometimes they also included a therapist; there was also a sexologist in one institution.

Psychologists were employed in all establishments visited by the HFHR representatives. Juveniles named the psychologists as the people to whom they were most likely to turn if necessary. Furthermore, two of the institutions had so-called patronage. In the Young Offender Institution and Youth Shelter for girls in Koronowo each juvenile chose one person from the management staff, the diagnostic team, a psychologist or child counsellor (other than the carers) who became her patron. The patron's responsibilities included holding face-to-face talks with the juvenile, her parents, and mediation in case of conflicts. Sometimes patrons helped the wards even after they had left the institution. The patronage system in the Young Offender Institution and Youth Shelter in Świdnica was based on a similar concept.

The juveniles in the young offender institutions usually had their individual therapy plan which described what was required of them and sometimes even their expected parole date. All managers declared that the plan implementation was subject to evaluation and had an impact on the juvenile's overall situation. This was partly confirmed during interviews with the juveniles.

Therapeutic activities offered by the units included the following: substance abuse therapy, art therapy, dog therapy and aggression therapy. Regarding substance abuse therapy, the Young Offender Institution in Poznań and the Young Offender Institution and Youth Shelter in Świdnica cooperated with local groups related to Alcoholics Anonymous.

In several institutions there were separate rooms for therapy. That was not, however, a rule. When there was no designated room, therapy was held in the common rooms or assembly hall.

A popular form of therapy in several institutions was to give juveniles some pets for which to care. For example, juveniles in the Young Offender Institution in Grodzisk Wielkopolski cared for two dogs and birds. A similar situation was observed in the Young Offender Institution and Youth Shelter in Głogów. Juveniles in the Young Offender Institution and Youth Shelter in Świdnica, Young Offender Institution in Białystok cared for fish and several rodents.

¹ Regulation of the Ministry of National Education on the decisions and opinions given by the multi-disciplinary teams at the public counselling centres, decisions concerning individual instruction of children and youth because of dyslexia or dysgraphia, among other things, are issued at the request of the child's parents or legal guardians (2008).

Maintaining contacts between juveniles and the outside world and preparing them for release from the young offender institution was an inherent stage of social rehabilitation activities. To that effect, juveniles took advantage of absence leave, holiday leave and the solution described in Article 90 of the JJA. The last remedy is frequently used as the final test for the juvenile before the young offender institution applies for parole. A leave of absence may be withdrawn whenever the juvenile's conduct is below par.

The researchers observed such a practice in the Young Offender Institution and Youth Shelter for girls in Warszawa-Falenica, among others. Each year, four to five girls in that institution were given parole. Before the young offender institution applied for parole, each of the girls had to pass the test and was permitted to take advantage of the solution that was referred to in Article 90 of the JJA. A consultation with the teaching staff was the next stage. If the outcome was positive the management filed an application for parole.

Granting holiday leave or absence leave to juveniles was another form of educational influence frequently employed by the institution. The Young Offender Institution in Poznań, in particular, used that method frequently. According to the management, the institution granted around 1000 instances of absence and holiday leave to juveniles in 2012.

In some institutions researchers observed practices that helped the juvenile feel closer to life outside the institution. In the Young Offender Institution in Szubin and in the Young Offender Institution in Białystok there were Separate Living Quarters (SLQ), in which wards of the institutions had the opportunity to get used to life outside the institution. The Separate Living Quarters were used by those who were well-behaved and fulfilled conditions to leave the young offender institution in the near future. The SLQ in Young Offender Institution in Szubin consisted of a kitchen, two bedrooms and a bathroom and were separate from the group living quarters. The one in the Youth Offender Institution in Białystok operated in a separate building on the same estate as the institution. It had two apartments with a kitchen, bathroom and several bedrooms. The juveniles living there were entitled, between 6 AM to 10 PM, to leave the area of the Institution without the carer's permission. It should be noted that the juvenile enters into a special formal agreement with the director of the facility. It includes detailed rights and obligations connected with the stay at the SLQ. The juvenile has to pay an additional fee connected with her stay in the SLQ but she could also contribute towards this fee by doing work for the institution.

The hostel, which is operated as part of the Young Offender Institution and Youth Shelter in Świdnica, had a similar function. It is a single-family house several kilometres from the young offender institution inhabited by several juveniles of the institution under the supervision of a carer. They study and work outside the hostel and they also need to pay part of their living costs.

Social rehabilitation actions were also frequently related to volunteering. As part of those actions, wards from the young offender institutions took part in the Grand Finals of the Great Orchestra of Christmas Charity (*Wielka Orkiestra Świątecznej Pomocy*), helped children with cancer, fought against flood risk, renovated staircases in housing communities adjacent to their establishment, cut the hair of residents of nursing homes or did community work. Cooperation with centres providing care for people with disabilities was another popular form of social rehabilitation. In addition, units organised events on Children's Day and classes for lower-secondary school youth.

The Young Offender Institution in Poznań operated a community cooperative called "Herakles" which provided renovation, construction and cleaning services. Wards working in the cooperative also had the opportunity to gather experience and earn some money. As part of the agreement signed with the cooperative, they received 30% of their pay. The rest was

transferred to their individual accounts and paid out upon release from the young offender institution, except for the first payment which the juveniles could spend as they wished.

Two establishments visited by the HFHR representatives (Young Offender Institution and Youth Shelter in Warszawa-Falenica and Young Offender Institution in Poznań) organised workshops about parenting. During workshops, juveniles were given electronic dolls and asked to take care of them for a certain period of time.

In all the units, there are official events, celebrations on Mother's Day or Nativity plays. The management do their best to ensure that parents attend such events.

Units frequently cooperated with non-governmental organisations. For example, the Young Offender Institutions in Poznań and Grodzisk Wielkopolski, and the Young Offender Institution and Youth Shelter in Warszawa-Falenica took advantage of aid provided by the foundations and associations that supported the process of the juveniles' transition to independent life, and helped in day-to-day social rehabilitation work. Members of those organisations normally included former and current employees of the said establishments.

2.9. Leisure

The living quarters in all establishments visited included common rooms, some also included study rooms. Their equipment was very good. Juveniles could watch TV or a DVD, they could use video game consoles (in some of the institutions) and music equipment. There were also ping pong tables, table football, board games and computers. Juveniles in establishments usually used the Internet during school classes. The use of Internet in recreational time was usually supervised by a carer.

The management of the units also supported the pursuit of hobbies among the juveniles. There were active recreational groups in all of the units. Thanks to the wide-ranging hobbies and interests of teaching staff, the range of recreational groups was very extensive. There were drama groups, arts groups, film groups, photography groups, pottery groups, sports groups, tourism groups, scout groups and religion groups.

The management of the penitentiary units also tried to fill the juveniles' time with other activities. The Young Offender Institution in Głogów operated a mini-cinema with a very large TV screen and a sound system. The Young Offender Institution in Grodzisk Wielkopolski operated a mini-recording studio in one of the common rooms and the Young Offender Institution in Szubin had a billiard room. Billiard tables were also found in all living quarters in the Young Offender Institution and Youth Shelter in Głogów.

Juveniles also had access to rich sports facilities. Their condition was assessed as sufficient. The Young Offender Institution and Youth Shelter in Głogów had the best sports infrastructure of all. By contrast, the Youth Shelter in Warszawa-Okęcie and the Young Offender Institution and Youth Shelter in Świdnica and in Koronowo needed investment in that area.

In all units juveniles had access to football fields and basketball courts. Some also had volleyball playfields. There were also gyms in the establishments. Juveniles were able to use tennis courts in the Young Offender Institution and Youth Shelter in Warszawa-Falenica, Young Offender Institution in Grodzisk Wielkopolski and in the Young Offender Institution in Głogów. Some units also offered swimming pools (e.g. the Young Offender Institution and Youth Shelter in Warszawa-Falenica, Youth Shelter in Warszawa-Okęcie and Young Offender Institution and Youth Shelter in Świdnica).

Most establishments also had fitness centres. However, their use by the juvenile depended on the management's policy in that regard. For example, the management of the Young Offender

Institution in Poznań offered the fitness centre only to non-smoking juveniles who performed well at school. The management of the Young Offender Institution in Grodzisk Wielkopolski had a similar idea and also offered access to the fitness centre as a reward.

There was also outdoor furniture for building campfires and barbecues. Researchers saw such solutions in place in the Young Offender Institution in Grodzisk Wielkopolski, the Young Offender Institution and Youth Shelter in Głogów and the Young Offender Institution and Youth Shelter in Warszawa-Falenica.

According to the Havana Rules “[e]very juvenile should have the right to a suitable amount of time for daily free exercise outside, weather permitting” (Rule 47). Another soft law indicates that “at least one hour per day shall be in the open air”. (Rule 81 of the European Rules). One should also recall at this point that, according to the rules, every juvenile should have additional time for daily leisure activities, part of which should be devoted, if the juvenile so wishes, to arts and crafts skills development.

According to the juveniles, the way they spent their spare time depended on their social rehabilitation unit. Juveniles in the Young Offender Institution and Youth Shelter in Konstantynów Łódzki indicated that they spent most of their spare time in the common room. They were able to play outside only two to three times a week. They complained that they were not given more time outside during summer and holiday time.

During talks with the HFHR representatives, the juveniles of the Young Offender Institution in Szubin emphasised that they had too little spare time to themselves. In their view, the classes organised in group I, which are designed for juveniles with the worst behaviour, take all day. As a result they have only 20-30 minutes at their disposal. In addition, they complained that they needed to stay in the common room during break-time between classes (as the bedrooms are closed at that time). They stated that juveniles in the other groups could stay in their own bedrooms during break.

2.10. Health care

As a rule, newly admitted juveniles were examined by a physician. The medical examination most usually took place on admission day. Sometimes it took place on the day after admission. The Young Offender Institution and Youth Shelter in Koronowo was an exception as newly admitted juvenile girls were examined by a nurse who checked if they were clean. Juvenile girls had access to medical consultation by a doctor on Thursdays when the doctor admitted patients in the institution.

It should be noted that pursuant to rule 62.5 of Recommendation CM/Rec(2008)11, “as soon as possible after admission, the juvenile shall be medically examined”.

There was a medical practice and an infirmary in all facilities visited by the team. In some there was also a dentist practice. Equipment in health facilities in all establishments seemed clean and well-maintained.

Juveniles had permanent access to basic medical care within the facilities. Permanent medical staff typically included a doctor and two nurses. Some institutions also employed specialist medical practitioners. For example, the Young Offender Institution in Grodzisk Wielkopolski employed a psychiatrist and a dentist, and the Young Offender Institution and Youth Shelter in Koronowo employed a gynaecologist.

Access to specialist medical practitioners varied. Some managers said that they were using the medical services provided by private medical centres. Others said that they were trying to only use public healthcare services only. In case of queues, they were trying to provide faster

access to a specialist medical practitioner via their own medical staff. The Young Offender Institution in Poznań cooperated with the local University of Medical Sciences to provide juveniles with an adequate service.

In most institutions there were some juveniles who suffered from scabies. There were also isolated cases of juveniles who suffered from STD and jaundice. In recent years, there were practically no cases of HIV-infected juveniles. There was one case of HIV in the Young Offender Institution and Youth Shelter in Głogów. Voluntary and anonymous tests that the juveniles could perform thanks to the institution helped to detect it.

The juveniles in the institutions visited by the team were willing to use the medical services available. The nurse at the Young Offender Institution in Głogów claimed she gave around 30 consultations per day. The situation was similar in the Young Offender Institution in Poznań where 4,600 consultations were provided in 2012.

In case of a sudden illness the management of the establishments relied primarily on the judgement of the medical staff. If the medical officer decided that the juvenile needed to be placed in a hospital, she was driven to the hospital or the management called an ambulance.

Medication was primarily administered by medical staff. There were, however, cases at night whereby medication was administered by carers or guards. In such cases, however, the medication was prepared by medical staff.

An overall positive picture of medical care transpired from talking to the juveniles. They said they had permanent access to medical care. Some complained, however, that they were fobbed off sometimes and treated only with painkillers.

In recent years there was only one case of a juvenile dying on the premises of the establishments visited by the research team. The juvenile in question was staying at the provisional room and committed suicide.

2.11. Contacts with the outside world

Pursuant to the Havana Rules, *“every juvenile should have the right to receive regular and frequent visits (...) in circumstances that respect the need of the juvenile for privacy”* (Rule 60).

In all institutions visited by the researchers, juveniles usually received visits on Saturdays or Sundays at designated times. All managers stated, however, that parents may visit their children on other days of the week, especially if they come from afar. Some managers preferred that such visits be first arranged by phone and held outside time spent on education and workshops.

The fact that juveniles are not necessarily placed in an institution near their home was a significant obstacle. In all establishments visited there were juveniles from all over the country. In some establishments, such as the Young Offender Institution and Youth Shelter in Konstantynów Łódzki and the Young Offender Institution and Youth Shelter in Głogów, juveniles came primarily from the local area. Regarding the facilities for girls, as well as the Young Offender Institution in Grodzisk and the Young Offender Institution in Poznań, most of the juveniles placed there were from other provinces. The manager of the Young Offender Institution in Poznań mentioned that from the perspective of social rehabilitation such a practice had a positive impact on the juveniles. He said it helped to separate them from the environment in which they committed the prohibited act.

It was a common practice that juveniles had to obtain the manager's consent to receive visits from persons other than family members. This was contrary to a reversal of the principle adopted in the Juvenile Justice Act. Management had the right to limit or deny contacts be-

tween the juvenile and certain individuals due to their negative influence over the juvenile, among other things. Managers of institutions argued that the requirement was dictated by the need to separate juveniles from individuals who might be a negative educational influence. In addition, the ability to receive visits from third parties depended on the behaviour of the juvenile in most young offender institutions (that was the case in the Young Offender Institution in Szubin). As rightly observed by the National Prevention Mechanism in their report for 2013, such a practice was not regulated under the existing legal order.¹

In the Young Offender Institution and Youth Shelter in Świdnica there was a guest room where a parent could stay overnight after travel. A similar solution was offered to visitors at the Young Offender Institution in Poznań and the Young Offender Institution and Youth Shelter in Warszawa-Falenica.

Visits were usually held in the dining halls without the presence of staff. The Young Offender Institution and Youth Shelter in Koronowo was an exception as visits there were in each case held in a monitored dining hall in the presence of a member of the institution's personnel.

According to the Havana Rules, the management of that unit should consider whether it was actually necessary to receive visits in the presence of a staff employee.

Visits in other young offender institutions were usually held in rooms covered by the surveillance system.

The solution adopted by the Young Offender Institution in Grodzisk Wielkopolski is worth mentioning. Meetings with visitors were held in a specially designated room. The visitor had access to a kitchenette where they could prepare tea or coffee. A similar room was also available in the Youth Shelter in Warszawa-Okęcie.

Juveniles in all establishments were allowed to use phones. However, the scope of the permitted use varied from one institution to another. For example, the Young Offender Institution and Youth Shelter for girls in Koronowo operated a system of grades for behaviour that regulates the right to receive visitors and to use a phone. According to information provided by the juveniles, they were able to receive visits from family members if their behaviour was graded 1, and they were able to receive visits from friends if their behaviour was graded 3. Juveniles who had grade zero for behaviour did not have the right to use phones.

Meanwhile, pursuant to Article 66.4 of the JJA, an institution or shelter manager may restrict or ban the minor's contacts with selected third parties only if such contacts pose a threat to the legal order, safety and security of the establishment, the course of the proceedings pending or the process of the juvenile's social rehabilitation. Therefore, existing regulations do not provide for the authority to limit the juvenile's contacts with their family members and third parties a priori. There is also no basis for differentiating between family members and third parties.

A phone was usually located in the rooms of the carer groups. There were also cases where there was a payphone in the institution (in some institutions managers claimed that the telecommunications companies did not want to install such devices). A phone call at the expense of the young offender institution or youth shelter was one of the more popular rewards.

From all monitored institutions, only the Young Offender Institutions in Poznań (in one of the groups) and in Szubin allowed their wards to possess mobile phones. However, the phones had to be handed into a deposit box at night.

¹ Human Rights Defender (2014) Report on the operations of the National Prevention Mechanism in 2013, p. 79, available on: https://www.rpo.gov.pl/sites/default/files/Raport%20RPO%20z%20dzia%C5%82alno%C5%9Bci%20w%20Polsce%20KMP%20w%201%20kwartale%202012%20r_0.pdf

Juveniles at the institutions in Świdnica, Głogów and Koronowo complained to the HFHR representatives that some of their calls were monitored by carers, either by means of another phone or through the requirement to use loudspeaker. Some managers admitted to having such practices. However Article 49 of the Constitution of the Republic of Poland reads that *“this freedom and privacy of communication must be safeguarded. Any limitations thereon may be imposed only in cases and in a manner specified by statute”*. The JJA does not grant such a competence to the establishments visited.

The institutions found it very important to improve the contact between parents and juveniles, and also to make parents more interested in the fate of their children. However, according to the institutions’ managers, only half of all parents showed an interest in the predicament of their children.

The Young Offender Institution and Youth Shelter in Warszawa-Falenica organised therapeutic classes for the parents of juvenile girls placed in the institution; such classes were held twice a year for three days. As part of those classes, parents took part in workshops on interpersonal communication and conflict management, among other things. In other institutions parents were invited to parent-teacher meetings, open days, official celebration events and the official ceremony at the end of the school year.

The Youth Shelter in Warsaw followed an interesting practice in that respect. When a juvenile is admitted to that institution, staff call his parents and send them a letter to advise them on the most important issues concerning the juvenile’s stay at the institution, on contacting the juvenile or sending her correspondence.

Juveniles also frequently received help when they were on an absence leave or holiday leave. The institutions helped them buy tickets and sometimes paid out pocket money for the duration of the holiday. Juveniles who leave the Young Offender Institution in Poznań for the first time must be picked up by their parents.

The HFHR representatives did not find instances of juveniles’ correspondence being censored. There were, however, cases where staff vetted letters (if necessary) and parcels addressed to the juveniles. Such controls were primarily aimed at checking that no prohibited substances were smuggled in.

2.12. Contact with a defence lawyer

Most establishments visited did not have a separate room for contacts with the defence lawyer. Those meetings were usually held in the common rooms, dining halls, carers’ rooms, and even in the manager’s office.

According to the manager of the Youth Shelter in Warsaw, nearly all juveniles were represented by court-appointed counsels. The manager of the Young Offender Institution and Youth Shelter in Konstancin-Jezierna Łódzki said that defence lawyers seldom visit the juveniles placed in his institution; their aid was most usually illusory.

Juveniles who were asked the same question agreed. They believed that all defence lawyers did during the proceedings was to request that the juvenile should be placed in a juvenile youth educational centre rather than in the young offender institution. Defence lawyers also frequently discouraged them from filing appeals on the judgement of the first instance court, claiming that it would only extend the case and delay placement in the young offender institution. Nevertheless, some juveniles stated that the presence of a defence lawyer during the court session gave them a sense of security.

2.13. Access to religious services

Juveniles in all establishments had access to a Catholic priest. In nearly all establishments there were chapels in which services were held. There were also religious groups in some institutions. Others held regular religious festivities, including Nativity plays or Stations of the Cross.

Researchers did not note any cases in which juveniles were forced to attend religious services or cases where juveniles were punished for failure to participate in religious practices. There were, however, institutions in which religious values and practices were very strongly promoted and failure to comply may have affected the juveniles' grade for behaviour. In those institutions religious services were most usually attended by all juveniles.

In recent years, there were only several cases in establishments visited in which juveniles followed a religion other than Catholicism. The management of the institutions declared that in such cases they would do their best to ensure the juvenile had access to religious services. They also claimed that they would respect the parents' wishes regarding non-attendance at religious classes.

All juveniles had access to religious classes. Sometimes these were held as part of the school curriculum and sometimes as part of educational activities after school or workshops.

2.14. Safety and security

Institutions monitored by the HFHR were usually surrounded by high stone walls with barbed wire atop. The only exception was the Young Offender Institution in Głogów which was largely surrounded by a three-metre high hedge. There were bars on the windows in all institutions. In the Young Offender Institution in Grodzisk Wielkopolski there were additional screens on the windows. According to the management, the screens were to prevent any contacts between juvenile boys and girls from the nearby school.

All institutions employed security guards. Their number depended on the size and the nature of the institution. In some institutions security guards wore uniforms with the institution's logo and name which made them stand out from the other staff. In other institutions it was impossible to distinguish security guards from other personnel.

The manager of the Young Offender Institution in Poznań admitted that he lacked resources to ensure security staff for the institution. He believed the existing headcount may prove insufficient in case of a night-time emergency.

The standard equipment of the security guards included pagers, paging systems and walkie-talkies. Some devices were also equipped with motion sensors alerting when the employee did not move. The HFHR representatives did not encounter a situation where the security guards were equipped with direct coercive devices.

Other security measures observed by the HFHR representatives included closing bedrooms and classrooms when the juveniles were inside. Both practices were observed in the Young Offender Institution in Grodzisk Wielkopolski and, according to the management, were dictated by the nature of the institution.

Instances of escapes were rare in the institutions. For example, the last escape in the Young Offender Institution and Youth Shelter in Warszawa-Falenica took place in 2012; according to the management of the Young Offender Institution and Youth Shelter in Konstancin-Jezierna Łódzki juveniles tried to run away every 12 to 18 months on average.

Failure to return from a holiday leave or absence leave when required was a more frequent issue. For example, there were three such cases in the Young Offender Institution and Youth

Shelter in Warszawa-Falenica in 2012. At the time of writing, there was at least one juvenile in nearly all institutions who did not return from an absence leave or holiday leave on time. It seems to be, however, a natural risk inherent to social rehabilitation work.

In some institutions juveniles who returned from a holiday leave or absence leave were tested for the use of drugs and alcohol. The HFHR recommends abandoning the practice of testing the wards for substances and alcohol until the relevant legal measures have been introduced. The manager of the Young Offender Institution in Grodzisk Wielkopolski admitted that the clothes and luggage of juveniles returning from a holiday leave or absence leave were also searched in his institution.

Some establishments also performed searches of the clothing and the contents of juveniles' cupboards. Pursuant to the Minister of Justice regulation on the young offender institutions and youth shelters facilities staff are obliged to carry out a search to find dangerous and illegal objects or prevent escape. It has to be asked whether such a duty should be formalised by an Act.

In most institutions individuals entering the institution or shelter were not subject to a search to find whether they carried substances or objects banned on the grounds. The managers explain that the issue of competence to search those who enter the facility is not regulated by law.¹ On the one hand this results in violations of the constitutional right to privacy of persons who are subject to searches illegally applied by some young offender institutions, on the other hand it creates a safety risk in these institutions in which personal searches are not performed.

Upon arrival at the institution, visitors are required to produce identification and sometimes they are also asked to show the contents of their bags. Only the manager of the Young Offender Institution and Youth Shelter in Konstantynów Łódzki admitted that visitors to his institution must pass through a metal detector. In some institutions visitors are also required to deposit their mobile phones on arrival.

The HFHR proposed its recommendation concerning the need to set a statutory definition of grounds for body or personal searches of individuals entering the premises of young offender institutions or youth shelters.

Some of the managers who spoke to the HFHR representatives stated that there was always risk in detention institutions for the emergence of a division between stronger and weaker juveniles. However, they would not label such divisions as a sign of an "informal social structure in the institution". Only the juveniles in one institution admitted that there were signs of such an informal social structure in their facility. The stronger youth forced the weaker ones to hand over clothes and sweets.

2.15. Surveillance

CCTV systems were in operation in all institutions visited. However, the scope of surveillance varied between institutions. In most institutions the CCTV system covered hallways and corridors, dining halls, common rooms, study rooms, provisional rooms, infirmaries and sports fields and courts. In the Young Offender Institution in Szubin the surveillance system covered also the rooms of Group I in which were placed juveniles requiring special attention.

As a rule, bathrooms and toilets were not subject to surveillance. However, surveillance cameras in the provisional rooms in the Young Offender Institution in Świdnica and Białystok did

¹ That issue was included in the draft Juvenile Justice Act (2013) available on: <http://legislacja.rcl.gov.pl/docs//1/184064/184070/184071/dokument89206.pdf>.

extend to a part of the toilets. Researchers felt that juveniles were could not have their privacy in this case.

Two institutions visited by the team (the Young Offender Institution in Poznań and the Young Offender Institution in Grodzisk Wielkopolski) installed motion sensors in the juveniles' bedrooms which signalled movement at night time. According to the management, the above solutions ensured the juveniles' safety without invading their privacy.

Surveillance tapes were kept in the institutions for 14 to 30 days. Pursuant to Article 105 of the Regulation of the Ministry of Justice on young offender institutions and youth shelters, the tapes should be kept for as long as the juvenile remains in the social rehabilitation institution – none of the institutions in question met that requirement.

In all institutions images from the CCTV systems were available in the security guards' room. At the Young Offender Institution in Poznań, the manager also had access to a live camera feed. In the Young Offender Institution in Głogów, the nurse staying at the first aid room had access to recordings from the infirmary and the detention room.

The quality of the monitoring systems varied. In most cases it was good.

2.16. Direct coercive measures

During face-to-face talks in some institutions the management were unable to recall the last time a direct coercive measure was applied.

The last time such a measure, notably a body belt, was applied in the Young Offender Institution in Poznań was in February 2012. The records concerning the application of coercive measures did not specify, however, the reasons for such a procedure. Previously four cases of physical force used on juveniles took place in 2009.

In the Youth Shelter in Warszawa-Okęcie, direct coercive measures were last applied in February and August 2013. In both cases juveniles were placed in the detention room for using violence.

In two of the institutions visited, the walls of the detention room were laid out with a soft material and there was a mattress on the floor. While that practice was undoubtedly good, it was in breach of the Justice Ministry Regulation of 3 June 2013 concerning high security cells and detention rooms¹. Pursuant to Article 6 of that regulation, the detention room should be equipped with a table, a chair and a bed that should be securely anchored to the floor. As a consequence, that regulation cited above should be amended.

2.17. Disciplinary measures

The managers of the institutions stated that they only applied disciplinary measures as a last resort. Statistics presented to the team showed that, on the whole, more rewards than disciplinary measures were applied in institutions and shelters visited by the team.

The most frequently used disciplinary measures named by the managers included reprimands, verbal warnings and cancelling absence leaves.

It should be noted at this point that Article 95 *cf.* of the JJA includes a closed catalogue of disciplinary measures.

Discussions with juveniles placed in the Youth Shelter in Warszawa-Okęcie revealed that disciplinary measures applied there included the duty to wear clothing provided by the Shelter,

¹ Regulation of the Minister of Justice concerning the high security cell and the detention room (2012).

cleaning when not on duty and restriction on visits from individuals other than the closest family. Juvenile girls from the Young Offender Institution and Youth Shelter in Koronowo who misbehaved were required to wear red checked shirts. A similar practice was noticed in the Young Offender Institution in Białystok. In that facility juveniles living in Group No. 1 (designated for those wards who misbehaved) were obliged to wear red sweat suits.

None of the measures described above was listed in the statutory catalogue.

The most frequently applied rewards included commendation, including commendation with notice to parents or family court. Juveniles were also able to produce items for their personal use during workshops, they were granted permission to attend activities outside the institution, permission to use a longer leave of absence or make a phone call at the institution's cost. In the Young Offender Institution in Koronowo juveniles who behaved well received more pocket money.

2.18. Use of provisional rooms¹

All institutions visited by researchers had at least one provisional room equipped as regular living quarters. In the Young Offender Institution and Youth Shelter for Girls in Warszawa-Falenica there were blackboards on the walls on which the juveniles were free to write.

According to the management, the blackboards prevented the vandalising of the walls in the provisional room.

In some institutions the provisional rooms were also equipped with a TV. That was the case in the Young Offender Institution and Youth Shelter in Głogów, among others. However, juveniles in that institution complained that only the newly admitted boys were sent to provisional rooms with TV sets. The other juveniles put in the provisional room for safety reasons were placed in a room that was presented to the visiting team as the detention room. Equipment in that room was significantly worse in comparison to the other provisional rooms. There was a mattress on the floor instead of a bed and there was no TV.

There were also bathrooms in some of the provisional rooms, for example in the Young Offender Institutions and Youth Shelters in Warszawa-Falenica and in Głogów. In other units the juveniles were usually forced to signal to security that they wanted to use the sanitary facilities. In the Youth Shelter in Warszawa-Okęcie, the juveniles either had to knock or signal their needs via the CCTV system.

The frequency with which juveniles were placed in the provisional room varied. Among institutions visited by the team, provisional rooms were most frequently used by the staff of the Young Offender Institution and Youth Shelter in Konstancin-Jezierna. From January 2013 to 23 August 2013, a total of 83 juveniles were placed in the provisional rooms. Juveniles complained about the frequency of placements in the provisional rooms, which was also confirmed by the HFHR representatives when they visited the provisional rooms.

The Youth Shelter in Warszawa-Okęcie was at the other extreme – researchers did not record any cases of juveniles being placed in a provisional room to maintain safety and order at the shelter or to prevent aggression or disruption of life in the institution.

¹ A Provisional Room is a separate room furnished in a manner appropriate to the conditions of living quarters. A ward might be placed in provisional room for a period not longer than 14 days for the following purposes:

- to conduct an initial medical examination;
- to conduct an initial adaptive conversation;
- to prepare a plan of individual social reintegration;
- to maintain the order and security of the establishment;
- to prevent aggression or transgression of the establishments' order.

An analysis of the records concerning the use of the provisional rooms in the individual institutions showed that these were not always kept with the same degree of accuracy. In the Young Offender Institutions and Youth Shelters in Konstancin Łódzki and in Świdnica the reasons behind the juvenile's placement in a provisional room were described in very general terms, most usually by giving a reference to the reasons set forth in paragraph 44 of the Regulation of the Ministry of Justice on young offender institutions and youth shelters. As a consequence, it was impossible to control whether or not the provisional room was used in a lawful manner.

Records concerning the use of the provisional room in the Young Offender Institution in Szubin did not include a hand-written signature of the manager to prove that the juvenile was placed in the provisional room. There was only a printed signature on the documents. As a result, it was impossible to check whether or not the decision on the juvenile's placement in the provisional room was taken properly.

The duration of the juveniles' stay in the provisional room varied. Some institutions applied very long placements (up to 14 days) irrespective of the reasons for the placement. In others, such as the Youth Shelter in Warszawa-Okęcie, juveniles were usually placed in the provisional room for five to six days. There was no case where the juvenile is placed in the provisional room for more than 14 days.

It is worth noting here the adaptation group which operated as part of the Youth Shelter in Warszawa-Okęcie up to 1 September 2013 and which was a partial alternative to the provisional room or long placement in such a room. The group was closed down by the decision of the Ministry of Justice on account of financial constraints. There were six beds within the group which were used by the newly arrived youth for no longer than a month. The group itself was a way of introducing juveniles to life at a youth shelter.

It was a common practice that juveniles placed in the provisional room had to wear clothing provided by the institution. In nearly all cases clothing was not stigmatising. Sweat suits provided by the Young Offender Institution and Youth Shelter in Konstancin Łódzki and Young Offender Institution in Białystok were an exception to that. They were bright red (or yellow) and the colour brought to mind the uniforms for ultra-high risk inmates in penitentiary institutions.

Representatives of the National Prevention Mechanism also came across such a situation. At their request, Professor Marek Konopczyński, an expert in Social Rehabilitation Education, gave his opinion on the clothing. In his view, *"its nature is stigmatising, and consequently counter-productive"*.¹

Furthermore, the HFHR representatives noticed that, pursuant to the regulations governing the stay at the Young Offender Institution in Grodzisk Wielkopolski, juveniles placed in the provisional room were required to report to staff every time the door was open. It seems that such a provision is contrary to the educational nature of the unit. The National Prevention Mechanism believes that such a provision distorts communication and underlines the staff's domination over the juvenile.²

2.19. Requests and complaints

Pursuant to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty of 1990, *"on admission, all juveniles must be given the address of the authorities competent to receive complaints"*.

1 Human Rights Defender (2014) Report on the operations of the National Prevention Mechanism in 2013, p. 90.

2 *Ibid.*, p. 87.

According to data presented by the Ministry of Justice, the Ministry received 12 complaints in 2013 concerning the operations of the young offender institutions and youth shelters. The complaints were made by juveniles, their parents and guardians, as well as members of the staff of the institutions. Fifteen complaints were reviewed that same year, of which only five were ruled in favour of the complainant. Nine were rejected and another was resolved in a different way.

Nearly all managers of institutions visited were unable to recall a complaint received in recent years. The Young Offender Institution and Youth Shelter in Świdnica was an exception. In 2009 one of the juveniles in that institution complained that he had been subjected to violence by one of the carers. The information provided in the complaint was found without merit and pre-trial proceedings in that respect were discontinued by the Prosecutor's Office.

Some juveniles approached by the representatives of the HFHR stated that they did not know any institution to which they could send their complaints or ways to do it. This was particularly true for the juveniles at the Young Offender Institution and Youth Shelter in Konstantynów Łódzki.

Not all institutions had noticeboards with addresses and phone numbers of institutions where written complaints may be filed. In the Young Offender Institution and Youth Shelter in Konstantynów Łódzki there was only the address of the Ombudsman for Children on the noticeboard and in the Young Offender Institution in Poznań such information was available only next to the psychologists' rooms. The noticeboard located there showed the addresses of the Ombudsman for Children, Human Rights Defender, Regional Court in Poznań, District Court of Poznań and the Department of the Enforcement of Judgments and Probation in the Ministry of Justice. However, the film which is shown to all newly admitted juveniles featured information on the right to make a complaint.

Only juveniles in the Youth Shelter in Warszawa-Okecie were able to make anonymous complaints. The box for such complaints was located in a games room which was not monitored. According to the manager of that institution, there had never been a case of filing a complaint. No facilities or mechanisms for that purpose were put in place in other institutions.

It should be noted that in one facility civil proceedings were brought against one of the juveniles who slandered the director and one of the carers.

2.20. Description of rights and obligations

Rule 24 of the Havana Rules requires that upon admission all juveniles be given a copy of the rules governing the facility and a written description of their rights and obligations in accessible language. For illiterate juveniles the information should be conveyed in a manner enabling full understanding.

Nearly all juveniles who spoke to the HFHR representatives said that they had been informed of the rules governing the facility on admission. What is more, the description concerning the juveniles' rights and obligations was found in nearly all institutions visited. However, the HFHR representatives noted that in some institutions the description was not available in all groups (the Young Offender Institution in Grodzisk and the Young Offender Institution in Białystok) or it was only displayed in the carers' room which could naturally deter the juveniles from reading it (the Young Offender Institution and Youth Shelter for girls in Koronowo). There were also cases when the rules on display were out of date (the Young Offender Institutions in Głogów and Szubin).

The description of the juveniles' rights and obligations was usually not presented in a clear and straightforward manner. It usually came down to putting up the rules of the youth shelter

or young offender institution in a common place. Language used in the rules made it difficult for the juveniles to understand. Examples of such practices include an excerpt from the JJA put on the noticeboard in the Young Offender Institution and Youth Shelter in Konstancinów Łódzki, or the need to respect the rules of social coexistence which was included among the duties of the juvenile in the Young Offender Institution in Grodzisk Wielkopolski.

A good practice in that respect was observed in the Young Offender Institution in Poznań where staff, together with the juveniles, made a film showing new wards the rules and the practices followed in that institution, describes their rights and duties, including advice on how to file a complaint with the competent institutions. According to information gathered by the HFHR representatives, the Young Offender Institution and Youth Shelter in Głogów intend to use the same concept.

2.21. Budget

Managers said that funds they have at their disposal are sufficient for the day-to-day operations of the institutions. However, they believe they sometimes lack funds for investment projects.

2.22. Other issues identified during visits

Nearly all managers of institutions visited by the researchers pointed to the issue of aftercare regarding juveniles who leave the young offender institutions. In their view, existing legal solutions do not provide or guarantee adequate assistance to such persons. They believed assistance provided by the District Family Support Centre was superficial and insufficient.

What is more, without adequate information on the juvenile, those institutions are unable to recognise their needs and provide them with specific help.

Lack of coordination and exchange of information between the various ministries overseeing wards in youth educational centres and young offender institutions was a serious problem, according to managers. They also pointed out that there was a significant disproportion between funds spent on the care of juveniles while in social rehabilitation institutions and funds spent on so-called aftercare.

Most managers declared that in their capacity within the young offender institution system they would be willing to provide additional services towards the juveniles' transition to independent life. They believed their units would supplement well existing solutions concerning post-penitentiary care. First of all, having worked with the juveniles for several years, they are well acquainted with their needs. Upon release from the young offender institution, the juveniles would not be left to fend for themselves but would continue to have support from a familiar environment.

The HFHR believes the lack of an aftercare system does, in fact, lead to wasting funds spent on social rehabilitation of juveniles in young offender institutions and youth shelters.

Managers highlighted several other issues. In their opinion, there is a significant decrease in the number of youth sent to young offender institutions. Such a decrease is not only caused by the demographic decline but also by the courts' policy of placing juveniles in young offender institutions only as a last resort. As a result, juvenile delinquents are sent to youth educational centres even though they have committed very serious punishable acts. Consequently, there is an increased number of escapes from such centres, their functioning is disturbed and there are specific threats to which other juveniles in such centres are exposed.

Managers of young offender institutions and youth shelters for girls mentioned the lack of profiling in such institutions. They pointed out that institutions put together girls with com-

pletely different needs and habits – those whose intellectual development was normal and those who required special care and attention. Managers believed such a situation made the work process with the girls much harder.

The next issue was observed while visiting the workshop rooms. Following the closing down of auxiliary enterprises, the social rehabilitation institutions are no longer able to compete in the services market. In consequence, the juveniles were deprived of the ability to earn money and the institutions were deprived of the proceeds.

This is unfortunate. The opportunity to perform remunerated labour would have a significant educational influence on the juveniles. It would encourage them to study and be diligent in their classes. The proceeds from such work would also increase the institution's budget.

With existing regulations managers are forced to circumvent the law. A situation that the HFHR representatives came across in one of the institutions is a good example. As part of the workshops, juveniles in that institution made an item using materials provided by a third party. The third party paid the institution for this. The institution transferred the proceeds to the Ministry of Justice and the Ministry of Justice then returned the funds to the institution.

The solutions adopted by the Young Offender Institution in Poznań are an example of good practice in that regard. The institution operated a community cooperative called "Herakles" which provided renovation, construction and cleaning services. Apart from the opportunity to earn some money, the youth working in the cooperative also have the opportunity to gather much needed practical experience.

3. Recommendations

It is necessary to create a system that will support the process of transition to independent living for the juveniles of the young offender institutions. The current legal regulations, whereby the former juveniles of the young offender institutions are tied with the District Family Support Centres, are far from sufficient. It is worth considering whether or not some tasks undertaken by the District Family Support Centres with respect to the former juveniles of young offender institutions should be actually conducted by the institutions themselves.

An information exchange system needs to be established for the educational and correctional establishments in which the juvenile stayed. Existing solutions do not facilitate the flow of such information. There are situations in which data exchange could be beneficial to the meeting of the juvenile's needs and for their protection.

Specialised therapies should be introduced on a broader scale (substance abuse therapy, sexual offence therapy). Some of the juveniles of young offender institutions were convicted for sexual offences or because of alcohol or drug addiction and they do not have access to relevant therapies.

The issue of independent living for the juveniles of the establishments for juveniles

System of effective exchange of information on the juveniles

Broader access to therapy

Methods should be put in place that enable juveniles to access information on their rights and obligations in an effective and clear manner.

Juveniles should be provided with the contacts of the institutions competent to recognise their complaints. Juveniles should have the opportunity to file anonymous complaints.

The formation of proper hygiene habits among juveniles should be promoted by providing them with the ability to bathe on a daily basis, after sporting activity or work.

The privacy of juveniles while using toilets and bathing should be guaranteed.

The amount of time spent outdoors should be increased.

The practice of substituting the direct coercive measure in the form of placement in the detention room with the provisional room for juveniles should be abandoned. The juvenile's stay in the provisional room should be kept to a minimum. The number of cases in which the provisional room for juveniles is used to the absolute minimum should be limited.

A distinction should be introduced between young offender institutions aimed at social rehabilitation and young offender institutions aimed at social rehabilitation and revalidation.

The practice of controlling phone calls made by juveniles should be abandoned.

Legal measures should be introduced that would enable the screening of minors for substance and alcohol use, while taking account of the constitutional principles of proportionality. The practice of testing juveniles for substance and alcohol until the relevant legal measures have been introduced should be abandoned.

Minors should be subjected to a medical examination immediately upon admission to the young offender institution or youth shelter.

Description of rights and obligations

Effective right to make a complaint

Increasing access to personal care products

Right to privacy while using toilets and while bathing

Time spent outdoors

Limiting the use of the provisional room

Profiling young offender institutions for girls

Controlling the phone calls made by the youth

Substance and alcohol use screening.

Medical examination on admission

It should be guaranteed that juveniles have full access to contact with their family members regardless of their behaviour (provided such contacts do not pose a threat to the legal order, the safety and security of the establishment, the course of the proceedings pending or the process of the juvenile's social rehabilitation).

It should be ensured that juveniles receive visits from their family members and third parties in privacy, without the presence of staff members.

Some establishments practised searching the clothing and the contents of the juveniles' cupboards. Pursuant to the Minister of Justice regulation on young offender institutions and youth shelters facilities, staff are obliged to carry out a search to find dangerous and illegal objects or prevent escape. It has to be asked whether such a duty should be constituted by an Act.

Some sweat suits provided by the facilities were red or yellow. The colours were reminiscent of units for ultra-high risk inmates in penitentiary institutions. They were used for juveniles kept in provisional rooms for misbehaving.

Juveniles should have full access to contacts with third parties, regardless of their behaviour. No distinction should be made between visits from family members and visits from third parties. The juvenile's contacts with selected third parties should only be banned or restricted if such contacts pose a threat to the legal order, the safety and security of the establishment, the course of the proceedings pending or the process of the juvenile's social rehabilitation.

Contact with family members

Privacy of visits

Statutory regulation of personal control

Abandoning the practice of stigmatizing juveniles by clothing

Contact with third parties

4. Good practices

4.1. Direct coercive measures

Laying out the floors and the walls of the detention rooms with a soft material and separating youth from the windows and radiators by putting shatterproof plexiglas walls.

4.2. Contact with family members

Organising workshops for parents where two therapists meet with the parents of the inmate girls for three days a year. During workshops the parents undergo training on interpersonal communication and conflict resolution, among other things.

YOI in Grodzisk

YOI and YS in Warszawa-Falenica

YOI and YS in Warszawa-Falenica

4.3. Description of rights and duties

Creating a multimedia presentation on the rights and duties of youth in the establishment where the young people themselves talk about rules effective in the establishment. The information is presented in a clear and straightforward manner.

YOI in Poznań

4.4. Social rehabilitation action

Developing volunteering as an element of the social rehabilitation process. Social rehabilitation actions were also frequently related to volunteering. As part of those actions, the wards of the young offender institutions took part in the Grand Finals of the Great Orchestra of Christmas Charity (Wielka Orkiestra Świątecznej Pomocy), helped children with cancer, fought against flood risk, renovated staircases in the housing communities adjacent to their establishment, cut the hair of residents of nursing homes or did community work. Cooperation with the centres providing care to the disabled was another popular form of social rehabilitation. In addition, the units organised events on Children's Day and classes for lower-secondary school youth.

All establishments

Offering parental education programmes for the juveniles.

YOI and YS in Warszawa-Falenica

YOI in Poznań

Creating an adaptation group for juveniles who are newly admitted to the establishment.

YS in Warszawa-Okęcie

Starting a social cooperative that provides renovation, construction and cleaning services; the cooperative is a source of income for the youth and helps them gain the required practical experience.

YOI in Poznań

4.5. Video surveillance

No video surveillance systems in the bedrooms of the wards. Ensuring security via movement detection systems.

YOI in Grodzisk Wielkopolski

YOI in Poznań

4.6. Contact with the outside world

Providing a room for visitors including a rest and refreshment room.

YOI in Grodzisk Wielkopolski

YS in Warsaw

YOI and YS in Świdnica

4.7. Contact with carers

Creating a patronage system where each ward selects his or her individual patron.

YOI and YS in
Koronowo

YOI and YS in
Świdnica

4.8. Leisure

Creating an extensive sports infrastructure for the youth.

YOI and YS in
Głogów

4.9. Independent living for the juveniles of the establishments for juveniles

Creating separate residential rooms where juveniles of the young offender institution can get used to a normal life.

YOI in Szubin

YOI in Białystok

Creating a hostel that enables juveniles of the young offender institution to become gradually accustomed to normal life and learn responsibility.

YOI and YS in
Świdnica

YOI in Poznań

Creating a self-governing group where juveniles decide for themselves the course of their day.

4.10. Staff

Creating a complex system of staff recruitment.

YOI in Białystok

YOI in Białystok

Conducting supervision of staff.

YOI in Grodzisk
Wielkopolski

Staff establishing non-governmental organisations that support the operations at the young offender institution.

YOI in Poznań

4.11. Medical care

Providing the juveniles with the opportunity to make voluntary and anonymous HIV tests.

YOI and YS in
Świdnica

B. POLICE REMAND HOMES FOR CHILDREN

Although Police Remand Homes for Children (PRHfCH) are short-term juvenile detention institutions, at the time of visit by the researchers some juveniles had stayed there for more than 10 days. Research revealed that none of the visited PRHfCH was in a facility built for the purpose. As a consequence, access of juveniles to fresh air turned out to be an issue in some of the homes. This issue was often played down by staff.

One of the facilities provides juveniles with single colour loose-fitting clothes resembling jumpsuits for high-risk inmates in prisons. The research team has assessed that such practices may indicate stigmatisation and degrading treatment. It should be demanded that the clothing currently being used be replaced with tracksuit bottoms and cotton t-shirts in less distinctive colours or that juveniles be permitted to wear their own clothes.

One of the identifiable best practices was that a police officer, performing the role of a carer, wore civilian clothes.

1. General information

Police Remand Homes for Children (*Policyjne Izby Dziecka*) are short-term juvenile detention institutions operating as part of the organisational structure of provincial Police Headquarters. Juveniles can only be placed in them in cases covered by the Juvenile Justice Act (JJA), in particular when transfer is suspended (for a maximum period of 24 hours) or following a court order (for a maximum period of 48 hours).

Furthermore, under Article 32g(1) of the Juvenile Justice Act, if necessary given the circumstances of the case, police can arrest a juvenile and place them in a police remand home for children if the police have reasonable grounds to suspect that they have committed a punishable act. The police may only do so if they are unable to determine the identity of the juvenile in question or if they have well-founded reason to believe that the juvenile will go into hiding or attempt to conceal the evidence of having committed the act.

Juveniles who leave a youth shelter, an educational centre or a young offender institution without permission may also be placed at police remand homes for children for the duration required for their return transfer to the appropriate shelter, centre or institution, but not for a period longer than five days.

Police Remand Homes for Children are supervised by the Minister of the Interior. They can be set up and closed by provincial police commissioners and the Chief Commissioner of the Warsaw Police, in agreement with the Chief Commissioner of the Police.

2. Detailed analysis

Half of the visited Police Remand Homes for Children were located in the area of Police Headquarters. The rest are in residential areas. It should be emphasised that none of the visited PRHfCH was located in a facility built for this purpose.

The capacity of the facilities visited varied from 12 places in PRHfCh Bydgoszcz to 28 in PRHfCh Warsaw. Most juveniles were detained in a PRHfCh after leaving young offender institutions or youth educational centres without permission or committing a punishable act against property. Some young people, however, were there for committing a punishable act against the health and life. Juveniles were also placed there for the duration of a justified break in the process of them being transferred or escorted to appear in court.

2.1. Description of rights and obligations

The United Nations Rules for the Protection of Juveniles Deprived of their Liberty¹ require that upon admission all juveniles be given a copy of the rules governing the facility and a written description of their rights and obligations in comprehensible language. For illiterate juveniles the information should be conveyed in a manner enabling full comprehension.

According to the Rules governing stays at Police Remand Homes for Children,² the juveniles should be informed of their rights and obligations orally immediately after admission. Immediately after admitting a juvenile into the home, the Director or a member of staff authorised by them, should talk to the juvenile to inform them of their rights and obligations, the activities' schedule and rules governing the facility. The fulfilment of this rule needs to be confirmed by the juvenile's own signature (s. 1(2)). It would appear that the Rules may not be entirely clear to the juveniles (a good example would be the duty to "respect the rules of social coexistence" included under s. 9(1)(4) of the Rules).

The provision seems to reflect the fact that legislators were aware of this and consciously imposed the duty of briefing juveniles orally on facilities' directors. Discussions with juveniles during the visits show, however, that this duty is usually carried out by presenting the juvenile with the relevant provisions of the rules. As there are no examples of good practices in this regard, it should be demanded that informing juveniles is not limited to presenting them with the relevant normative texts but that this is done in an accessible way, in a language and format suited to the age and legal awareness of the juveniles. This is the format in which the rules governing the juveniles' rights and obligations should be available at police remand homes for children.

According to Section 40 of the 2012 Regulation, a copy of the rules and a list of all institutions protecting the rights of juveniles should be placed in the juveniles' bedrooms, the common room, the isolation room and the medical isolation room, protected from damage or being used to harm others.

The visits conducted showed that the duty described above is being fulfilled in different ways.

1 Havana Rules.

2 Rules governing stays at Police Remand Homes for Children, Minister of the Interior's Regulation on facilities designated for persons detained or escorted for the purpose of recovering from alcohol abuse, interim rooms, temporary interim facilities and police remand homes for children, rules governing such facilities, rooms and homes and the handling of images and visual recordings from such facilities, rooms and homes (2012), Annex 12.

The Director of the Police Remand Home for Children in Warsaw indicated that the juveniles are informed of their rights and obligations upon admission to the PRHfCh, which they then certify with their own signature. The Director also believed that the juveniles can also be informed of their rights and obligations by a carer upon request and at any time. During the visit, however, researchers did not notice the information on rights and obligations of the juveniles on display. This finding was disputed in the correspondence with the PRHfCh in question. In written communication from 29 July 2014, the Deputy Chief of the Warsaw Police Headquarters' Transportation Unit indicated that rules governing the rights and obligations of juveniles are available in Polish, English, German and Russian in the common room, the bedrooms and in the duty officer's room.

A noticeboard displayed addresses and telephone numbers of institutions and organisations which could be contacted by the juveniles, e.g. The Human Rights Defender and the HFHR. The PRHfCh in Łódź displayed information on juveniles' rights and obligations in one of the bedrooms, behind a grille. This made it particularly difficult for the juveniles to familiarise themselves with particular provisions. According to information obtained at the PRHfCh in Bydgoszcz, juveniles are informed of their rights and obligations upon admission. At that point, they have the possibility to read the rules, as well as information on video surveillance cameras located at the facility. The rules and addresses of institutions which the juveniles can contact were displayed in the duty officer's room, the isolation room and the bedrooms. They were located behind transparent safety glass, which made it easier for the juveniles to read them.

At the Police Remand Home for Children in Kraków, the juveniles' rights and obligations are in the format of written rules governing stays at the PRHfCh and are in the common room and in each bedroom. Each juvenile is also informed of the PRHfCh's general rules and the use of sanitary facilities and bedrooms. This information is also available in writing. It was written using simple language, which can be understood by a juvenile. Information on rights and obligations can also be obtained during organisational and housekeeping activities, in which all newly admitted persons take part.

2.2. Right to make requests or complaints

According to Rule 121 of Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures,¹ procedures for making requests or complaints by juveniles should be simple and effective. Decisions on such requests or complaints should be taken promptly. If a request is denied or a complaint is rejected, the reasons must be conveyed to the juvenile. The juvenile or, where applicable, the parent or legal guardian, has the right to appeal to an independent and impartial authority.

Under section 8(8) of the Rules, the juvenile has the right to make requests, complaints and proposals addressed to the Director of the facility or the designated police officer.

An effective and functioning juvenile complaints review mechanism should be seen as a means of preventing violations of their rights, as well as an indication of the facility's transparent functioning. Therefore, juveniles should be able to make complaints without interference and in anonymity. It is important that the juvenile is aware of this possibility, as well as the fact that the complaint would not be used against them. The current procedure adopted in several facilities and involving recording complaints in writing in a notebook – under previously recorded complaints – is not effective or transparent.

1 European Rules for Juvenile Offenders.

It should be possible to lodge complaints on separate pieces of paper in a way that would make it impossible for anyone (e.g. other juveniles lodging complaints at a later stage) apart from the addressee to see their contents. Using a designated box for complaints and requests, located in an accessible place, seems to be the most appropriate solution. This would also provide the Director of the facility with information on what changes should be introduced. It is important to note that such boxes would need to be located outside video surveillance cameras' field of view.

Therefore, Section 8(8) of the Rules should be amended as follows: *“the possibility to make requests, complaints and proposals addressed to the Director of the facility or the designated police officer, including without the presence of others, as well as anonymously.”*

In the PRHfCh in Poznań, a complaints and requests book was located in the duty officer's room. However, on the day of the visit, it contained no entries. It cannot be discounted that this was because complaints had to be entered in the book by juveniles in the presence of an officer. Juveniles can enter complaints into a complaints book at the Warsaw Home as well. According to the Director, no complaints have been made at the facility to date either. During the visit to the PRHfCh in Łódź, no designated complaints' book or box was observed. Juveniles at the Police Remand Home for Children in Kielce make complaints and requests orally. These concern various matters, which cannot always be approved, e.g. painting the walls of the PRHfCh a certain colour. There have been no complaints regarding the functioning of the Kielce PRHfCh. There have been complaints, however, regarding the behaviour of officers transporting juveniles to the PRHfCh. They have not been confirmed, however. There was no room for making an anonymous complaint at the PRHfCh in question. At the PRHfCh in Kraków, juveniles had the right to make complaints, requests and proposals to the Director during daily morning assemblies. Such complaints were made relatively rarely, as opposed to requests and proposals concerning, for example, contact with family members.

2.3. Right to privacy

According to Rule 65.2 of Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures (adopted by the Committee of Ministers on 5 November 2008 at the 1040th meeting of the Ministers' Deputies¹), *“[j]juveniles shall have ready access to sanitary facilities that are hygienic and respect privacy”*.

Moreover, according to the European Court of Human Rights' case law, factors such as compliance with sanitary requirements or ensuring the possibility of using toilet facilities in private are decisive in terms of, for instance, whether the treatment in question has attained a minimum level of severity in the context of deprivation of liberty. As stressed by the European Court of Human Rights in *Peers v. Greece* (judgment of 19 April 2001, Application no. 28524/95), toilets which are not separated from the rest of the cell are a breach of Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms. At this point, it is important to point to the Human Rights Defender's speech regarding the Director General of the Prison Service's guidelines no. 3/2011 of 4 October 2011 on technical and security requirements for detainees' living quarters. These included the possibility of installing door viewers enabling the monitoring of toilet facilities from the corridor. In the Human Rights Defender's opinion², observing the convicted person through a door viewer while they are using sanitary facilities breaches their right to humane treatment and to be treated with dignity and respect. For this reason, using this form of inmate behaviour management should be abandoned.

1 *Ibid.*

2 Human Rights Defender's statement of 25 March 2013 to the Director General of the Prison Service no. RPO-700317-II/12.

In light of the above, the shortcomings observed at the facilities visited in terms of ensuring privacy must be eliminated through the installation of curtains or separating toilet and shower facilities from the rest of the room with walls, as well as discontinuing the use of video surveillance cameras. At present, there are no detailed regulations in place regarding the right to privacy when using shower facilities (section 33 of the Ministry of the Interior's Regulation of 4 June 2012 only provides that the facility should feature "a sanitary room for personal hygiene including wash-basins, showers and toilets"). This lack of regulation may allow for violations of the right to be treated with dignity and respect. It seems justified to have these areas regulated.

At the Police Remand Home for Children in Warsaw, both showers and toilets lack doors and can be seen from the room. Despite the Director's assurances that juveniles are let into the bathroom one by one, this finding is highly disturbing. At the PRHfCh in Łódź, all showers are located in one space, without partitions. The Director claims that juveniles are let into the shower room one by one. However, one of the showers is within the video surveillance camera's field of vision. Despite the officers' reassurances that the camera only captures the view up to the showering person's knees, researchers observed that shorter people could be seen up to their waist by the camera in the duty officer's room. At the PRHfCh in Poznań, the showers have no curtains and despite the fact the showering person cannot be seen by someone standing by the bathroom's door, it may evoke a sense of lack of privacy in the juveniles.

2.4. Right to spend time outside

According to the United Nations Rules for the Protection of Juveniles Deprived of their Liberty,¹ every juvenile should have the right to daily exercise outdoors, weather permitting. Appropriate recreational and physical activities should be provided. Detention facilities should ensure that each juvenile is able to participate in available physical education programmes.

It should be stressed that these recommendations are in line with the European Committee for the Prevention of Torture's standards, by which efforts should be made to ensure everyday access to outdoor exercise for persons held in police custody for longer periods (i.e. 24 hours or more).

As per Section 8(1)(10) of the Rules, juveniles have the possibility of exercising outside for at least one hour daily if they are detained at the PRHfCh for more than 24 hours. Moreover, according to Section 33 of the Regulation, every PRHfCh should have a designated space for outdoor recreational activities, secured in a way that would prevent absconding and contact with persons from the outside, specifically by means of a closed fence at least three metres high.

Access to fresh air was an issue at some of the facilities visited. Moreover, the issue was often played down by staff, who argued that juveniles were only spending short periods of time at the units. It should be noted, however, that not having the option of spending time outside while at the facility, especially during summer months, can be quite cumbersome for the youths concerned.

The PRHfCh in Łódź had a concrete courtyard of approximately 5 x 13 metres outside the building. According to staff at the facility, it was not being used because it needed to be renovated. However, the Director of the PRHfCh was unable to indicate when the planned renovation works were to take place. The courtyard was surrounded by a tall concrete wall, approximately four metres high, with barbed wire on top. There were no plants, benches or football pitches there. The Director stated that even when the courtyard was open, the juveniles detained were not interested in using it. Due to the above, at the time of the inspection, juveniles at the PRHfCh had no possibility of spending time outside at all.

¹ Havana Rules.

Juveniles at the PRHfCh in Poznań were also unable to use the designated walking area. According to information provided by the PRHfCh's staff, this was because the facility was not secure enough to prevent escaping. This was exacerbated by the fact that the facility was next to a single-family home residential area and in case anyone escaped, third parties could potentially be put at risk and officers at the Poznań PRHfCh would rather not bring the juveniles outside in handcuffs. According to information provided by the PRHfCh's Director, renovation works were to begin on 15 September 2013.¹ In her assessment, juveniles do not usually spend more than 24 hours at the facility. Consequently, not being able to go for a walk is not too bothersome for the juveniles.

The PRHfCh in Kielce has a walking courtyard with a badminton/volleyball court outside the building. The courtyard is also used by the police transportation unit for other detainees or transferred persons. It cannot be used by the PRHfCh on Wednesdays when the transportation unit uses it.

There is concrete volleyball court behind the PRHfCh in Warsaw, surrounded by a five metre high wall with a metal fence and barbed wire on top. The barbed wire was introduced as a result of two juveniles escaping from the facility in 2003. Staff at the Warsaw PRHfCh are to be commended for the mural produced at the court, depicting differences between the criminal and non-criminal worlds. Thanks to it, surroundings that were not very friendly became more agreeable.

The PRHfCh in Bydgoszcz has a walking courtyard outside the building. It is surrounded by a tall concrete wall, approximately four metres high, with barbed wire on top. The juveniles can use it every day, for up to two hours. In winter they are provided with jackets (the PRHfCh has two of these). The courtyard has a basketball ring. It is also possible to play badminton there. In terms of appearance, the courtyard looks as if it was part of an adult detention centre rather than a children's facility.

2.5. Provision of suitable clothing

According to Rule 66 of the Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures,² juveniles should be able to wear their own clothing provided that it is suitable. Juveniles who do not have sufficient suitable clothing of their own shall be provided with such clothing by the institution. Suitable clothing is such that is not degrading or humiliating and is adequate for the weather and does not pose a risk to the security or safety.

In its 2009 monitoring report, the European Committee for the Prevention of Torture recommended that juveniles detained at police remand homes for children be provided with appropriate daytime clothing (including for outdoor exercise).³

According to Section 7(1) of the Rules, for the duration of their stay at the facility, the juvenile is provided, free of charge, with clothing, underwear and shoes, appropriate for the given time of day and year if the juvenile's own clothing cannot be used or if it is unsuitable for use for reasons of hygiene. The decision is made by the facility's director or a person authorised by them to do so.

1 At the time of the Report's publication, we were informed that the Home secured an open air recreational area for the juveniles.

2 European Rules for Juvenile Offenders.

3 Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 26 November to 8 December 2009, CPT/Inf (2011)20, p. 41, the report is available at: <http://www.cpt.coe.int/documents/pol/2011-20-inf-eng.pdf>.

In a 2013 report, the National Prevention Mechanism also observed that practices of confiscating the clothing of all the juveniles detained without exception are too far reaching.¹

Researchers examined the type of clothing provided, as well as its level of wear. The visits showed that clothing provided is not always suitable. In particular, there is a lack of clothing that would be suitable for girls only. Some tracksuits provided were brightly coloured, resembling clothing used for so-called high-risk inmates in prisons. Such situations may indicate degrading treatment.

The juveniles at facilities visited were not permitted to wear their own clothing. The officers at the PRHfCh in Kraków claimed that when their own clothing is in suitable condition, the juveniles are permitted to continue wearing it. They pointed out, however, that it is usually necessary for them to wear clothing provided by the PRHfCh.

The PRHfCh in Warsaw provides juveniles with single colour loose-fitting clothes, resembling jumpsuits for high-risk inmates in prisons.² In the monitoring team's assessment, such practices may indicate stigmatisation and degrading treatment. It should be demanded that clothing currently used be replaced with tracksuit bottoms and cotton t-shirts in less distinctive colours or that the juveniles be permitted to wear their own clothes.

Researchers were also concerned by the state of the clothing provided at the Police Remand Home for Children in Poznań. It appears that the clothing at the PRHfCh's disposal should be replaced due to its degree of wear and tear.

The PRHfCh in Kielce allowed its youth to wear their own clothes. The Director of the PRHfCh usually recommends them to change into clothing provided, however, due to the inadequate level of their own clothes' cleanliness. She indicated that trainers previously provided at the facility were replaced with plastic flip-flops as there had been attempts at swallowing the trainers' metal eyelets. She also reported that pyjamas at the facility were replaced regularly. All of the clothes at the unit are suitable for both sexes.

Officers at the PRHfCh in Bydgoszcz reported that juveniles were able to wear their own clothes provided they were clean. Otherwise they were given tracksuits, a pair of pyjamas, a toothbrush, a towel and bed linen.

The Kraków facility provides boys and girls with the same type of daytime clothing and shoes. During summer, the juveniles wear T-shirts and boxer shorts and in winter, tracksuit bottoms. Depending on where activities take place, they wear flip-flops or trainers, which they are required to disinfect using the disinfectant provided, located in the corridors. They are also provided with pyjamas and underwear. The facility has recently purchased bras for girls.

2.6. Increasing the number of creative educational activities

The monitors looked at the type, quality and quantity of educational activities offered to juveniles detained at Police Remand Homes for Children. The visits showed that these were usually run on an ad hoc basis and depended on the interests and creativity of the officer on duty at the given PRHfCh on the day. This was pointed out by the juveniles themselves as well, when approached by researchers during their visits to youth educational centres and young offender institutions. In their view, activities offered at Police Homes were usually boring. They are limited to watching TV or completing written assignments. It thus seems necessary to introduce educational aids such as textbooks or capacity building sessions which would assist officers in their work with the juveniles and inspire them to facilitate activities.

1 Human Rights Defender (2014) *Report on the operations of the National Prevention Mechanism in 2013*, p. 106.

2 Correspondence dated 19 July 2014 indicates that the Police Remand Home for Children in Warsaw allows detainees to wear their own, clean clothing provided by their parents.

At this point, it is worth noting that even in its 2011 report, the European Committee for the Prevention of Torture recommended that Polish authorities take steps to establish a programme of creative activities for children in detention. The Committee found that the programme should focus on educational activities (s. 44(2005)3).

Activities offered to the youth at the PRHfCh in Łódź usually involve watching films about addiction prevention or promoting peaceful spectator sports. They also involve completing dictation tests or written assignments on a given topic (later discussed with the carer). Juveniles can also play table tennis, read books or watch TV. They do not have the possibility to spend time outdoors. At the Łódź facility they also do not have access to media. Educational activities consist of, for instance, watching thematic programmes. The PRHfCh ensures that the carers prepare handouts for the activities. The carers also give talks to the juveniles detained about, for instance, the harm involved in using certain substances. They help the youths in practising reading comprehension, drawing or writing hip-hop lyrics. Juveniles and their carers all frequently watch sports events together.

The educational activities provided at the PRHfCh in Poznań are especially commendable. Supervised by a police officer who is also a qualified paramedic, the juveniles learn first aid techniques. The PRHfCh has a training dummy at its disposal, which facilitates hands-on learning.

According to officers from the Police Remand Home in Bydgoszcz, getting the juveniles interested in educational activities takes a lot of effort. Very often not all of them want to take part in such activities. Officers from the Bydgoszcz PRHfCh related that children tend to be reluctant to engage in activities involving large groups. They prefer activities run in small groups or individually. Activities provided at the PRHfCh mostly concern topics around legal responsibility, the harm involved in using certain substances and addiction prevention.

2.7. Contacts with family members

Staying at a police remand home for children can be a difficult experience for the juvenile. The awareness of the family's presence and the ability to stay in contact with them is extremely important for juveniles. These factors can certainly affect the child's future behaviour at the facility.

Under Section 8(1)(9) of the Rules juveniles have the right to be visited by their parents, defence lawyers or guardians – on agreement by the court, the director of the Home or the police officer in charge of their case.

In its 2013 report, the National Prevention Mechanism observed that juveniles' parents were usually notified of their arrest after three to five hours. In the NPM's opinion, this should happen immediately after arrest. The NPM further explains that there can be exceptions to the duty to notify "immediately", but that such exceptions should be clearly defined and have strict time limits and that invoking them should be documented (e.g. by recording all cases of delayed notification in writing, with reasons provided).

Juveniles admitted to the Police Remand Home for Children in Warsaw have the right to have their closest family members notified. A duty officer informs family members by phone. The Director of the Warsaw PRHfCh believes that juveniles rarely make use of this right. There are no obstacles at the Warsaw facility to family members visiting the juveniles there. The Director admits that parents are rarely interested in the children placed at his facility.

Juveniles at the PRHfCh in Łódź can be visited by their family members. In most cases, this needs to be approved by the court (in cases of juveniles detained for having committed a punishable act). The visits usually last no longer than 30 minutes. In the director's view, in sixty

per cent of cases, the parents have no interest in the fact that their child has been placed at the facility.

At the PRHfCh in Kielce, juveniles can be visited by family members, following the court's approval. Visits take place in a special visiting room. The Kielce director also notes the general lack of interest expressed by parents notified of the placement of their child in a PRHfCh. The reaction of parents is different in the cases where a child is admitted for the first time and for whom the situation is very emotional. Parents of such children do display an interest; they go through the fraught situation with the child and visit them frequently. In such cases, staff strove to provide the juvenile with particular supervision.

According to information provided on 24 July 2014, no legal norms on telephone contact are in place at the Police Remand Home in Poznań. At the same time, according to the Deputy Chief of the Provincial Police Headquarters' Transportation Unit in Poznań, the officer's presence during telephone conversations and visits is required according to Article 9(1) of Regulation 134 of the Chief Commissioner of the Police of 30 October 2012 on methods and forms of performing duties at Police Remand Homes for Children. Under this article, "Police officers on duty at the Home are forbidden from leaving juveniles detained at the Home without supervision".

2.8. The right to contact a defence lawyer

According to Recommendation CM/Rec(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures, juveniles and their parents or legal guardians are entitled to legal advice and assistance in all matters related to the imposition and implementation of sanctions or measures. The competent authorities are obliged to provide juveniles with reasonable facilities for gaining effective and confidential access to such advice and assistance, including unrestricted and unsupervised visits by legal advisors. The state must provide free legal aid to juveniles, their parents or legal guardians when the interests of justice so require.

Research visits showed that there is little awareness among juveniles of the possibility of being assisted by a defence lawyer. It seems that the legislators' decision not to introduce the mandatory defence requirement for juveniles suspected of having committed punishable acts presents a serious issue.

According to Article 32g(3) of the Juvenile Justice Act, the juvenile arrested is immediately informed of the reasons for the arrest and their rights, including the right to assistance of a defence lawyer, the right to refuse to testify or answer individual questions, as well as the right to lodge complaints if these particular actions breach their rights. The unit carrying out the arrest is obliged to question the juvenile without delay. The JJA provides that upon request the juvenile should be granted access to a parent, legal guardian or lawyer.

Under Section 8(1)(9) of the Rules governing stays at Police Remand Homes, juveniles have the right to be visited by their defence lawyer. They should be informed of this right upon admittance to the facility.¹

It appears that the length of time spent at a Police Remand Home for Children is also decisive in terms of the procedural safeguards for juveniles suspected of having committed a punishable act. It is worthwhile then not only to inform the juvenile of the above-mentioned right but also to enable uninterrupted contact with a defence lawyer by providing an appropriate room for this purpose. The PRHfCh visited lacked such designated rooms, which would en-

¹ For more information: Fairness in Juvenile Justice Proceedings – Findings of Case File Research commissioned by the Helsinki Foundation for Human Rights (p. V).

sure confidentiality and comfort during lawyers' visits. Officers at the PRHfCh visited were highlighting the fact that it was possible to conduct such visits in Directors' offices, visiting rooms or, which is of even greater concern, at a desk in the duty officer's room.

According to the Director of the Police Remand Home for Children in Warsaw, juveniles hardly ever have any contact with defence lawyers after arrest. In his view, this is primarily due to the high costs of lawyers' services. Defence lawyers' visits take place in a designated visiting room, which ensures that privacy is respected.

This is done in a similar way at the PRHfCh in Łódź. In the opinion of its Director, juveniles detained at the facility are hardly ever visited by defence lawyers. It happens two to three times throughout the year. In the Director's opinion, the juveniles' families are unable to cover the lawyers' fees. At this Home, juveniles can talk to their lawyers in the carers' room. It should be noted that this room is not suitable for this type of visit and does not ensure privacy as required as it is separated from the common room only by a glass window,.

Due to the fact that such visits do not occur in practice, the Poznań PRHfCh does not have a designated room for defence lawyers' visits.

Since its establishment the PRHfCh in Bydgoszcz has seen only two cases of defence lawyers' contacts with juveniles.

There has recently been one such case at the PRHfCh in Kraków. As instructed by the court, the conversation between the lawyer and the juvenile took place in the presence of the Home's Director. At this Home, juveniles can talk to their lawyers in the Director's room. It is puzzling that these visits do not take place in an unsupervised room next to the common room in which juveniles see the doctor, for instance. The Director indicated that defence lawyers and family members do not have access to rooms located throughout the facility apart from the duty officer's room and the Director's room. This is to prevent dangerous behaviour, including bringing various objects into the facility. In the view of the director of the Kraków PRHfCh juveniles are aware of their right to contact a defence lawyer. They are able to inform themselves of this right primarily through the display of the rules governing stays at the PRHfCh available in each bedroom and the common room.

2.9. Direct coercive measures

The directors of facilities visited stressed that in recent years direct coercive measures have not been used on juveniles.

Using direct coercive measures towards juveniles at police remand homes for children is permissible under the Police Act. The Direct Coercive Measures and Firearms Act of 24 May 2013, Article 16(a) of the Police Act provides a list of circumstances in which direct coercive measures may be used towards juveniles admitted to police remand homes for children, as well as a list of measures permitted.

Direct coercive measures may be employed at the institutions discussed in the following circumstances: to enforce behaviour required by law and in accordance with an order given by a legally authorised person; to ward off a direct, unlawful assault threatening the life, health or freedom of a legally authorised person or another person; to prevent actions directly leading to an assault threatening the life, health or freedom of a legally authorised person or another person; to prevent the destruction of property; to capture a person, prevent their escape or to chase that person; to arrest a person, prevent their escape or to chase that person; to break passive resistance; to break active resistance; to prevent actions leading to self-destructive behaviour.

In such circumstances officers may use the following measures: physical force using means such as: transport, defence, attack, restraint techniques, handcuffs or shackles, straitjackets, restraining belts, protection helmets, police batons, hand-held incapacitating gas throwers, objects using electrical energy for incapacitating persons (so-called stun devices).

This list was established upon the entry into force of the Direct Coercive Measures and Firearms Act (5 June 2013). One significant objection may be raised in relation to the list of direct coercive measures permitted towards juveniles admitted to police remand homes for children. The possibility of using stun devices on persons under the age of 18 at police remand homes for children is against constitutional requirements, especially in terms of the principles of necessity and proportionality. In this regard, one should mention the recommendations recently issued by the Committee Against Torture (CAT) after considering the Polish government's report on the implementation of the Convention Against Torture.¹ In its Recommendation 15, the Committee stressed that it remained concerned that the use of stun devices can be in breach of the Convention's provisions and that in some cases, it can even cause death. The Committee indicated that electric stun devices should not be used on children and that they should not be part of prisons' and other detention facilities' equipment. For these reasons, the provision contained in Article 16a of the Act on the Police is contrary to the above-mentioned recommendations, issued on the basis of interpreting Poland's legal solutions in the context of the Convention's provisions. It is also worth stating that neither prison service staff at penal facilities nor security service staff at young offender institutions and youth shelters are permitted to use electric stun devices. Therefore, the solution adopted at police remand homes for children remains inconsistent with those adopted at other detention facilities.

Hence the HFHR proposed a draft amendment to the JJA of October 2013. The Ministry has accepted the HFHR's proposal to abolish the use of electric stun devices as a direct coercive measure in police remand homes for children. The police were given the right to use such devices following the enactment of the 2013 Coercive Measures and Firearms Act. The Foundation has criticised the change from the very beginning. The proposed amendment is to introduce relevant changes to the Police Act which will prevent the possibility of using electric stun devices in police remand homes for children.

At the PRHfCh in Kielce there have been no cases of using direct coercive measures on juveniles. According to the Home's director, there is no need to employ coercive measures at her facility. Talking to a juvenile whose behaviour is aggressive is a better and more effective method of calming them down, even if it may take much longer, according to the director.

The position was similar at the PRHfCh in Łódź. The director indicated that in recent years there were no cases of using direct coercive measures towards juveniles at the facility. In the director's opinion, talking to the juvenile, whose behaviour is aggressive, and trying to calm them down is a better option.

The Police Remand Home for Children in Poznań does not employ direct coercive measures either. The Home is equipped with a restraining belt and has recently ordered a protective helmet. Cases of self-destructive behaviour have not occurred at the facility to date. Staff have usually been able to convince juveniles to follow the officers' instructions.

At the PRHfCh in Bydgoszcz there have been no cases of using direct coercive measures towards juveniles either. According to the officers, there has been no need for such measures so far.

¹ CAT, Concluding observations on the combined fifth and sixth periodic reports of Poland, available on: <http://www.refworld.org/publisher,CAT,CONCOBSERVATIONS,POL,537f14e84,0.html>.

2.10. Duration of stay at Police Remand Homes for Children

Under Article 32g(7) of the Juvenile Justice Act the juvenile must be immediately released and handed over to their parents or legal guardians in any of the following circumstances: where the reason for their detention has ceased; upon instructions of the Family Court; if the Family Court has not been notified of the juvenile's detention in time; or if the 48-hour time-frame for pronouncing a ruling on the juvenile's placement at a youth shelter or temporary placement at an educational centre, with a professional foster family or a treatment facility, has not been respected.

If the juvenile is presented with the above-mentioned ruling, they can be placed at a police remand home for children until their placement at one of the facilities listed above, but for no longer than five days from then.

Juveniles who have left a youth shelter, a youth educational centre or a young offender institution without permission may also be placed at police remand homes for children for the duration required for their return transfer to the appropriate shelter, centre or institution, but for no longer than five days.

The director of the PRHfCh in Warsaw was unable to provide data on average time spent by juveniles at the Warsaw facility. According to information he provided, most juveniles leave the facility 48 hours after arrest. This is the case mostly for juveniles arrested on suspicion of having committed punishable acts. In August 2012 one juvenile spent 15 days at the facility while waiting for a place at a youth educational centre. In 2013 two juveniles spent 18 days each at the facility. The Director stated that at his facility there have been no cases of detaining juveniles for periods exceeding the statutory custody time limit.

In 2013 several juveniles at the PRHfCh in Łódź were there for periods exceeding the statutory time limit – six, eight and nine days respectively. This was due to not having received rulings on the juveniles' placements at the relevant shelters in time.

In Poznań there were cases of educational centres' directors requesting extensions of the 48 hours time limit for return transfer of juveniles who escaped but upon the PRHfCh officers' interventions and informing the Family Court, the juveniles were collected from the Home in time. According to the PRHfCh's director, juveniles who spend a few days there usually do so while waiting for placement in a relevant youth shelter.

The directors of the PRHfCh in Kielce maintain that they are doing their best to minimise time spent at the facility. According to its director the average period of time spent at the facility is less than five days. Accordingly, in cases of juveniles who committed punishable acts, the PRHfCh in Kielce monitors police operations and brings appropriate matters to the attention of the Ministry of Justice. In cases of juveniles leaving youth shelters or young offender institutions without permission, on the other hand, officers intervene early on, to avoid acting outside the statutory time limit. According to the management of the Kielce PRHfCh no juvenile has ever spent more than five or six days at the facility. The director of the PRHfCh commended the effective work of the courts in the Świętokrzyskie Province in this regard, especially the Courts in Starachowice and Kielce.

The PRHfCh in Bydgoszcz monitors the time spent by juveniles at the facility. Officers try to minimise the duration of children's stay as much as possible. In the officers' opinion, the most difficult situations occur with five-day stays following a court ruling. A court rules on placing a juvenile at a facility and the Education Department must identify an appropriate one. This is when the problems often start because the Department does not work on Saturdays or Sundays. The staff mentioned one situation in which the appropriate facility was not identified in time. The juvenile was then released from the PRHfCh. He awaited the ruling at his family home.

The director of the PRHfCh in Kraków indicated that during the past year ten persons spent more than five days at the facility. One of them spent as long as nine days there. In the directors' opinion, statutory time limits for detention are not being breached at the facility. In each case when the statutory time limit approaches, the court notifies the Home of its decision.

2.11. Video surveillance

The Police Act of 6 April 1990 (2011 Journal of Laws, No. 287, item 1687) regulates the issue of video surveillance at police remand homes for children. The detailed rules on using closed-circuit television cameras were further elaborated in the Minister of the Interior's Regulation of 4 June 2012 on facilities designated for persons detained or escorted for the purpose of recovering from alcohol abuse, interim rooms, temporary interim facilities and police remand homes for children, rules governing such facilities, rooms and homes and the handling of images and visual recordings from such facilities, rooms and homes.

As the conducted research shows, surveillance practices at police remand homes for children are not uniform.

At the Police Remand Home for Children in Warsaw all rooms except the bathrooms were under constant video surveillance. The director maintained that upon admission juveniles are informed of the fact that video surveillance is being used.

At the PRHfCh in Łódź video surveillance cameras have been installed in the bedrooms and corridors. Showers are also within their field of vision.

At the Poznań PRHfCh common rooms, corridors and the walking courtyard are electronically monitored. There is no surveillance of bathrooms or bedrooms. Bedrooms are monitored every half an hour through door viewers and sometimes through open doors. The juveniles are informed of this beforehand.

At the PRHfCh in Kielce video surveillance cameras have been installed in all rooms except the bathrooms and the changing room. The courtyard is also monitored. It is a closed-circuit recording system. No person from outside the PRHfCh can access recordings. The child is informed of the video surveillance upon admission. At this point they sign a "familiarisation card" or the statement of having been informed about the video surveillance. Information about video surveillance is also displayed on doors and in each room monitored.

At the PRHfCh in Bydgoszcz video surveillance covers the entire area surrounding the facility, corridors, the common room, the isolation room and the bedrooms. Only the toilets and the health examination room are not monitored. The juvenile is informed about video surveillance upon admission.

At the Kraków facility video surveillance covers the bedrooms, the common room, the entrance to the PRHfCh, the area around the building, walking areas and the corridor.

2.12. Access to natural light

It should be emphasised that in its last Report the CPT recommends reconsidering the design of cell windows at penitentiary facilities in a way which would allow inmates to see outside.¹ The HFHR believes this standard should also be applied to the facilities for juveniles.

At the PRHfCh in Łódź the visiting team noticed that windows were not made of transparent glass. The Director explained that this was to make it impossible for juveniles to have contact with persons outside. This prevents, for instance, obstruction of pre-trial proceedings.

¹ CPT (2014), *Report to the Polish Government on the visit to Poland carried out from 5 to 17 June 2013*, available on: <http://www.cpt.coe.int/documents/pol/2014-21-inf-eng.pdf>.

A similar solution was adopted at the Kraków facility. However, because this PRHfCh is located on the premises of the provincial Police Headquarters, access to it is very limited anyway. It appears, therefore, that the measures adopted are too far reaching.

Architectural solutions adopted at the remaining facilities enabled the juveniles' access to daylight.

2.13. Living conditions

Living conditions vary among police remand homes. This is undoubtedly related to the differences in buildings in which the various homes are located.

The PRHfCh in Kielce went through a general overhaul in 2009. The building and the surrounding area are very well maintained and clean to the point that this facility stands out from the other PRHfCh. The colours used inside the facility should also be commended. They are appropriate for children, mostly pastel and bright. The Home thus seems cosy and welcoming.

The PRHfCh in Łódź is located in a two-level pre-war villa officially listed as a protected historical building. It was given a general overhaul in 2009 when the outside and the inside were renovated, the bathrooms were given new fittings and video surveillance cameras were installed. The facility looked clean and tidy during the visit.

The Poznań facility is situated in an old two-level building. It also features a small outside area of approximately 300 metres. In the researchers' view, the entire facility is in a bad technical condition. It needs to be renovated and re-fitted. For this reason, as well as given the proximity of residential housing, the Provincial Police Headquarters in Poznań should once more consider relocating the Poznań PRHfCh. It is important to note that despite these difficult conditions there were no issues with the facility's cleanliness.

The PRHfCh in Warsaw is located in a three-level terraced house from the interwar period situated between other residential terraced houses.

There were no issues with the level of cleanliness at the PRHfCh in Bydgoszcz. Its looks could be improved, however, during the next renovation works. The colours currently used are mostly sad white-grey hues. This impression is reinforced by the use of non-transparent frosted glass on all windows. The facility does not give the impression of being designated for children. On the contrary, it looks like a detention facility.

3. Recommendations

The monitoring visits indicate that some juveniles spent as many as 15 or 18 days at Police Remand Homes for Children waiting for transfer to youth educational centres or youth shelters. The practice of keeping juveniles at Remand Homes for such long periods is contrary to law currently in force and needs to be changed. Police Remand Homes for Children are not suited for such long stays, both with regard to equipment and personnel. Moreover, unduly long periods spent in Police Remand Homes for Children may be deemed to be in breach of the principle of proportionality in restricting the liberty of juveniles, especially in cases where it is sufficient to employ educational measures only.

Time spent at Police Remand Homes for Children

Juveniles should have access to legal assistance already at the initial early stage of proceedings. It appears to be necessary to take steps to ensure making this right a reality.

There is a notable lack of awareness among juveniles of the possibility of being assisted by a defence lawyer in juvenile justice proceedings. The lack of mandatory defence following the January 2014 amendment to the Juvenile Justice Act is a problem. Under Section 8(9) of the Rules governing stays at Police Remand Homes for Children juveniles have the right to be visited by a defence lawyer. They should be informed of this right upon admission to the facility. A requirement to provide a consultation room for meeting with the defence lawyer should be stipulated to ensure fair trial rights of the juveniles detained, as well as legal professional privilege.

Police Remand Homes for Children should display, in visible, easily accessible locations information about the rights and obligations of juveniles, both regarding their stay at the facility and the juvenile justice proceedings. Such information should be written in simple terms, understandable to a child. It should not merely copy rules or legislative provisions. It appears that the length of time spent at a Police Remand Home for Children is decisive in terms of the legal awareness of juveniles and therefore, implementing the above recommendations is especially important.

The complaints procedures available to juveniles placed at Police Remand Homes for Children should be changed. The current procedure involving recording complaints in writing in a notebook – under previously recorded complaints – is not effective or transparent. In fact, it does not enable the right to make complaints. It should be possible to lodge complaints on separate pieces of paper in a way that would make it impossible for anyone (e.g. other juveniles lodging complaints at a later stage) apart from the addressee to see their contents. Making complaints without the presence of others should also be made possible.

Clothing provided to the juveniles placed at the facilities needs to be replaced. Providing juveniles with clothing in bright colours, resembling that used for so-called high-risk inmates in prisons, should be abandoned. Such practices might indicate stigmatisation and degrading treatment. Clothing currently used should be gradually replaced by clothes of less distinctive colours. It has been observed that, in practice, juveniles at most facilities are automatically provided with Police Remand Homes for Children's clothing. It is worth considering allowing juveniles to wear their own clothes, as long as they are in good

Legal aid

Contact with a defence lawyer

Description of rights and obligations

Right to make requests or complaints

Clothing

condition. Clothing provided should also be different for the different sexes. The Homes should consider purchasing clothes specifically for girls. The necessity to wear unisex clothes does not seem to make the juveniles feel comfortable (particularly girls). Providing clothing suitable to the different sexes should certainly makes them feel more comfortable.

Courtyards need to be modernised to facilitate the juveniles' right to spend time outside. Currently the state of these courtyards in most facilities visited makes it impossible to achieve this. It is necessary to take steps to adapt the courtyards to juveniles' needs. This includes making them visually pleasing to young people rather than resembling prison courtyards.

At some facilities the juveniles have no access to natural light due to the use of frosted glass. Such practices should be abandoned, especially in units far from residential buildings and streets.

The right to privacy has to be ensured while using sanitary facilities. This was not the always the case at the facilities visited.

Officers' engagement with local communities and increasing the role of the police in prevention should be ongoing. It seems that Police Remand Homes for Children's officers with experience in working with juveniles should more frequently organise activities with children for juvenile delinquency prevention.

It would be worthwhile to make capacity building training provided by the PRHfCh' officers available to officers from other units.

Interviews with staff employed at some of the institutions visited suggest that some of the National Prevention Mechanism's recommendations are not being implemented. Officers frequently pointed out that they did not agree with the National Prevention Mechanism's assessments and that some of the recommendations were not implemented. For this reason, it seems justified to increase monitoring of the implementation of the NPM's recommendations' at the central level, by the National Police Headquarters.

Right to spend time outdoors

Access to natural light

Right to privacy

Preventive work by the police

Educational work

Implementing the National Prevention Mechanism's recommendations

4. Good practices

4.1. Living conditions

Rooms in the Kielce and Kraków remand homes look notably pleasing. The colour schemes are in keeping with the units' function. The PRHfCh in Kielce is in a newly renovated building. It is of a much higher standard than other units visited. Toilets, showers and bedrooms all look newly renovated.

PRHfCh in Kielce
PRHfCh in Kraków

4.2. Contact with officers

At the PRHfCh in Bydgoszcz the police officer performing the role of a carer wears civilian clothing.

This should be common practice. The contact between the juvenile and the officer is certainly made easier by diminishing the distance between them in this way and reducing the stress connected with staying at the unit.

PRHfCh in
Bydgoszcz

4.3. Waiting room for parents and defence lawyers

On the ground floor of the building there is a waiting room for families of juveniles and their defence lawyers. Numerous addiction and human rights related publications are on display. There is also a play area for young children visiting the unit with their parents.

PRHfCh in Warsaw

4.4. Therapy room

This facility features a room for addiction therapy - "Candis", where therapists work on certain days of the week.

PRHfCh in Warsaw

4.5. Activities offered

The Poznań PRHfCh offers first aid courses (one of the officers employed is a paramedic). The PRHfCh has a training dummy at its disposal, which facilitates hands-on learning. According to officers, the juveniles have been finding these courses very interesting.

PRHfCh in Poznań

4.6. Prevention programmes

The Director of the Kielce PRHfCh pointed to a large number of programmes for children from outside the Home. In the past, such activities used to take place at the Home. At the moment, however, they take place at schools, in line with the National Police Headquarters' guidelines to prevent external persons' access to the PRHfCh. Officers working at Police Remand Homes for Children have substantial experience in working with children and thanks to this, it is easier for them to communicate with the juveniles and to carry out preventive work.

PRHfCh in Kielce

4.7. Programmes for duty officers

The Director of the PRHfCh in Kraków carries out training for officers in the Małopolskie Province on changes introduced to the Juvenile Justice Act, as well as the new formal requirements concerning procedures for arresting juvenile offenders.

PRHfCh in Kraków

4.8. Access to fresh air

According to the timetable at the Kraków facility, juveniles have access to fresh air for two hours each day. The walking area looks undeniably better than those at other facilities.

PRHfCh in Kraków

4.9. Police Remand Homes for Children codes of conduct

The Kraków facility has a Code of Conduct written in simple language and covering general rules and the use of sanitary facilities and bedrooms.

PRHfCh in Kraków

C. YOUTH EDUCATIONAL CENTRES

The monitoring visits revealed that the functioning of a youth educational centre (YEC) largely depends on its manager. The degree to which juvenile rights are respected is also largely dependent on the manager. This is the result of a lack of full and adequate regulation of both the legal character of placement at a youth educational centre and the organisation of these facilities.

Nearly all the youth educational centres visited were in proper condition. Only one of them needed urgent renovation.

However, in some facilities researchers encountered practices, which amount to human rights violations. Some facilities applied disciplinary measures that stigmatise youth, for example, by requiring them to wear brightly coloured clothes similar to those worn by so-called dangerous prisoners. In some facilities, collective responsibility was enforced. For example, this meant that an entire group would be punished for the wrongdoings of a single person. These practices are used due to inadequate regulation of disciplinary measures.

One of the more serious problems in youth educational centres was the lack of access to specialised psychiatric care for juveniles.

Researchers also established that most youth educational centres visited pursued intensive social rehabilitation with regard to the juveniles. A wide variety of sports, cultural and therapeutic activities are offered to juveniles. Moreover, various forms of vocational education for juveniles are available at the institutions visited.

1. General information

Placement in a youth educational centre is one of the educational measures that may be ordered by the Family Court when a juvenile demonstrates antisocial and delinquent behaviour or has committed a punishable act. Such a measure may be applied only to children under 18. In the case of juvenile delinquency proceedings, there is no lower age limit for placement in a youth educational centre.

Youth educational centres are run for children who are socially maladjusted and who require special organisation of instruction, work methods, education and social rehabilitation. In such cases, the centre's role is to provide social rehabilitation and education. The centres also accommodate children with mild intellectual disabilities, in which case their role is to pro-

vide social rehabilitation and revalidation. The tasks of the youth educational centres include eliminating the causes and symptoms of social maladjustment and preparing the children to live in accordance with applicable social and legal norms.

2. Detailed analysis

2.1. Facilities

The research monitoring teams visited seven youth educational centres. The institutions were in five provinces, notably: Mazowieckie, Lubelskie, Małopolskie, Pomorskie and Kujawsko-Pomorskie. Five institutions were designed for boys, and two for girls.

The institutions differed in terms of their capacity. With 80 beds, the YEC of the Orionist Priests in Warsaw and the YEC in Włocławek were the largest institutions visited. The YEC in Wielkie Drogi and the YEC in Puławy could admit 72 juveniles, whereas the YEC in Wierzbica and the YEC in Kraków could admit, respectively, 40 and 30 juveniles. The occupancy rate in most of the visited institutions was low because most of the visits took place during holidays. At that time of the year, there were just a few juveniles residing in the institutions, for whom the court did not approve their return home. It was usually around 10 to 20% of the regular occupancy rate.

2.2. Youth population

Juveniles in most visited institutions were placed either on the basis of antisocial and delinquent behaviour or for committing punishable acts. The directors of the institutions estimated the two groups were equally represented. Antisocial and delinquent behaviour usually consisted of the failure to attend compulsory schooling and drinking alcohol. As for punishable acts, the directors of the centres relayed that juvenile delinquents were usually placed in the centre because of acts such as theft, burglary, fighting incident, robbery and drug possession. The number of offences involving physical aggression and drug offences was growing each year, according to the directors of facilities.

Juveniles spend, on average, two to three years at youth educational centres. The monitoring team established that the longest placement was five years. The shortest one was more than ten but less than twenty hours. This was the result of a juvenile's escape from the institution immediately following placement due to the open nature of youth educational centres.

The youngest juvenile delinquent placed in the centre was 12- and the oldest was 21-years-old. However, these were exceptional cases. It seems that the average age of juveniles in institutions was around 16.

Nearly all juveniles came from socially isolated environments, from dysfunctional and broken families. There were, however, also juveniles from so-called good families that are educationally inefficient for whatever reason. There is also an increase in the number of so-called euro-orphans, whose parents have left to work in another EU member state.

Juvenile delinquents usually came from the region in which the institution is located. There were, however, institutions with juveniles from all over Poland.¹ In most cases, directors disagreed on whether juveniles should stay in an institution close to their place of residence. Some claimed that such a situation is more favourable for organisational and educational reasons since it guarantees close contacts with the family.² Conversely, others claimed that it

1 Youth Education Centre in Puławy.

2 Youth Education Centre in Kraków.

is much better to place a juvenile in an institution far from their residence to cut ties with the destructive environment.¹

As a rule, there were no foreign nationals among juveniles placed in the institutions. Occasionally, there were Poles of Roma origin.

Notably, directors of institutions gave examples whereby juveniles were placed in youth educational centres for reasons lacking grounding. In the view of some directors, there were several cases, whereby juveniles should have been placed in young offender institutions instead due to their antisocial and delinquent behaviour and the nature of the punishable acts committed.

2.3. Staff

Staff in youth educational centres include educational specialists and administrative staff. Educational specialists included both teachers employed at the schools operated on-site and carers in the dormitory. The total number of employees has always been lower than the number of children placed in the institution.

Carers had university degrees in education studies or social rehabilitation, and teachers at the schools had university degrees in their respective areas of teaching. Staff in the YECs were usually permanent and the staff turnover ratio was not high. There are also no difficulties in hiring staff, except with regard to vocational teachers.

The carers' have the following responsibilities: to cooperate with parents or legal guardians, to acquaint themselves with the local environment and the reasons for the child's placement, to encourage their parents or legal guardians to take part in the development of an individual plan for social rehabilitation and therapy, to cooperate with the Family Court on the exchange of information on progress in the social rehabilitation process by attending hearings, writing opinions, commissioning juvenile probation officers' interviews, to cooperate with organisations and institutions in organising the social rehabilitation and therapy process, and to organise the child's treatment.

According to information provided by the directors of the youth educational centres, employees are willing to improve their skills and qualifications and do so on a regular basis by attending all types of training programmes, courses and post-graduate programmes. They are covered by annual and long-term professional advancement plans. Training programmes are sponsored by special funds or organised by the authority that operates the facility and its branches (e.g. School Superintendent Authority).

2.4. Living conditions

Nearly all facilities visited by the team ensured sufficient or good living conditions for the juveniles. Many of the facility buildings had been recently renovated. The buildings and equipment in the YEC in Kwidzyn were especially good.

The YEC in Kraków was an exception and in need of urgent renovation. The facades of the buildings had been vandalised, and the buildings were not connected to the sewage system or to the heating system. The facades of the youth dormitories, the school, the dining hall and the boiler house are neglected and as such require thorough renovation. The dormitory interiors also require renovation. The management stated that they planned to renovate the dormitory interiors in 2014. During the monitoring visit, one of the dorms was already prepared for renovation. Up until January 2013, the existing buildings of the YEC belonged to the

¹ Youth Education Centre in Wielkie Drogi, Youth Education Centre in Warsaw.

children's shelter, for which as a result of disputes between the Municipal Social Assistance Centre and the Education Department of the Kraków Municipal Office over whose responsibility the shelter was, the YEC was not able to obtain funds for the renovation.

There were between two to seven beds in the bedrooms for juveniles. The accommodation was, as a rule, neat and tidy. The furnishing in most rooms was simple but sufficient for the juveniles' needs. The furniture in the bedrooms included cupboards for the juveniles' personal effects. In some institutions, the juveniles were allowed to keep animals.

2.5. Personal hygiene

Researchers assessed the number and condition of toilets and baths as decent. The showers ensured privacy. They were either in a single walled room or in a larger room separated by partition walls and curtains (or glass windows). In some institutions, bathrooms were recently renovated. Some of the baths lack anti-slip mats. Overall, the cleanliness of the baths was assessed as good.

Both directors and youth reported that residents could bathe every day, with the possibility to access showers additionally following activities requiring extra exertion.

2.6. Nutrition

In all institutions visited by researchers, juveniles were offered at least three meals (breakfast, lunch and dinner). In some institutions, there were even five meals a day.¹ Most institutions provided lunch or afternoon snacks to juveniles. Juveniles often had the opportunity to ask for an extra portion of bread or soup, for example.

Organising culinary workshops where juveniles cooked meals using products provided by the institution was a popular idea. Some institutions had funds for purchasing alimentary products for residents in addition to the meals provided by the YEC, for example, as part of the culinary group operated in the facility.²

Regarding meal provision, institutions either had kitchen facilities that employed cooks or used the services of an external catering firm.³

Institutions differed in terms of the daily food allowance per youth. For example, the daily food allowance in the YEC in Kwidzyn was PLN 11 (EUR 2.65); in Warsaw from PLN 14 to 16 (EUR 3.37 to 3.85); in Puławy, it was PLN 12.50 (EUR 3); and in Wierzbica, it was PLN 16.8 (EUR 4). Directors reported that the rate was sufficient. Some relayed that problems arise when the youth population in the facility is lower than the maximum capacity.

As a rule, residents who talked to the researchers spoke highly of the quality and quantity of the food. They even pointed out that food in the institution was better than at home.

The directors of all YECs assured researchers that it was possible to prepare meals as part of a special diet regimen. In case of medical indications, chefs could prepare other dishes, such as a low-protein diet, anti-allergy diet or diet for pregnant women.

1 Youth Education Centre in Kwidzyn

2 Youth Education Centre in Kwidzyn, Youth Education Centre in Wielkie Drogi and Youth Education Centre in Kraków.

3 Youth Education Centre in Kwidzyn, Youth Education Centre in Wierzbica.

2.7. Education

There were middle schools in all of the youth educational centres visited. In most institutions, there were two schools, and in two institutions there were even three schools.

YEC	Schools
YEC in Puławy	Middle school, Vocational school
YEC in Wierzbica	Middle school, Vocational school
YEC in Kraków	Special-needs primary school, Special-needs middle school
YEC in Wielkie Drogi	Special-needs primary school, Special-needs middle school
YEC of Orionist Priests in Warsaw	Middle school
YEC in Kwidzyn	Special-needs primary school, special-needs middle school, special-needs vocational school
YEC in Włocławek	Primary school, middle school, vocational school, secondary school (suspended)

The directors assured the team that the diplomas do not indicate in any way that they are issued by a school operating as part of a youth educational centre.

Each of the schools visited was equipped with various teaching aids and most had very modern audio-visual equipment. The institution in Kwidzyn stood out in particular in that respect – all classrooms were equipped with audio equipment, a projector, a TV set, and one of the classrooms also had an air conditioner. The female residents also have access to a well-equipped computer room. During the on-site visit, the management also reported that they were planning to buy tablets for the girls.

The directors also reported that a significant number of children lag behind with their school curriculum corresponding to their age. However, instances of students having to repeat an academic year are rare and usually result from the juvenile being placed in the youth educational centre in the middle of the school year.

The directors of some institutions cited the good performance of juveniles during the middle school exams as compared to other schools. In the YEC in Kwidzyn, the results of the middle school exam in Polish during the school year 2013/2014 were 16% better compared to overall results for the province. Residents of the YEC in Warsaw received an average score of 60% during the exam in humanities (Polish), compared with the national average of 68%. Their average score in history and civic education classes was 55%, compared with the national average of 59%; their average score in math was 34%, compared with the national average of 47%; their average score in chemistry, physics, biology and geography was 39%, compared with the national average of 52%; and their average score during the English exam was 48%, compared with the national average of 67%. However, the results of the middle school exams in most institutions were worse as a result of the numerous interruptions in the children's education.

All youth educational centres visited by researchers offered the possibility of vocational training. Sometimes it was provided at the vocational school or as part of vocational training (for juveniles attending primary school and middle school). Training in vocational schools was offered for the following trades, among others: baker, cook, carpenter, locksmith, fitter and welder, hair dresser and sales clerk, with carpenter and locksmith being the most popular ones.

Some institutions offered their residents the opportunity to take part in all sorts of courses and training programmes that prepared them for a specific trade or simply upgraded their qualifications. Those courses included, among other things, sewing, cooking, building, basics of business, waitering, bartending, or driving licence courses. Those additional courses were subsidised by the European Union in some institutions.

The directors of the YECs visited relayed that there was, as a rule, the possibility of attending schools outside the institution. However, such cases were rare. The director of the YEC in Kwidzyn cited the example of one female juvenile who was taking part in an apprenticeship programme in hairdressing outside the institution. On the other hand, there were three students in the history of the YEC in Puławy who attended schools outside the facility. The management of the YEC in Kraków decided to introduce a pilot programme, which sent children, who were middle school graduates, to vocational schools in Kraków; they also provided them with accommodation in a dormitory. The pilot programme failed and most of the children did not complete the school. None of the female students in the YEC in Wierzbica attended school outside the premises of the facility although such an option exists formally.

Residents in nearly all institutions rated the educational facilities highly. Many of them stated that the practical skills in a specific trade will help them compete in the job market after they leave the institution.

2.8. Education and social rehabilitation activities

In principle, all youth educational centres visited organised a variety of activities aimed at education and social rehabilitation, as well as therapy.

Therapies offered in the youth educational centres included: biofeedback, team-building games and exercises to release emotional tension, prevention programmes, VIT communication video-training, relaxation activities, brain training, art therapy, educational therapy, social prevention and rehabilitation, psycho-educational activities, revalidation and social therapy activities, aggression replacement training, prevention programmes called “Alcohol?! No, thank you”, “Drugs?! No, thank you”, workshops on human sexuality, working programme with a newly admitted female juvenile under the theme “You are not alone”, a programme under the theme “Violence – Not for me, thank you”.

In most cases, the therapy was conducted in separate therapy rooms (rooms for group therapy) or the office of a psychologist or child counsellor. An interesting solution has been devised in the YEC in Warsaw where juveniles are sent to a branch in Anin, which operates a therapy centre called “Trampolina 1”. The centre employs psychologists and therapists. The juveniles are split into groups of eight and take part in a two-week therapy programme. During that time, the juveniles have a break from school. The therapy aims at identifying the most important problems that youth face such as alcohol or drug addiction, behavioural problems and aims at solving them.

All the facilities visited employed a child counsellor and a psychologist who conducted various therapeutic activities for groups and for individuals. Some facilities employed therapists or specialists for specific forms of therapy.

The juveniles in all YECs visited had Individual Educational and Therapy Plans. Typically, these plans are devised by the carer, child counsellor and psychologist in consultation with the juvenile. The plans contain basic details concerning the juvenile, the opinions of the psychologists and other specialists, an educational assessment, information about developmental deficits and the direction, methods and forms of social rehabilitation work.

All types of scoring systems are a central part of the educational and social rehabilitation activities applied regarding juveniles in facilities visited by the team; the scores were usually given on a weekly basis. For example, in the YEC in Wielkie Drogi, the weekly scores are given out on a special spread sheet called “Fine feathers make fine birds” (“*Jak cię widzq tak cię piszq*”).

Points are granted on the basis of the juvenile’s results in the following areas: social activity, manners, and individual school performance. The points are awarded by the carer, who can award points on a scale from “6” to “0” or deduct “-2” points as a penalty. Juveniles have the right to view the score and demand a rationale behind the score from the carer.

After the weekly scoring has been closed and the weekly average has been calculated, there is a group meeting where the scores obtained in the preceding week are discussed and posted on a board. In the YEC in Kraków, the juveniles are classified within four categories (stages). Within each of these categories, there are specific privileges, requirements and responsibilities depending on the juvenile’s progress in the social rehabilitation process.

Progress is measured each week based on weekly scores by accounting for the individual capabilities and the engagement in daily chores. The category system is considered to be one of the methods, which allows carers to evaluate a juvenile’s compliance with the centre’s regulations and give rewards or punishment. The following stages are as follows: Observer (0), Newcomer (I), Household Member (II), Resident (III). The juvenile may progress to the next category after at least four weeks of compliance with the requirements of the given stage (with each new week starting on Monday). The juvenile may progress only one category higher after obtaining the required number of points (both in the dormitory and at school) during the four-week period. It is the director of the facility, who promotes the juvenile to a higher level. The juvenile moves up to the next category after presenting their request to the YEC director. The request must be accepted by the carer and patron, teacher, psychologist, child counsellor, instructors of two interest groups, psychotherapist and deputy director. Upon receipt of the request and analysis of the Juvenile’s Social Awareness Report Card concerning the given stage, the director decides on the youth’s promotion to the next level. The YEC in Warsaw applies a score system each week; juveniles are given points for their behaviour, observance of the rules effective in the centre and personal hygiene. Depending on the number of points received during the week, the carers take a decision on whether or not the juveniles may be granted a leave of absence to go to the city.

Custodial work on the facility grounds was another form of educational and rehabilitative activity used in all of the institutions visited. There was no cleaning staff employed in nearly all YECs.

Residents in YECs take part in all types of volunteering projects for various institutions (such as animal shelters, food banks, children with disabilities, and nursing homes).

The possibility to leave the premises of the facility varies from one facility to another. Group trips to various types of external events (such as trips to the swimming pool or to the theatre, going shopping or biking) were the most frequent. All facilities enabled individual juveniles to leave the premises. In many cases, this depended on two factors – permission of the court and the good behaviour of the juvenile. Typically, such leaves occurred on weekends.

The facilities adopt various types of measures to teach juveniles self-reliance and prepare them for transition to independence living in society on release. To achieve that goal, the facilities cooperate with the District Family Support Centres (*Powiatowe Centra Pomocy Rodzinie*). Some facilities also employ social workers. The YEC in Kwidzyn and the YEC in Warsaw have an interesting approach to teaching independent living skills. In Kwidzyn, there

is a Transition Unit, first established in January 2006. The unit can house up to six girls. The programme targets girls with outstanding or excellent levels of social awareness. There is a separate entry to the Transition Unit and the girls have their own keys. Juveniles are with the educational group's unit all day (until 10.00 PM). They must be there several times per day.

The management of YEC provided that in the academic year 2013-2014 there was a total of six girls in the Transition Unit; during the on-site visit during holiday time, there was one girl there. According to the document called "Innovative Educational Programme called 'Transition Unit' in the YEC in Kwidzyn," which was given to the monitoring team by the facility management: "*Years of observations, research analyses and the experience of the educational staff show that juveniles experience the most difficulties when taking independent decisions concerning their lives and living in accordance with social norms, without constant educational supervision. [...] Following the approval of the Permanent Educational Team of the YEC, a female juvenile who has established an agreement with the facility director, is granted a standing leave of absence and moves to the Transition Unit. The girl retains her status as a YEC resident, and her stay in the Transition Unit does not result in any financial consequences for the girl or the YEC. She still has the right to attend educational activities in her group. She eats dinner in the dining room in the YEC. She prepares breakfast and supper on her own using products provided by the food service in the YEC. During the day, she is required to confirm her presence in the YEC at the Attendance Register for her educational group. She can turn to her carer regarding any educational matters.*" The Anin branch of the YEC in Warsaw can house a total of 17 graduates who are preparing for their transition to independent living, while attending upper level secondary schools in Warsaw.

In all the facilities, there are regular official events, celebrations on Mother's Day or Nativity plays. The management does their best so that parents also attend these kinds of events.

2.9. Leisure time

Residents at all facilities visited have access to an impressive array of activities during their spare time. Both management and youth emphasised that it was difficult to get bored in the YEC because their time was effectively organised all day. Only during holidays was it problematic as there are only a few juveniles on the premises.

Each facility visited had common rooms containing at least tables for preparing homework, chairs or armchairs and a TV set. Usually, there was more equipment in the common room, such as a DVD player, games or books.

Activities attended by the juveniles included: trips to the cinema, theatre, zoo, botanical garden, aqua park, walks, biking tours, skiing trips, table tennis, billiard, computer classes, fitness centre, drama classes, special recreational groups (e.g. sporting groups, regional and cultural studies groups, volunteering groups, drama clubs, book discussion clubs, musical clubs, arts clubs or history lovers clubs) and scouting groups. Participation in those events and activities was frequently photographed and the photographs were on show in display cabinets at the facility.

The residents of most youth educational centres visited regularly attended various types of sporting competitions or championships, including events tailored to residents of the youth educational centres.

The sporting infrastructure in the individual facilities varied. Some facilities had a well-developed and modern sports infrastructure, and others had infrastructure, which required urgent investment.¹

¹ Youth Education Centre in Warsaw, Youth Education Centre in Kraków.

2.10. Health care

Most youth educational centres visited faced issues of inadequate medical care within the centre. Most centres did not employ either general practitioners or nurses¹ (even on a part-time basis). Sometimes financial resources were insufficient for the hiring such professionals. The lack of medical care led to organisational problems – a juvenile, who must consult an external doctor, must be accompanied by a carer who at the same time must care for the entire group.

Nurses were employed in the following institutions: Kwidzyn (on a part-time basis), in Warsaw (two nurses), and in Puławy (one nurse). Institutions that employed nurses had medical rooms with optimum equipment. On the whole, medical care in the institutions visited was organised according to general rules – the institutions register children at the local medical centre. Lack of good medical care is a serious problem, especially since children in the YECs are neglected in terms of health care and require frequent visits to a doctor, which is not easy to organise. The directors relayed that it was necessary to regulate the issue of medical care in the youth educational centres by employing medical doctors and nurses.

Lack of specialised psychiatric care for children in the YECs is another separate serious problem. Almost all directors voiced their concerns in that respect, emphasising that the number of youth residents with mental disorders and illnesses who require the immediate attention of a psychiatrist continues to rise. Securing a psychiatric consultation can take up to several months, which is a major problem. Due to the scale of the problem, some institutions have begun to cooperate with psychiatrists (also on a pro bono basis). For example, there is a psychiatrist visiting a YEC in Warsaw each month. The YEC in Puławy also began to work with a psychiatrist. In other facilities, children frequently have to wait several months for a psychiatric referral within the public health care system.

Regarding more serious conditions, directors reported hepatitis C, syphilis, gonorrhoea, scabies, and sports injuries (bone fractures and joint dislocations, as well as superficial wounds). Nevertheless, these cases were rather rare.

In case of a sudden illness, the management of the establishments relied primarily on the opinion of nurses (if employed) and carers. If they decided that the juvenile needed to be hospitalised, they were driven to the hospital or the management called an ambulance. Medicines were primarily administered by carers and by nurses if employed.

There was only one case (in the past) of a child with HIV in the institutions visited by researchers (YEC in Kwidzyn).

A relatively large number of juveniles are addicted to tobacco, alcohol or drugs, according to the directors of the facilities visited. There is no uniform approach in the YECs to smoking by residents. Smoking is not allowed at the YEC in Kwidzyn. There is a complete ban on smoking in the Warsaw YEC; however, the management reported that nearly all residents smoked. The director was aware that children usually violated the ban while throwing out the garbage.

There is a ban on smoking at the YEC in Puławy; however, smoking was a problem there; the children smoked in the bathrooms, among other places, or they snuck out to smoke. Even though smoking is banned at the YEC in Wielkie Drogi, the carers tolerate smoking in the toilets. The children relayed that it was usually the older residents who disobeyed the ban. According to the director, around 10 to 15 children stop smoking through the year.

As illustrated by the examples, the smoking policy varies and depends on the director. There are cases where – despite an official ban – the directors and carers tolerate smoking; and

¹ Issues concerning the availability of nurse services are regulated by the Law on healthcare services financed from public funds, Art. 27.

smokers do not face repercussions for their behaviour. A uniform smoking policy should be established in all YECs. It should be prohibited to smoke on the premises of YECs as permitting smoking is not educational and is harmful to the juveniles' health. It should be also noted that legislation bans the sale of tobacco products to children under the age of 18.

2.11. Contacts with the outside world

All the facilities visited by researchers enabled residents to contact persons outside the facility in various ways.

Juveniles could receive visits on the facility's premises, usually on weekends or on weekdays outside school hours. As a rule, juveniles could be visited by their immediate family such as parents, grandparents, siblings and legal guardians. In most facilities, the list of persons who may visit the juveniles was not exhaustive, and the decision on who may visit the juvenile remained at the discretion of the facility director or carer.¹ Prior to approving or disapproving such a visit, YECs carefully examined the situation, obtained consent from parents or legal guardians and even sometimes sought the consent of the court. If not indicated otherwise, the visit could take place on the premises. Typically juveniles receiving a visit from their family were permitted to leave the facility for several hours. Some facilities also offered special visiting areas or rooms for receiving visits from families. If there was no visiting area, meetings were held in the dining hall or in the carer's room.

The set-up of special rooms for visitors who may stay there overnight (free of charge) is a positive practice and was observed in several establishments. Such a practice certainly makes it easier for parents to visit their child and helps deepen the relationship between parent and child.

Phone calls were another form of maintaining contact with the outside world. The policy on phone calls followed by the facilities could hardly be considered uniform.

Outgoing calls to parents were limited in the YEC in Kraków. The duration of the phone calls increased once the juvenile has progressed to a particular category at the YEC. No limit was placed on incoming calls from parents. The management relayed that restrictions did not apply to any formal or health matters regarding which the parents should be notified. Telephone calls were made in the presence of the carer. In the YEC in Puławy, there was a telephone in each educational group and family members could call the juveniles at any time. If the matter was important, juveniles were also allowed to make calls at the expense of the facility.

The director of the YEC in Wielkie Drogi noted that juveniles were allowed to call their families whenever they wished. If the bills were too high, the juvenile gave their parents a missed call, and the parents called back. The carer was present during the phone call and usually dialled the number. At the YEC in Kwidzyn, children had regular access to a cordless phone connected to a fixed telephone line, which could be used on the premises of the entire facility. They were able to receive calls from their families without limitations. Outgoing calls were made from a mobile phone with an unlimited phone call offer that children were permitted to use in a reasonable manner, as emphasised by the management. The carers decided on the duration of the phone call.

According to the management of YEC in Kwidzyn, carers were not present during the phone calls. If necessary, the girls were also allowed to use the phone in the director's office. In the YEC in Warsaw, juveniles were allowed to have their own mobile phones, which were stored in a deposit area. Juveniles were allowed to use them only from 6.00 PM to 8.00 PM. If a juvenile did not own a cell phone, they could use the phone in the director's office. The phone was port-

¹ The Youth Education Centre in Warsaw was an exception in that respect as it did not allow visits from acquaintances.

able and could be used in the entire facility, which guaranteed the privacy of the calls. During that same time frame, parents could also call the facility and request contact with their child.

The use of all types of personal Internet communication and online social networking services was growing in popularity as another form of maintaining contact with the outside world. In the facilities visited, juveniles were permitted to use them after classes in the computer room. Usually the group carer monitored the websites visited by the juvenile and their messaging. For example, in the YEC in Warsaw all online activity was monitored by the carers regularly so as to limit the possibility of contacts between the juveniles and any unwanted parties, such as drug dealers.

At the YEC in Kwidzyn, the children were not allowed to use the Internet on school days. Two educational groups were allowed to use the Internet on Saturdays, while the other two groups attended church mass. As a result, each educational group was allowed to use the Internet every other Saturday. All four groups were allowed to use the Internet on Sunday, according to the time schedule approved by the carers. All girls were also allowed to use the Internet during the activities of the IT club and during IT classes held in the computer room. Pursuant to the Rules of the Social Awareness Levels, it was forbidden to make opinions or comments using offensive, vulgar or defamatory language or to post erotic pictures. The juvenile could be asked by the carer to delete such comments or pictures. In the YEC in Wielkie Drogi, Internet use was also monitored by the carers.

Residents at the YECs were allowed to send and receive letters and packages. At the YEC in Kraków, the juveniles collected letters and packages in the presence of the carer. Any money or valuables received by the juveniles were placed in a deposit box. In the YEC in Puławy, packages from family members were examined, and letters were also examined against the light to see if money was inside. At the YEC in Wielkie Drogi, carers distributed the mail to juveniles. Packages were opened in the presence of the carer. At the YEC in Kwidzyn, the staff always asked the children to open the correspondence they received. The sole purpose of that request was to establish whether any other messages or content were placed inside. Juveniles in Warsaw received mail that was not monitored and was distributed to them during the afternoon assembly.

2.12. Contacts with a defence lawyer

Some of the juveniles in YECs stated that they did not have access to a defence lawyer during proceedings. Even though the need to contact a defence lawyer during the correctional proceedings was not as pressing as in youth shelters, the directors lacked awareness of the need to ensure privacy during juveniles' contacts with their defence lawyer. The director of one institution said that such talks were held in his office and in his presence.¹ Such a practice does not ensure the right to defence or the client-attorney privilege, and should be terminated. Research revealed that defence lawyers often do not visit juveniles placed in youth educational centres.

2.13. Access to religious services

Directors of the facilities reported that most of the children were Roman Catholics. There were occasionally children of other denominations, e.g. Lutheran, Christian Orthodox, non-denominational or did not want to take part in religious services of their denomination.

Juveniles in all establishments had access to a Catholic priest. There were chapels in two of the institutions visited.²

1 Youth Education Centre in Wielkie Drogi.

2 Youth Education Centre in Kwidzyn, Youth Education Centre in Warsaw.

Youth were able to attend services on the facility premises, if there was a chapel, or in the local church. There were also religious groups in some institutions.¹ Several institutions held regular religious festivities, including Nativity plays, retreats, confirmation or Stations of the Cross. Interest in attending religious activities among juveniles in YECs varied. The director of the YEC in Kwidzyn emphasised that girls were happy to attend masses. According to the director of the YEC in Wielkie Drogi, the juveniles did not really express a desire to attend religious services. The director of the YEC in Puławy reported that interest in services was not high.

In most institutions, religious practice attendance was voluntary and was not enforced or promoted in any manner, except in two facilities. The youth residents in YEC in Warsaw are not required to attend services but they may not spend the period outside the group. In consequence, if a group attends a given service, the juvenile has to be with the group and has to be present during such a service; they can be a passive observer. Girls at the YEC in Kwidzyn relayed that participation in mass was mandatory.

2.14. Safety and security

The doors in nearly all facilities visited were closed which made it more difficult for residents to escape. The facility's grounds were also usually fenced and locked. The bedroom windows were not barred and no other security measures typical of detention institutions, such as a high wall with barbed wire, were visible.

The security measures on the premises included video surveillance used to a limited extent, hold-up systems² and self-defence training for the staff.³

Escapes and failure to return from leave of absence are a problem in most youth educational centres. This phenomenon is naturally related to the fact that youth educational centres are open facilities. The management of the YEC in Kraków relayed that escapes were registered in the centre and their number usually depended on the time of year. Escapes were most frequent during September, when new juveniles were admitted to the facility, and December, when some of the juveniles were not granted a leave of absence to go home for Christmas. Some juveniles did not return to the YEC from their leave of absence.

The director of the YEC in Wielkie Drogi relayed that there were, on average, 15 escapes per year. Juveniles, who did not receive the court's permission to use a leave of absence, most frequently attempted escape. According to the director of the YEC in Kwidzyn, there were ten escapes during the school year 2012-2013, including eight during the holidays. Escapes occurred most often during exercise, a leave of absence or time outside of the facility.

The director of the Warsaw YEC relayed that there were escapes from the centre but that their frequency varied. During some months, there were no escapes at all, and during others, there were as many as two or three. The director estimated that there were around 10 to 15 escapes per year. Escapes from the premises of YEC were less frequent than failures to return to the centre after receiving permission for a leave of absence. In the YEC in Puławy, there were only occasional escapes; failures to return to the YEC, for example, after Christmas or failure to return on time were more frequent.

After the runaways have been found, juveniles are brought to the local police remand home for children in the place in which they were found. The staff of the YEC is required to collect the juvenile from the remand home.

1 Youth Education Centre in Wierzbiica, Youth Education Centre in Kwidzyn.

2 The hold-up system was installed in the carers' room and in the janitor's room in the Youth Education Centre in Wierzbiica.

3 Youth Education Centre in Puławy.

Most facilities visited test the children for alcohol or drugs on their return from a leave of absence. When staff suspects that a juvenile returning from a leave of absence could be under the influence of alcohol or narcotic substances, they administer tests, including urinalysis, a breathalyser for estimating blood alcohol content or special drug tests.

The approach towards aggressive behaviour and the formation of cliques varied in the visited facilities. The management of the YEC in Kraków relayed that juveniles were only sporadically violent. There were two cases of battery in visited YECs. Referring to the subcultures in YEC, the management relayed that there were juveniles who were stronger and those who were weaker. Common sports activities were the main method to counter division among the youth population. The management also forbade youth to shave their heads and wear hoods.

The director of the YEC in Kwidzyn relayed that there were no cases of beatings among the girls, which did not mean that there were no conflicts between them or signs of aggressive behaviour. He assured the researchers that there were no cliques formed by the juveniles at the institution. This was largely because the group of residents was rather specific and also included girls with mental disabilities. The director of the YEC in Warsaw assured the researchers that the carers were trying to prevent the formation of cliques in the facility. He observed that such attempts usually stemmed from juveniles sent to the centre from state-owned institutions, such as orphanages. A team comprising the carer, psychologist and the YEC director was established to perform a crisis assessment of the juveniles.

Some facilities visited recorded cases of attempted suicides. Those facilities included: the YEC in Puławy,¹ the YEC in Wierzbica² and the YEC in Warsaw.³

2.15. Surveillance

Video surveillance was a measure used to ensure safety on the premises of youth educational centres. The conditions for and the scope of its use have not been included in the nationally applicable laws, which is a violation of the constitutional standards (Article 54 in conjunction with Article 31(3) of the Constitution of the Republic of Poland).

The use of video surveillance in institutions visited varied. There was no video surveillance in the youth educational centre in Warsaw. Video surveillance in the YEC in Wielkie Drogi only covers the halls in the dormitory and the yard. Video surveillance in the YEC in Puławy covers the school corridors and classrooms. Video surveillance in the YEC in Kraków only covers the school corridors, the parking area and the entry gate to the facility. Video surveillance in the YEC in Wierzbica covers the school corridors and classrooms, as well as the area right in front of and behind the facility. At the YEC in Kwidzyn, video surveillance covers the secretary's office, the school (including the teachers' lounge), as well as other rooms such as the accountant's room or the psychologist's office. The carer groups are not covered by the video surveillance system. In addition, video surveillance is placed outside the buildings. Recordings are archived for two weeks. The use and scope of video surveillance in the youth educational centres needs to be regulated by the normative acts.

2.16. Direct coercive measures

Research revealed that direct coercive measures were used very rarely in the youth educational centres. In the school year 2013/2014, direct coercive measures were used four times in

¹ Ten years ago a juvenile in the Youth Education Centre in Puławy attempted to hang himself (and died as a result), another juvenile died while inhaling gas from a fire lighter.

² One attempted suicide occurred in December 2013.

³ There were suicide attempts in the Youth Education Centre in Warsaw, including attempted suicide by ligature strangulation. There were no suicide attempts in recent years; however, according to information provided by the director, in the past there were three such attempts in one year.

the YEC in Kwidzyn. According to the facility management, the court was notified about the measure in each case. Direct coercive measures are not currently used in Wielkie Drogi. In the past, an isolation room was set up in the dormitory building for juveniles, who caused disciplinary problems. Following a recommendation from the National Prevention Mechanism in relation to a video surveillance recording in 2011, the juveniles are no longer placed in the isolation room. The management in other facilities relayed that direct coercive measures have not been used. Carers respond to difficult situations by using educational methods that respected the emotional state and personality of the juvenile.¹

2.17. Disciplinary measures

The use of disciplinary measures or punishments is not regulated by law. As a result, different institutions apply various disciplinary measures and on different bases.

Based on the scope of lack of results of the social rehabilitation process, determined each week by the score obtained by the juvenile, the following types of punishments are established in the YEC in Kraków: verbal reprimand, additional cleaning duty, community work for the centre, temporary ban on the use of equipment available in the centre, restricting or depriving juveniles of the ability to take part in events on or outside the premises of the centre, ban on visits, except for visits from parents or legal guardians, revoking or suspending rewards or privileges the juvenile was granted, stripping of social functions, reducing pocket money, lowering their category, transferring the juvenile to another group, written reprimand from the centre's director with a written notification to the parents or legal guardian, written reprimand from the centre's director with a written notification to the court, a petition to the court for changing the educational measure to a correctional measure. The juvenile has the right to make a written appeal against the punishment to the centre's director; the appeal should be filed within three days of receiving the punishment, and it should be reviewed within seven days from the filing date.

The following punishments were applied in the YEC in Puławy: verbal warning, verbal warning registered in their personal file and court notification, reducing pocket money, and transfer to another facility. The last punishment is not considered to be appropriate since juveniles transferred to other facilities as a punishment have a negative impact on the educational system in YECs, especially if such transfers are frequent. In 2013, there were as many as 44 juveniles transferred to the YEC in Puławy from other facilities.

Based on the rules on punishment, juveniles in the YEC in Wielkie Drogi could receive the following types of punishment: disciplinary talk, restrictions on leaving the facility (revoking the leave of absence), lowering the score for behaviour in the "Fine feathers make fine birds" classification, an entry in the Records of Rewards and Punishments, a reprimand or verbal warning, notifying the parents or court of the juvenile's bad behaviour, transfer to another group in special cases, and initiating criminal proceedings in the court.

Punishments in the YEC in Kwidzyn included: lowering the juvenile's category at the institution, a reprimand or verbal warning during the meeting of the YEC community, reducing pocket money, notifying the court and parents of bad behaviour, a ban on leaving the facility's premises except to attend scheduled activities, apart from recreational activities, suspending individual leave of absence, a ban on attendance of entertainment events, and a ban on the use of mobile phones. Carers and teachers could administer the following penalties for violating the internal order and disciplinary measures: a verbal warning or reprimand in front of the educational group, additional cleaning duty, suspending individual leave of absence on a one-time basis, temporary ban on watching TV, temporary suspension of the right to attend all

¹ For example, Youth Education Centre in Puławy.

types of entertainment events, temporary suspension of visiting privileges except for visits from family members. Based on the Rules of the Social Awareness Levels, female juveniles have the right to appeal the decision of the child counsellors and the Permanent Educational Team to the YEC director. The appeal must be reviewed at the next meeting of Team III in the presence of the female juvenile concerned. The YEC director makes the final decision regarding complaints and appeals.

Meanwhile, juvenile residents at the YEC in Warsaw may face the following consequences for disobeying the centre's internal rules, neglecting studying and other chores, and inappropriate behaviour on the premises and outside the centre: verbal warning, verbal warning registered in the personal file, reprimand from the school headmaster, reprimand from the centre's director, reprimand during the assembly, reprimand during assembly and registered in the personal files. However, if the violation is particularly flagrant, the juvenile could face the following consequences: notice to the Family Court, a petition to the court for a change of the educational measure. For overstepping, infringing or breaching the internal rules, the juvenile's right to attend events and additional recreational activities could be limited or taken away; the juvenile's right to leave the grounds of the centre could be suspended or restricted; the juvenile could be assigned additional duties; the juvenile could be deprived of privileges for a specified period of time determined by the carer and/ or director; the holiday leave could be shortened or denied for the time of the punishment; the juvenile could be given another punishment requiring them to behave in a specific manner to adhere to the order set out in the YEC's Charter and Rules.

Research revealed that several youth educational centres applied punishments that were not stipulated in the rules, which is also stigmatising. Specifically, it was observed that two youth educational centres visited by researchers applied a measure whereby the juvenile was required to wear pyjamas throughout the entire day (including school classes)¹ or a brightly coloured orange sweat suit.²

Discussions with the residents of some of the YECs revealed that some institutions applied certain forms of collective responsibility, which meant that, for example, the entire carer group was punished for the wrongdoings of a single person.³ This was established based on conversations with several juveniles.

2.18. Requests and complaints

The juvenile's right to complaint was exercised in different ways in the facilities visited. Typically, the book of complaints and grievances was simply laid out in the secretary's office. In some institutions, such as the YEC in Kwidzyn, there was an additional box for placing complaints anonymously. However, the director stressed that such individual complaints were often placed at the door of the child counsellor. The directors of the YECs relayed that juveniles were informed about their right to complain on admission. Juveniles interviewed by researchers confirmed, as a rule, that they were informed.

Furthermore, juveniles placed in YECs should have the right to file anonymous complaints to the director of the institution. Only three facilities⁴ visited by researchers offered such an opportunity; the youth could deposit their complaints in a special box. However, in two cases the boxes were located within the area covered by the video surveillance system, which made the right to anonymous complaint rather illusory.

1 Youth Education Centre in Włocławek.

2 Youth Education Centre in Warsaw.

3 Youth Education Centre in Puławy, Youth Education Centre in Kwidzyn.

4 Youth Education Centre in Kwidzyn, Youth Education Centre in Wielkie Drogi and Youth Education Centre in Kraków.

Not all institutions published publicly accessible notices with information on the addresses and phone numbers of institutions where juveniles could submit their complaints. If there were such notices, they usually contained the contact details of the Family Court and the Children Rights Defender.

2.19. Description of rights and obligations

Directors of all visited YECs relayed that juveniles were informed of their rights and obligations on admission. Juveniles interviewed confirmed, as a rule, that it was true.

In most facilities, information on the rights and obligations of residents in youth educational centres was displayed in a visible place. The following facilities stood out in this respect: YEC in Puławy, Wielkie Drogi, Wierzbica, Kwidzyn and Warsaw. Unfortunately, information on the juveniles' rights and obligations was not usually presented in a clear and straightforward manner, corresponding to the juvenile's age and knowledge. It usually came down to displaying the rules in the youth educational centre.

The practice followed by the YEC in Kwidzyn with respect to informing female juveniles of their rights and duties deserves special mention. Upon placement, the juvenile girls at the centre receive a copy of the Rules of Social Awareness Levels and the Resident's Handbook. In addition, a display cabinet exhibited information on children's rights. There was also information on the possibility to turn to the Children Rights Defender.

A school display cabinet was the only visible place in the YEC in Kraków, which contained information on the residents' rights.

2.20. Budget of the institutions

The financial situation of the YECs depended largely on the generosity of the authority that operates it (particular local government units). Directors of the visited YECs believed that budgets assigned to them were sufficient for day-to-day operations of the facility. Nevertheless, there were certain areas of operations that remained underfunded. The director of the YEC in Kwidzyn relayed that additional funding would be beneficial for the proper functioning of the YEC, such as funding for hiring more therapists or organising additional leisure time activities. The director of the YEC in Warsaw reported that it was necessary to obtain additional funds to renovate the bathroom or the football field, etc. The director of the YEC in Wierzbica stated that funds were sufficient for day-to-day maintenance but he lacked funds for adaptation works, employment of nurses or buying additional equipment. Insufficient medical care and psychiatrist care for the children mentioned earlier was also related to the budgetary situation.

3. Recommendations

Research on youth educational centres shows that juveniles returning from an absence leave are routinely tested for the use of alcohol or intoxicants. There is no legal basis for such tests. Such an action invades the privacy and physical integrity of the juveniles; hence, the admissibility of such a procedure should derive from an explicit regulation, meeting the requirements under the Constitution. Therefore, the Juvenile Justice Act (e.g. Article 66) should be amended in such a way as to give carers in youth educational centres the authority to conduct (non-invasive) tests on youth with respect to the use of alcohol or intoxicants while maintaining the principle of proportionality.

The system of disciplinary measures applied to juveniles is not regulated by law. Such a situation does not meet constitutional standards (e.g. Article 31(3) of the Constitution). It also leads to the application of different disciplinary measures in different youth educational centres. Neither the full extent of the variety of measures nor the principles of their application and appeal are fully known. Consequently, some youth educational centres apply disciplinary measures that stigmatise youth, for example, by requiring juveniles to wear brightly coloured clothes suggestive of clothes worn by so-called high-risk inmates in penitentiary institutions. Therefore, the following issues should be fully regulated in the Juvenile Justice Act: the list of disciplinary measures, the principles of applying disciplinary measures, the reasons behind the application of disciplinary measures, and the appeal procedure. The changes may be based on Chapter 4a of the Act concerning rewards and disciplinary measures applied to juveniles placed in young offender institutions and youth shelters.

Since there are no generally applicable principles for applying disciplinary measures, some institutions used collective responsibility, which meant that, for example, an entire carer group could be punished for one individual's wrongdoings. This was established based on interviews with several juveniles. Collective responsibility for the actions of individual juveniles should be explicitly excluded from the Juvenile Justice Act.

Test for use of alcohol or intoxicants

Discipline measures

Collective responsibility

Most youth educational centres faced issues of inadequate medical care within the centre. Most centres did not employ general practitioners or nurses (even on a part-time basis). Sometimes there was no funding for hiring such professionals. The lack of medical care within the centres led to organisational problems – a juvenile, who must consult with an external doctor, accompanied by a carer, who in turn cannot supervise an entire group. Such a situation must not be maintained and legal changes

must be demanded. The National Education Minister's Regulation of 12 May 2011 should stipulate that there should be a paediatrician and a nurse (even on a part-time basis) in each youth educational centre.

One of the more serious problems observed was the lack of access to specialised psychiatric care for juveniles. Practically all directors of visited institutions agreed that this was a serious problem. According to them, the number of children with mental disorders, who require the immediate attention of a psychiatrist, continues to rise. It can take up to several months for a psychiatrist consultation. Due to the scale of the problem, some institutions have begun to cooperate with psychiatrists (also on a pro bono basis). However, in order to ensure access to professional psychiatric care, certain legal changes are required, such as introducing a requirement for employing a psychiatrist in YECs for eight hours a week in the National Education Minister's Regulation of 12 May 2011.

Frequent escapes from the YECs and failure to return from leave of absence were a problem in all YECs visited. This phenomenon is naturally related to the fact that youth educational centres are open facilities. It seems that the right educational and rehabilitative work would be the best way to eliminate these problems and encourage youth to remain in the centres.

An organisational problem pointed out by the directors of the youth educational centres concerned situations in which police detain a juvenile after they have gone absent without official leave (AWOL) and are not able to bring them back to the institution. In consequence, a carer and a driver from the YEC have to go to the police remand home for children where the juvenile is detained. Practice shows that juveniles who go on an unauthorised leave are often detained in places located several hundred kilometres from the YEC. In addition, the juvenile may immediately re-abscond after the police hand them over to the carer because the carer must not use any direct coercive measures. Bearing in mind the above, the police should be responsible for bringing the juveniles back to the youth educational centres. This would be the most effective solution.

Health care

Professional psychiatric care

Escapes and failures to return

Bringing runaways back to Youth Educational Centres

Juveniles placed in youth educational centres should have the right to file anonymous complaints to the director of the institution. In only three of the visited institutions did juveniles have the ability to make such a complaint and place it in a special box. The boxes were, however, located within the area under video surveillance, which meant that the complaint was not anonymous.

Information on the rights and obligations of residents in the youth educational centres was not always displayed in a visible place, written in a language suitable for the residents.

Even though the need to contact a defence lawyer is less pressing than in youth shelters, the directors lacked awareness of the need to ensure privacy during meetings with the defence lawyer. The director of one institution said that such meetings were held in his office and in his presence. Such practices do not safeguard the right to defence or the client-attorney privilege, and should be eliminated.

Directors of the visited institutions indicated several cases where they thought the measures imposed by judges during proceedings were inadequate. According to some directors, some judges are ignorant about the nature of certain measures, such as the differences between placement in a young offender institution and a youth educational centre. In consequence, there may be situations, where a juvenile who has committed a punishable act, notably aggravated battery resulting in death, is placed in a youth educational centre. Such a juvenile poses a threat both to the other residents and to the carers of the youth educational centre. It leads to a situation where juveniles, placed in the centre for failure to comply with the compulsory education requirement, live next to juveniles, who have already been in and out of a young offender institution. The opposite situation also exists, when juveniles are placed in a youth educational centre for minor transgressions. Judges presiding over juvenile cases should undergo extensive training courses, especially since as of 2014, these cases are heard before civil courts.

The smoking policy for juveniles varies and depends on the management of the institution. Despite an official ban, smoking is sometimes tolerated by directors and carers and smokers face no consequences for their behaviour. A universal smoking policy should be laid out. It should be prohibited to smoke on the premises of youth educational centres as permitting smoking is not educational and is harmful to the juveniles' health. It should also be noted that legislation bans the sale of tobacco products to children under the age of 18.

It should be guaranteed that juveniles are not forced to take part in religious services when they are unwilling to do so.

Anonymous complaint

Description of rights and obligations

Contact with a defence lawyer

Adequacy of remedies pronounced in the proceedings

Smoking Tobacco Products

Access to religious services

4. Good practices

4.1. Leisure

The variety of sports, cultural and therapeutic activities.

YEC in Kraków
YEC in Wielkie Drogi
YEC in Puławy
YEC in Warsaw
YEC in Kwidzyn
YEC in Włocławek

4.2. Contact with carers

A carer and patron, who are responsible for ensuring on-going care for the juvenile, contact with the outside world, and adaptation to life outside the institution.

YEC in Kraków

4.3. Contact with family members

Setting up special rooms for visitors who may stay overnight (free of charge) is a positive practice and was observed in several establishments. Such a practice makes it easier for parents to visit their child, and helps deepen the relationship between parent and child.

YEC in Kraków
YEC in Wielkie Drogi
YEC in Kwidzyn

4.4. Education

The visited institutions offered various forms of vocational education for juveniles. Such good practices should be encouraged. The directors of individual institutions should increase the variety of the educational activities they offer, especially those focused on vocational training. The fact that juveniles, placed in YECs have completed several vocational courses and received certificates of accomplishment will certainly have a positive impact on the juveniles' position in the job market after they leave the centre; it will also help the juveniles to live an independent life and not return to a life of crime.

YEC in Wielkie Drogi
YEC in Warsaw
YEC in Włocławek

4.5. Social rehabilitation actions

Involving juveniles in the youth educational centres in various volunteering projects (e.g. animal shelters, food banks, children with disabilities) is another practice worth encouraging. Such projects certainly increase the empathy of youth and help them learn how to work for other people.

YEC in Kraków
YEC in Wielkie Drogi
YEC in Puławy
YEC in Warsaw
YEC in Kwidzyn
YEC in Włocławek

4.6. Culinary workshops

Organising culinary workshops for juveniles to learn to cook meals using the products provided by the institution was a popular idea.

YEC in Kraków
YEC in Wielkie Drogi
YEC in Kwidzyn

4.7. Youth Ombudsman

The YEC in Kwidzyn introduced a programme called “Youth Ombudsman” (“Trybun Młodzieżowy”) under the patronage of the Children Rights Defender. This institution aims at increasing the legal awareness of juveniles and the possibility to discuss rights and obligations. The Youth Ombudsman is elected by children.

YEC in Kwidzyn

4.8. Preparing to fulfil the role of mother

The YEC in Kwidzyn introduced a programme called “Good mother” (“Dobra mama”) that focuses on preparing the juveniles to fulfil the role of a mother.

YEC in Kwidzyn

4.9. Adaptation of newly arrived children

The YEC in Kwidzyn introduced a programme called “You are not alone” (“Nie jesteś sama”). The programme focuses on the adaptation of newly arrived juveniles not only by the carers but also other children.

YEC in Kwidzyn
YEC in Wierzbica

4. KEY FINDINGS AND CONCLUSIONS

The juvenile justice system in Poland, which results in the deprivation of liberty of minors, shall be considered on two levels – formal and practical. Still, any amendments in this respect shall take into account all the relevant perspectives – legal, pedagogical and economic. It shows that the reform of the juvenile justice system requires full coordination between different public administration sectors. Juvenile justice is covered not only by the scope of Ministry of Justice competences. Legislative dispersion in the field of juvenile justice results in a lack of detention standards. There is no systematic framework regarding comprehensive legislation in this area.

Parallel to creating a coherent and comprehensive juvenile justice system, independent research is needed to assess to what extent existing institutions and procedures are effective – whether the aims of juvenile proceedings are fulfilled and to what extent they minimise the delinquency of juveniles. Possibly, one of the reasons why the drafts for codification (prepared by experts appointed by the Ministry of Justice) did not succeed was that the main direction of the codification and reform was not outlined at the very beginning – whether they supported the existing model or whether it should be reshaped dramatically.

Furthermore, the above-mentioned amendments to Juvenile Justice Act lack any reference to any kind of support for juveniles and their families. Particularly, no mention is made regarding support (institutional or financial) for juveniles who are leaving juvenile centres. Whereas, according to monitoring conducted by the Helsinki Foundation for Human Rights, there is a lack of support for people leaving the juvenile justice system. It is an incomplete investment – the process of rehabilitation is not finished, if the adult juvenile upon leaving the centre is not able to start a normal and responsible life.

Such an approach shows that up until now any attempts to reform the juvenile justice system in Poland have not been comprehensive. They rather deal with single sets of problems. What is positive is that the public consultations on the proposal of October 2013 resulted in broadening the scope of the proposal. However, the fact that they were published before the recent reform had become binding shows that the major shortcoming in this respect is chaotic legislative planning at the governmental level.

Research revealed that the functioning of an establishment largely depends on its manager. The day-to-day functioning of a young offender institution or a youth shelter reflects all the virtues and faults of the person who manages the institution. The degree to which juvenile

rights are respected is also largely dependent on the manager. Most young offender institutions and educational youth centres visited by the HFHR pursued intensive social rehabilitation activities with respect to the juveniles. As part of the efforts, the juveniles may take advantage of therapeutic activities, interest groups, trips and holidays.

In several facilities the rights and freedoms of juveniles were limited by several measures, such as:

- the practice of substituting direct coercive measures such as placement in an isolation room with placement in a provisional room for juveniles;
- the practice of approving phone calls made by youth;
- the practice of limiting contacts with their family members, regardless of their behavior, provided such contacts do not pose a threat to the legal order, the safety and security of the establishment, the course of the proceedings pending or the process of the juvenile's social rehabilitation;
- the practice of limiting visits from family members and third parties in privacy, without the presence of staff members;
- limiting the access to natural light due to the use of frosted glass, even in units far from residential buildings and streets.

The aforementioned practices should be terminated to abide by constitutional and international standards.

Moreover, the lack of a sufficient aftercare system does in fact lead to wasting funds spent on social rehabilitation of juveniles in the young offender institutions and youth shelters.

APPENDIXES

Appendix 1 - Pictures



Space for time in the open in Police Remand Home for Children in Łódź.



Space for time in the open in Police Remand Home for Children in Kraków.



Space for time in the open in Police Remand Home for Children in Poznań.



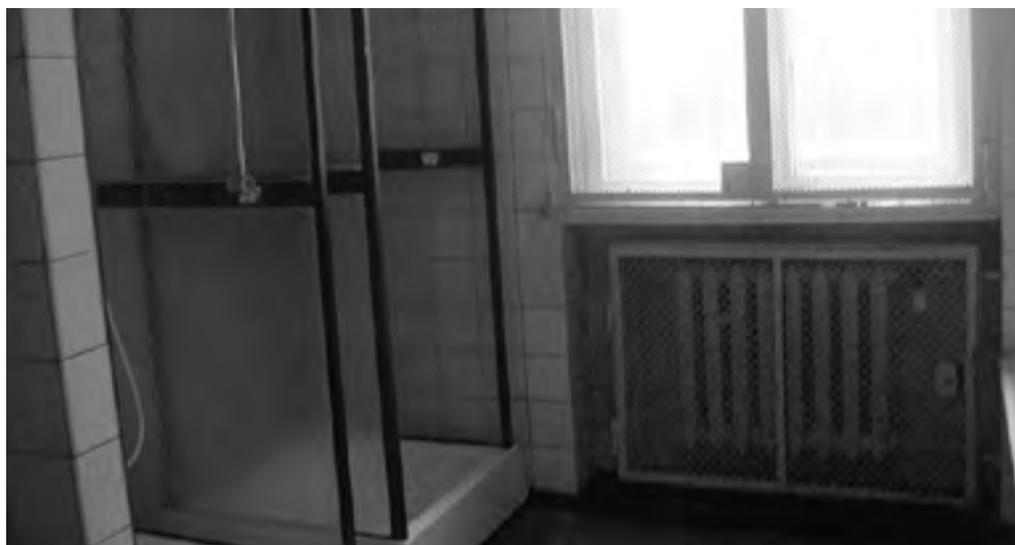
Space for time in the open in Police Remand Home for Children in Bydgoszcz.



Space for time in the open in Police Remand Home for Children in Kielce.



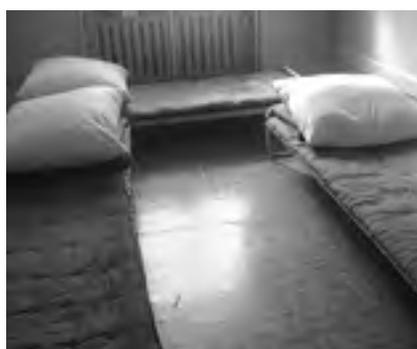
Showers in the Police Remand Home for Children in Łódź.



Showers in the Police Remand Home for Children in Poznań.



Sleeping rooms in the Police Remand Home for Children in Kraków.



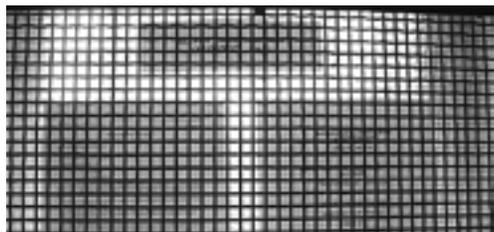
Sleeping rooms in the Police Remand Home for Children in Poznań.



Sleeping rooms in the Police Remand Home for Children in Bydgoszcz.



Sleeping rooms in the Police Remand Home for Children in Kielce.



Information about juveniles' rights and duties in the Police Remand Home for Children in Łódź.



The external wall of the Young Offender Institution in Grodzisk Wielkopolski.



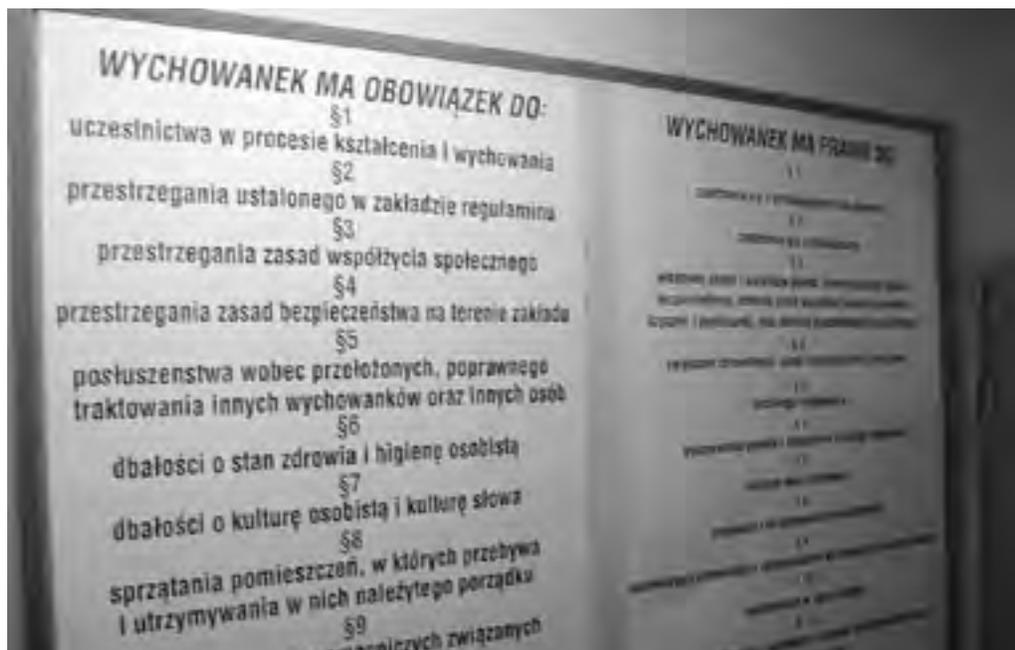
Window of a sleeping room in the Police Remand Home for Children in Kraków.



Doors of the sleeping room in the Police Remand Home for Children in Bydgoszcz.



The corridor of the Police Remand Home for Children in Kielce. Information on juveniles rights and duties can be seen on the doors.



The information on rights and duties in the Young Offender Institution in Grodzisk Wielkopolski.



Sports fields in Young Offender Institution in Szubin.



Sports fields in the Young Offender Institution in Grodzisk Wielkopolski.



Sports fields in the Youth Shelter in Warszawa-Okęcie.



Showers in the Young Offender Institution in Konstaktyńów Łódzki.



Showers in the Youth Shelter in Warszawa-Okęcie.



Billiard room in the Young Offender Institution in Szubin.



Gym in the Young Offender Institution in Koronowo.



Sleeping rooms in the Young Offender Institution in Szubin.



Sleeping rooms in the Young Offender Institution in Koronowo.

Appendix 2 - List of young offender institutions, youth shelters and hostels

Dolnośląskie Province

- Young Offender Institution and Youth Shelter in Świdnica
- Young Offender Institution and Youth Shelter in Głogów
- Young Offender Institution in Sadowice
- Young Offender Institution in Jerzmanowice Zdrój

Kujawsko-Pomorskie Province

- Centre for Social Adaptation for Youth in Szubin (Young Offender Institution in Szubin)
- Young Offender Institution in Kcynia
- Young Offender Institution in Koronowo (for girls)

Lubelskie Province

- Youth Shelter in Dominowo

Łódzkie Province

- Young Offender Institution and Youth Shelter in Konstantynów Łódzki

Małopolskie Province

- Young Offender Institution in Tarnów

Mazowieckie Province

- Centre for Social Adaptation for Youth in Studzieniec (Young Offender Institution in Studzieniec)
- Young Offender Institution and Youth Shelter in Laskowiec
- Youth Shelter in Warszawa-Okećie
- Young Offender Institution and Youth Shelter in Warszawa-Falenica (for girls)
- Young Offender Institution and Youth Shelter in Mrozy (for girls)

Podkarpackie Province

- Young Offender Institution in Tarnów

Podlaskie Province

- Young Offender Institution in Białystok

Pomorskie Province

- Young Offender Institution in Gdańsk
- Youth Shelter in Chojnice

Śląskie Province

- Young Offender Institution in Pszczyna Łąka
- Young Offender Institution and Youth Shelter in Racibórz
- Young Offender Institution and Youth Shelter in Zawiercie (for girls)

Świętokrzyskie Province

- Young Offender Institution in Ostrowiec Świętokrzyskie
- Youth Shelter in Gacki

Warmińsko-mazurskie Province

- Young Offender Institution in Barczewo

Wielkopolskie Province

- Young Offender Institution in Poznań
- Young Offender Institution in Grodzisk Wielkopolski
- Young Offender Institution in Trzemeszno
- Young Offender Institution in Witkowo

Zachodniopomorskie Province

- Centre for Social Adaptation for Youth in Koszalin (Young Offenders Institution in Koszalin)
- Youth Shelter in Szczecin

Appendix 3 - List of Police Remand Homes for Children

Dolnośląskie Province

- Police Remand Home for Children in Wałbrzych
- Police Remand Home for Children in Wrocław

Kujawsko-Pomorskie Province

- Police Remand Home for Children in Bydgoszcz

Lubelskie Province

- Police Remand Home for Children in Lublin

Lubuskie Province

- Police Remand Home for Children in Gorzów Wielkopolski

Łódzkie Province

- Police Remand Home for Children in Łódź

Małopolskie Province

- Police Remand Home for Children in Kraków

Mazowieckie Province

- Police Remand Home for Children in Warsaw

Opolskie Province

- Police Remand Home for Children in Opole

Podkarpackie Province

- Police Remand Home for Children in Rzeszów

Podlaskie Province

- Police Remand Home for Children in Białystok

Pomorskie Province

- Police Remand Home for Children in Gdańsk

Śląskie Province

- Police Remand Home for Children in Katowice
- Police Remand Home for Children in Bielsko-Biała

Świętokrzyskie Province

- Police Remand Home for Children in Kielce

Warmińsko-mazurskie Province

- Police Remand Home for Children in Olsztyn

Wielkopolskie Province

- Police Remand Home for Children in Poznań

Zachodniopomorskie Province

- Police Remand Home for Children in Szczecin
- Police Remand Home for Children in Koszalin

Appendix 4 - List of youth educational centres per province and per type

Dolnośląskie Province (13):

- YEC in Brzeg Dolny (social rehabilitation and education centre; mixed)
- YEC in Iwiny (social rehabilitation and education centre for boys)
- YEC in Jawor (social rehabilitation and revalidation centre for boys)
- YEC in Lwówek Śląski (social rehabilitation and education centre for boys)
- YEC in Mrowiny (social rehabilitation and education centre for boys)
- YEC in Oława (social rehabilitation and education centre for boys)
- YEC in Smolnik (social rehabilitation and education centre for boys)
- YEC in Sobótka (social rehabilitation and education centre for girls)
- YEC in Szklarska Poręba (social rehabilitation and education centre for boys)
- YEC in Walim (social rehabilitation and education centre for girls)
- YEC in Wałbrzych (social rehabilitation and education centre for boys)
- YEC in Wrocław (social rehabilitation and education for girls and social rehabilitation and education; mixed)

Kujawsko-Pomorskie Province (5):

- YEC in Bielice (social rehabilitation and revalidation centre for boys)
- YEC in Kruszwica (social rehabilitation and education and social rehabilitation and revalidation centre for girls)
- YEC in Samostrzele (social rehabilitation and education centre for girls)
- YEC in Strzelno (social rehabilitation and education centre for boys)
- YEC in Włocławek (social rehabilitation and education and social rehabilitation and revalidation centre for boys)

Lubelskie Province (3):

- YEC in Podgłębokie (social rehabilitation and education centre for girls)
- YEC in Puławy (social rehabilitation and education centre for boys)
- YEC in Rejowiec (social rehabilitation and education centre; mixed)

Lubuskie Province (1):

- YEC in Babimost (social rehabilitation and education centre for boys)
- Łódzkie Province (2):
- YEC in Łódź (social rehabilitation and education centre for boys and social rehabilitation and education centre for girls)

Małopolskie Province (4):

- YEC in Kraków (social rehabilitation and education centre for boys and social rehabilitation and education centre for girls)
- YEC in Mszana Dolna (social rehabilitation and education centre for boys)
- YEC in Wielkie Drogi (social rehabilitation and education centre for boys)

Mazowieckie Province (19):

- YEC in Borowie (social rehabilitation and education centre for boys)
- YEC in Czuchów-Pieńki (social rehabilitation and education centre for girls)
- YEC in Gołotczyzna (social rehabilitation and education and social rehabilitation and revalidation centre for boys)
- YEC in Gostchorz (social rehabilitation and education centre for boys)
- YEC in Goździków (social rehabilitation and education centre for boys)
- YEC in Jaworek (social rehabilitation and education and social rehabilitation and

revalidation centre for boys)

- YEC in Kolonia Ossa (social rehabilitation and education centre; mixed)
- YEC in Kolonia Szczerbacka (social rehabilitation and education centre; mixed)
- YEC in Otwock/Józefów (social rehabilitation and education centre for girls)
- YEC in Pogroszyn (social rehabilitation and education centre for girls)
- YEC in Rusinów Konecki (social rehabilitation and education centre; mixed)
- YEC in Warsaw (social rehabilitation and education centre for girls and three social rehabilitation and education centres for boys)
- YEC in Wierzbica (social rehabilitation and education centre for girls)
- YEC in Wola Rowska (social rehabilitation and education centre for boys)
- YEC in Wojnów (social rehabilitation and education centre; mixed)
- YEC in Załusków (social rehabilitation and education centre for girls)

Opolskie Province (5):

- YEC in Julianpol (social rehabilitation and education and social rehabilitation and revalidation centre for boys)
- YEC in Leśnica (social rehabilitation and education and social rehabilitation and revalidation centre for girls)
- YEC in Namysłów (social rehabilitation and education centre for boys)
- YEC in Nysa (social rehabilitation and education centre for boys)
- YEC in Zawiesz (social rehabilitation and education centre for girls)

Podkarpackie Province (2):

- YEC in Lubaczów (social rehabilitation and education and social rehabilitation and revalidation centre for boys)
- YEC in Łańcut (social rehabilitation and education centre for boys)

Podlaskie Province (3):

- YEC in Augustów (social rehabilitation and education centre for boys)
- YEC in Goniądz (social rehabilitation and education centre for girls)
- YEC in Różanystok (social rehabilitation and education centre for boys)

Pomorskie Province (3):

- YEC in Debrzno (social rehabilitation and education centre for boys)
- YEC in Kwidzyn (social rehabilitation and revalidation centre for girls)
- YEC in Malbork (social rehabilitation and education centre for boys)

Śląskie Province (8):

- YEC in Herby (social rehabilitation and revalidation centre for boys)
- YEC in Jawor (social rehabilitation and education centre for boys)
- YEC in Kalety (social rehabilitation and education centre for boys)
- YEC in Krupski Młyn (social rehabilitation and education centre for boys)
- YEC in Krzepice (social rehabilitation and education and social rehabilitation and revalidation centre for boys)
- YEC in Kuźnia Raciborska (social rehabilitation and education centre for boys)
- YEC in Radzionków (social rehabilitation and education centre for girls)
- YEC in Rudy (social rehabilitation and education centre for boys)

Świętokrzyskie Province (6):

- YEC in Kielce (social rehabilitation and education centre for boys)
- YEC in Podzamcze (social rehabilitation and education centre for boys)

- YEC in Rembów (social rehabilitation and education centre for boys)
- YEC in Skarżysko-Kamienna (social rehabilitation and education centre for boys)
- YEC in Węgrzynów (social rehabilitation and education and social rehabilitation and revalidation centre for girls)
- YEC in Zawichost (social rehabilitation and education centre for boys)

Warmińsko-Mazurskie Province (2):

- YEC in Lidzbark Warmiński (social rehabilitation and revalidation centre for boys)
- YEC in Kamionek Wielki (social rehabilitation and education centre for boys)

Wielkopolskie Province (8):

- YEC in Antoniewo (social rehabilitation and education centre; mixed)
- YEC in Cerekwica (social rehabilitation and education centre for girls)
- YEC in Dębina (social rehabilitation and education centre for boys)
- YEC in Jastrów (social rehabilitation and education centre for girls)
- YEC in Kalisz (social rehabilitation and education centre for girls)
- YEC in Koźmin Wielkopolski (social rehabilitation and education centre for boys)
- YEC in Łobżenica (social rehabilitation and education centre for boys)
- YEC in Marszewo (social rehabilitation and revalidation centre for boys)

Zachodniopomorskie Province (9):

- YEC in Czaplina (social rehabilitation and education and social rehabilitation and revalidation centre for girls)
- YEC in Podborski (social rehabilitation and education centre for boys)
- YEC in Polanów (social rehabilitation and education centre for boys)
- YEC in Reniec (social rehabilitation and education centre for boys)
- YEC in Rewal (social rehabilitation and education and social rehabilitation and revalidation centre for boys)
- YEC in Rzepczyn (social rehabilitation and education centre for boys)
- YEC in Trzciniec (social rehabilitation and education centre for boys)
- YEC in Trzebież (social rehabilitation and education centre for boys)
- YEC in Szczecin (social rehabilitation and education centre for girls)

CHAPTER 5

Country report: Romania

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LIST OF ABBREVIATIONS

APADOR-CH	Association for the Defence of Human Rights in Romania - the Helsinki Committee
CLR	Centre for Legal Resources
CRYPND	Centre for Recovery of Young People with Neuropsychiatric Disorders
CCP	Commission for Child Protection
CCRSE	County Councils of Resources and Support in Education
CC	Criminal Code
CPC	Criminal Procedure Code
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ECtHR	European Court of Human Rights
GDSACP	General Directorates for Social Assistance and Child Protection
CVDA	Home for Elderly and Adolescents
NAP	National Administration of Penitentiaries
NAPSI	National Agency for Payments and Social Inspection
NRRC	Neuropsychiatric Recovery and Rehabilitation Centre
PMT	Penitentiary for minors and young adults
RSRCD	Residential Service for the Recovery of Children with Disabilities

EXECUTIVE SUMMARY

The project in Romania was implemented by two non-governmental organisations (NGOs) – the Centre for Legal Resources (CLR) and the Association for the Defence of Human Rights in Romania – the Helsinki Committee (APADOR-CH).

The CLR is a non-governmental, non-profit organisation. It actively advocates for the establishment and operation of a legal and institutional framework that safeguards human rights, equal opportunities and free access to fair justice. It also uses its legal expertise for the general public good. The CLR coordinates an Independent Monitoring Mechanism based on unannounced visits to monitor the respect for human rights standards for children with disabilities in institutional settings in Romania.

The APADOR-CH is a non-governmental, non-profit organisation, established in 1990. The APADOR-CH seeks to be an influential and principled factor of reference, to encourage dialogue with the state authorities, to cooperate with civil society, and to be an active participant in steering society and institutions towards embracing democratic values, based on respect for human rights. The APADOR-CH carried out monitoring visits to criminal justice detention facilities including prisons, police lock-ups, juvenile detention centres, juvenile prisons and re-education centres.

1. Context

The monitoring visits were conducted by the CLR and APADOR-CH in places where children are deprived of liberty. While the CLR focused on children with disabilities living in residential institutions, APADOR-CH investigated conditions in institutions related to criminal proceedings against minors.

In Romania, despite that there are specialised institutions where children can be detained, they are sometimes also detained in adult prisons. The number and presence of children in adult prisons is constantly changing, as they usually stay in these institutions for short periods, most often while in transit to a different city to attend court proceedings. In Romania, there are also police lock-ups, which are officially called Centres for Preventive Arrest and Detention, where children may be detained immediately after police arrests. There is very little public information about these institutions; detainee turnover is very high and the time spent in such an institution is very unpredictable, ranging from a few hours to months. Romanian children and young adults (people aged 18 to 21) can also be detained in juvenile detention centres and in juvenile prisons, as well as in education centres.

The Romanian state allows the existence of residential institutions for children, which are subordinated to county councils/ Bucharest district councils and are coordinated by the General Directorates for Social Assistance and Child Protection (GDSACP). In the centres visited, there were children/ young adults aged between a few months to 31. Children, including boys and girls, have varying levels of disability (mainly mental disabilities) or constitute “social cases”, or have committed an offence under criminal law and cannot be held criminally liable. Children are admitted to residential institutions by a decision from the Commission for Child Protection (CCP), an administrative mechanism set out under the GDSACP, or by a court. In principle, when reaching the age of majority, young people leave these centres and are admitted to centres for adults with disabilities.

2. Main issues identified in criminal justice detention facilities:

Children who live in adult prisons suffer not only from the general problems faced by the whole prison population, but they also face more specific problems. Romanian detention facilities are still plagued with serious problems. They fall short of the European Court of Human Rights (ECtHR) and European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) standards, leading in many instances to serious human rights violations:

- **Detention conditions:** One of the most serious problems regarding detention conditions is that Romanian prisons are severely overcrowded (a little over two square metres per person). Overcrowding also affects children in adult prisons, although they usually have at their disposal more space than the general prison population. Another general problem regarding detention conditions is that rooms are frequently unhygienic and in a deplorable condition. However, children detained in adult prisons usually receive comparatively better rooms.
- **Educational and other activities:** In practice, a little over 50% of children deprived of liberty are enrolled in school training. Children held in adult prisons and under police arrest are usually not enrolled in any form of educational programmes. Access to education and cultural programmes is a problem in most Romanian prisons, including juvenile prisons. Deprived of these programmes, children are mostly left sitting idle in their rooms, in many cases for up to 23 hours a day, even though, according to law, they should spend at least four hours a day outside their rooms.
- **Health care:** Access to health care is very problematic in Romanian detention facilities. One of the main issues is the severe understaffing in health care units. Assigned funds (state budget and social insurance) are insufficient for the needs of the prison system, and a major problem in many penitentiaries is the lack of vital medication. Mental health issues are particularly pressing because in most penitentiaries, there is no psychiatrist. In practice, when a psychiatrist is needed, penitentiaries have to refer to a psychiatrist either from another penitentiary or from outside the prison system.

3. Main issues identified in facilities for children with disabilities:

- **Denial of access to justice:** It is almost impossible for minors with mental disabilities to have effective access to justice either during their placement in an institution or with a professional caretaker. The national legal framework and CLR’s factual findings show the issues, which contribute to the violation of this right:
 - The national legal framework regarding legal representation works against persons with mental disabilities, since the ones, designated to protect their rights, are usually the source of the abuse;

- In practice, with very few exceptions, there are no procedures in place for registering and resolving the complaints of minors with disabilities who are institutionalised;
- In practice, a death occurring in an institutional setting is rarely investigated and examined forensically, in spite of existing legal obligations.
- **Torture, inhuman and degrading treatment:** The CLR has identified cases of treatment amounting to torture. This treatment is inflicted either directly by personnel, who are incompetent and untrained (e.g. tying people to their beds, sedating them), or by the other residents.
- **Poor living conditions:** The CLR monitoring visits identified numerous instances where persons with disabilities live in places with poor air quality, heating, lighting, hygiene or food. Special recuperation programmes are scarce, and simple activities such as stay outdoors are also unavailable in some residential institutions. Minors' oral hygiene is precarious because they seldom have access to dentists and are also discriminated against when it comes to accessing health care outside institutions. There is also widespread shortage of specialised personnel.

RESEARCH METHODOLOGY

APADOR-CH and CLR have extensive experience in carrying out detention monitoring visits. APADOR-CH has been monitoring police lock-ups in Romania since 1993 and, since 1995, also prisons. CLR has worked on research on mental health institutions and foster care facilities for children with mental disabilities since 2003.

1. Institutions visited

APADOR-CH carried out monitoring visits in criminal justice detention facilities, including prisons, police lock-ups, juvenile detention centres, juvenile prisons and re-education centres. CLR carried out monitoring visits in institutions and foster care facilities for children with mental disabilities.

No detention facilities for foreigners were visited because neither organisation obtained access to these places. The two organisations were responsible for selecting which institutions to visit based on outlined criteria and methodology.

1.1. Criminal justice detention facilities

In total, during 17 months of monitoring research from April 2013 to August 2014, APADOR-CH visited 34 criminal justice detention facilities. APADOR-CH has access to detention facilities in the criminal justice system on the basis of annually written Protocols signed by the National Administration for Penitentiaries and the General Inspectorate of Police. These protocols allow for unannounced visits to prisons and police lock-ups.

All of these institutions detain children, as explained later in the study when discussing the specific nature of all of these institutions. Despite there being specialised institutions for detaining children, they are sometimes also detained in adult prisons. For example, on August 26, 2014, twenty-four children were detained in prisons throughout Romania.¹

The number and presence of children in adult prisons is constantly changing, although they usually stay in these institutions for short periods, usually while in transit to a different city to attend court proceedings. This made it very difficult to choose which institutions to visit. Given these uncertainties, APADOR-CH chose institutions based on its previous research experience, amounting to more than 20 years. The organisation acted on complaints/

¹ National Administration of Penitentiaries (2014), *The situation regarding the detention capacity of the detention units as of 26 August 2014*, available on: <http://www.anp.gov.ro/documents/10180/3610656/Capacitatea+de+cazare+a+unitatilor+-+4+mp+si+cumulat+mp+mc+-+26.08.2014.pdf/ede13345-d93e-4c70-afab-13c1b00f3fc4> (all hyperlinks were last accessed on 3 September 2014).

suggestions received during monitoring visits from inmates with respect to other institutions part of the monitoring study. The organisation also responded to media reports as well as weekly statistical information shared by the National Administration for Penitentiaries, which showed how many children were detained on a given day in all of the prisons. Based on these criteria, APADOR-CH chose several adult prisons where researchers evaluated if they detained children and assessed the specific situation of those children. In the course of this project, APADOR-CH visited 14 prisons.

APADOR-CH also visited police lock-ups, officially called Centres for Preventive Arrest and Detention, where children may be detained immediately after police arrests. There is very little public information about these institutions; detainee turnover is very high and the time spent in such an institution is very unpredictable, ranging from a few hours to months. This made it impossible to determine which police-lockups might detain children. Consequently, APADOR-CH visited police lock-ups that were either in the same city or in close proximity to a monitored prison. In the course of this project, APADOR-CH visited eight police lock-ups.

Romanian children and young adults (persons aged 18 to 21) can also be detained in juvenile detention centres and in juvenile prisons. In Romania, there are three detention centres for children and juveniles and one juvenile prison (in Bacau). Romanian children can also be detained in education centres. There are two such centres in Romania and in the course of this project APADOR-CH visited both.

Additionally, in order to examine the impact of monitoring visits, APADOR-CH carried out six follow-up visits. Through these visits, researchers sought to establish whether any of the recommendations made during the previous visit have been followed through and if any improvements have been made regarding the children's detention conditions.

1.2 Facilities for children with mental disabilities

The CLR visited 40 social protection and mental health institutions for children with mental disabilities as following: 40 ad-hoc visits and 20 follow-up visits.

On the basis of written Protocols signed with the Ministry of Labour, Family, Social Protection and Elderly and the Ministry of Health and the provisions of Article 33 of the Convention on the Rights of Persons with Disabilities and of Law No. 487/2002, CLR representatives have the right to conduct unannounced monitoring visits in public and private residential centres for persons with disabilities.

Problems concerning access to institutions: At several centres, visits could begin only after hours of delay on the pretext that the main officials of the centre, as well as the general manager of the General Directorate for Social Assistance and Child Protection, were absent. CLR reiterates its valid suspicions that such practices, adopted by the officials from the centres and from the county councils/ Bucharest district councils, are designed to prevent CLR experts from examining the real conditions at the centres.

Despite the above-mentioned protocol, some institutions such as the Centre for Assistance and Recovery of Young People with Disabilities in Adjud, an institution subordinated to the municipality, on the basis of a Protocol signed with the Pro Armonia Association (an NGO coordinating the centre), did not allow full access. CLR representatives were only allowed to „look around, but for information about the centre they had to submit a formal request for access to information.“ During the follow-up visit to the Home for Elderly and Adolescents in Aldeni (a private Home), CLR representatives were permitted to stay inside only for approximately 30 minutes. Then the manager of the home arrived and forbade the experts to continue their monitoring visit.

The target of the ad-hoc visits were residential institutions for children, which are subordinated to county councils/ Bucharest district councils and are coordinated by GDSACP. In the visited centres, there were children and young adults, aged between a few months to 31. Children and young adults, including boys and girls, have varying levels of disability (mainly mental) or constitute „social cases“ or have committed an offence under criminal law and cannot be held criminally liable.

The CLR’s unannounced visits evaluated the respect of human rights standards in the following categories of persons, considered persons deprived of their liberty based on Article 4(2) of the Optional Protocol to the Convention against Torture¹:

- persons for which there is a decision for placement (in residential centres, public or private, in foster care or with a person/family, according to Law No. 272/2004 on the protection and promotion of children’s rights);
- persons institutionalised in public or private residential centres for persons with disabilities, according to Law No. 448/2006 on the protection and promotion of rights of persons with disabilities;
- persons institutionalised in psychiatric units under Law No. 487/2002 on mental health and protection of persons with mental disorders.

Children are admitted to residential centres by a decision from the Commission for Child Protection at the GDSACP or by a court. In principle, when reaching the age of majority, young people are transferred to centres for adults with disabilities. However, in some institutions,² CLR representatives discovered based on interviews with the personnel that „when reaching the age of majority, children continue to live here, if they do not go back to the family“ because the centre provides “bed and meals” and “they can perform household activities for the centre.” In the Neuropsychiatric Recovery and Rehabilitation Centre (NRRC) in Cotesti, CLR representatives were told that after reaching the age of majority, young people would continue to live within the centre because “no regulation was adopted regarding the professional assistant who could help integrate beneficiaries in the community and there is no other realistic solution.”

Some institutionalised young adults at the Centre for Recovery of Young People with Neuropsychiatric Disorders (CRYPND) in Babeni complained that they had been transferred to centres to attend a special school, not because of a mental disability, but mainly because of behavioural problems or learning difficulties.

2. Researchers

The monitoring visits were carried out by staff members from the two Romanian organisations and outside collaborators. For each visit, there were two people participating, at least one whom had more than four years of detention research experience. Both NGOs organised training for more junior staff members.

APADOR-CH organised a training seminar on October 23, 2013. This was held by a senior APADOR-CH collaborator and the executive director. CLR organised a training session for the human rights researchers in July 2013, which was held by the human rights programme manager at CLR.

¹ According to the Optional Protocol to the Convention against Torture, deprivation of liberty refers to any form of detention or imprisonment or placement of a person in a public or private custodial setting which the person is not permitted to leave at will by order of any judicial, administrative or other authority. Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, GA resolution 57/199 of 18 December 2002, art. 4 (2).

² For example, the School Centre for Inclusive Education in Peris.

3. Obstacles to conducting the study

Depending on existing legislation, governing central authorities and institutional philosophy regarding access, there are notable differences in the way an NGO can enter closed institutions.

For APADOR-CH, it was relatively simple to gain access to criminal justice institutions. These visits were carried out based on an annual protocol, which APADOR-CH signs with the central governing bodies of these institutions, allowing APADOR-CH to visit all the criminal justice detention facilities in Romania. All research visits conducted by APADOR-CH are unannounced.

At the same time, CLR encountered multiple obstacles to accessing mental health institutions due to the various changes at the level of central and local authorities and the lack of understanding of human rights treaties in the area of institutionalised persons with mental disabilities.

4. Monitoring visits

During visits, researchers spoke to the staff of the detention facilities, including the head of each facility, the medical staff, the delegate judge and staff working on re-education and social inclusion. During these meetings, researchers inquired about their activities, work with detainees and, more specifically, about their work with children detained in their facility.

After these discussions, the researchers would visit the various rooms and blocks of the detention facility, including the kitchen, visiting room, detention rooms, and courtyards. During these visits, researchers analyse the concrete living conditions of the detainees and evaluate if these comply with international standards. Also, during these visits researchers would carry out private conversations with detainees, beyond earshot of the guards. Based on these conversations, researchers tried to establish whether abuse or maltreatment was taking place within the detention facility and if detainees' rights are respected.

Before the end of each visit, researchers conduct a final conversation with the head of the detention facility to discuss the problems established. During this discussion, researchers try to convince the head of the facility to remedy some of the easily fixable problems and indicate other more complex issues and suggest solutions.

After the visit, researchers prepare a report, outlining the main findings, observations and recommendations. The report is then made public and shared with the head of the detention facility and the overseeing central body.

When visiting an institution and preparing a report, researchers also consult publicly available information about the detention facilities (both official sources and secondary sources such as press articles), the previous report (if available), relevant ECtHR jurisprudence and reports published by the CPT. During the visit, researchers also ask the representatives of the detention facility to provide them with:

- a list of staff members who work in the facility, and vacant positions;
- the number of people who are detained on that particular day, broken down by age and gender;
- a list of recreational and educational activities carried out during the previous year, as well as the number of people who are enrolled in school;
- the official holding capacity of the detention facility and a breakdown in square metres of all the detention rooms;
- the number of people who work while in detention and where they work.

1. ANALYSIS OF THE NATIONAL LEGAL FRAMEWORK

In this chapter, APADOR-CH and CLR present the legal framework of children deprived of liberty in Romania. The current framework is new and improves the standards of liberty deprivation of children, particularly by enhancing the role of educational measures.

1. Custodial measures applicable to minors and the new Criminal Code

The provisions of the new Criminal Code are applicable as of February 2014. They are specified by the new Criminal Code (hereinafter: CC) (Law No. 286/2009¹, valid as of 1 February 2014) and the new Criminal Procedure Code (hereinafter: CPC) (Law No. 135/2010² valid as of 1 February 2014).

These new regulations also amended procedures applicable to minors, the most important of which belong to the criminal sanctions category – minors can no longer be fined or sentenced to prison. Measures applicable to them can only be educational and usually non-custodial.

Educational measures are of two categories: non-custodial (four measures)³ and involving deprivation of liberty (two others)⁴. A privative educational measure is, obviously, a deprivation of liberty and therefore, similar to prison conviction. In such cases, however, length and regime are more favourable than prison conviction.

The new Criminal Code maintained the minimum age of 14 for criminal liability, although different drafts of the Criminal Code circulated different age limits, starting with 13 and going up to 16.

The new Criminal Code also did not change the underage limit (18 years), disregarding opinions in favour of change.

1 See Law No. 187/2012 on enforcing Law No. 286/2009 on the Criminal Code, which includes changes and addenda to the 2009 Criminal Code version and transitional provisions.

2 Also, see Law No. 255/2013 on enforcing Law No. 135/2010 on the Criminal Procedure Code and on changing and completion of acts specifying penal procedural dispositions, which includes changes and addenda to the 2010 version of the new Criminal Procedure Code and transitional provisions.

3 According to Article 115 paragraph 1 point 1 of the new Criminal Code, non-custodial educative measures are: a) civic education stage; b) supervision; c) weekend arrest; d) daily assistance.

4 According to Article 115 paragraph 1 point 2 of the new Criminal Code, custodial measures are: a) educational Centre detention; b) inclusion into a detention centre.

1.1 Underage

In criminal matters, a minor is a person under a certain age – usually the age of majority or 18 in this case. In this regard, educational measures, specific to underage criminal punishment, can be applied only to crimes committed until the age of 18 (Article 114 of the currently valid CC). From the point of view of criminal accountability, however, a child is considered underage until they turn 16. Once a child turns 16, the minor is legally presumed as understanding the effects of their actions and therefore, criminally responsible (Article 113(3) of CC). They can be cleared of any responsibility as in the case of adults, only if a forensic investigation establishes that they suffer from a mental illness, which impairs normal judgment. After 16, a lack of judgment can only be a result of the existence of a mental illness, as in the case of an adult's impaired judgement.

From the point of view of criminal responsibility, minors are not criminally responsible until they turn 14. Before this age, whatever they do is not considered a criminal act. Between 14 and 16, a minor is held liable only if the forensic investigation proves they acted in full knowledge. In the absence of such an investigation, or if it is established that the minor did not act in full knowledge, criminal liability cannot be accounted for.

In civil matters, the age of majority is 18 (Article 38, Paragraph 2 of the new CC). Until the age of 14, a minor is deemed to lack the physical and mental capacity to commit certain crimes (Article 43(1)(a) of the CC). Between 14 and 18, the minor has a limited mental and physical capacity, in the sense that they can sign legal documents by themselves, but they still need the approval of their parents or guardian for the documents to be legally valid (Article 41 of the CC).

Notes

1) *Young adults (18-21 years old)*

Article 42(1) of the Law No. 254/2013 also introduces a „young adult“ category regarding people younger than 21. The law states that:

- a) Special penitentiaries for young people can be created (Article 12(2)(a) of the law);
- b) Convicted youth serve their time separated from convicts older than 21, or in special detention places (Article 47(2));
- c) During time in detention, convicted youth are included in special educational, psychological and social assistance programmes, adapted to their age and personality. These special programmes are created by the educational and psycho-social assistance personnel at the penitentiary, with the participation of probation counsellors, volunteers, associations and foundations, as well as of other civil society representatives (Article 42(1) - (3) of the law);
- d) Convicted youth are encouraged to take part in educational, psychological and social care activities, pertaining to their needs and personalities (Article 93(1) of the law).

2) *Minors under 14, who have committed criminal offences*

According to Article 113(1) of the CC, as previously noted, a minor under 14 is not criminally responsible. If a minor under 14 commits a criminal offence, one has to identify measures that can be taken. Two legal acts specify such cases:

- a) Law No. 272/2004 on the protection and promotion of child rights;
- b) Government Decision No. 1439/2004 on specialised services for children who commit criminal offences and are not legally liable.

According to Article 84 of Law No. 272/2004, one of the following two measures can be imposed on a minor, who has committed a criminal offence and is not legally liable, upon the proposal of the General Directorate for Social Care and Child Protection territorially accountable for the minor:

- Specialised supervision (supervising the minor within their family under the condition that the minor will fulfil several obligations, such as: attend school, use day care services, undergo medical procedures or psychological treatment or therapy, respect bans on attending certain places or meeting certain people);
- Placement (relocation in foster care with a certain person/family or within a residential service for a determined period of time).

Placement is selected when family supervision is not effective or when the minor does not fulfil their obligations as established by the specialised supervision decision. The above-mentioned measures can be issued by the Child Protection Commission when parents and guardians are in agreement. If the commission does not receive their consent, the court can impose such a decision. The minor, who has committed a criminal offence and who cannot be legally held liable, shall be accompanied and assisted by a psychologist or social worker, appointed by the General Directorate for Social Assistance and Child Protection, at any stage of the legal investigation.

2. Custodial measures

There are three main categories of custodial measures:

- **Administrative** measures (administrative management specified by Article 31(1)(b) of the Law No. 218/2002 on the organisation of Romanian Police Forces). It can be applied both for petty and criminal offences;
- **Criminal** measures (detention, custody, educational measures, security measures - specified by the CPC and CC). They can only be applied as a result of committing offences specified in criminal legislation. As previously stated, the current Criminal Code stipulates that only educational measures can be applied and that punishments (prison, fine) cannot be imposed on minors. Preventive measures (custody, etc.) and security measures (medical custody, etc.) can instead be applied;
- **Medical** measures (for mental disorders). Can be applied to persons (either underage or of age) suffering from mental disorders but who did not commit any criminal offence. Such persons can be taken into custody, contained or isolated temporarily on a non-voluntary basis, as specified by Law No. 487/2002 on mental health and protection of persons with mental disorders.

2.1. Administrative custodial measures

2.1.1. Administrative arrest at the police station

According to Article 31(1)(b) of Law No. 218/2002 on the organisation and functioning of the Romanian Police Forces, policemen are authorised to detain any person in a police station who, with their actions, **endanger the life of other persons, public order** or any other public good, as well as persons **suspected of committing illegal activities** (petty offences included), whose identity cannot be established under legal conditions. If the policeman's actions are not heeded, he is entitled to **use force**; verifying the situation of such persons and taking appropriate legal measures must be performed in **no more than 24 hours**, as an administrative measure.

Consequently called administrative arrest, this measure is clearly a deprivation of liberty similar to confinement, regulated by the CPC. Both can be applied for no longer than 24 hours, but administrative arrest allows for fewer guarantees and its applicability is not as well defined as « criminal» custody. According to an APADOR-CH research report from 2011-2012, the police do not collect statistics on the number of people deprived of liberty by administrative arrest and do not foresee including it in the future reports on police activity. Research also discovered deficiencies in recording administratively arrested persons, lack of legal assistance as well as a generalised practice of not issuing any document to the administratively arrested person regarding the reason and length of the measure.

The current CPC also does not include a similar disposition to Article 144(1) and Article 149/1(11) of the former CPC on deducting the length of the administrative arrest from the total length of preventive detention. The lack of such a provision is a step backwards, because it allows for deprivation of liberty decided by the police for a maximum of 48 hours (24 hours of administrative arrest and 24 hours of detention itself), although the Constitution allows only for deprivation of liberty imposed by police or a prosecutor for a maximum of 24 hours.

2.2. Criminal custodial measures

In case of committing a crime specified by the criminal law, the person can be deprived of liberty on the basis of: **preventive measures** (detainment, preventive detention), **criminal sanctions** (for people of age – punishments: prison, fine; for minors – educational measures: detention in an educational or detention centre etc.), **security measures** (undergoing medical treatment, medical admission etc.).

Preventive measures are specified by the Criminal Procedure Code, while criminal sanctions and measures are specified by the Criminal Code.

2.2.1. Preventive measures

According to Article 202(4) of the new CPC, preventive measures are:

- Preventive detention;
- Legal control;¹
- Bail legal control;²
- House arrest;³
- Preventive arrest.

Out of all these preventive measures, the following have custodial characteristics: preventive detention, house arrest and preventive arrest.

According to Article 202 of the CPC, preventive measures can only be ordered if the following conditions are cumulatively met:

- There is substantial evidence for a reasonable suspicion that someone has committed a crime.
- When they are required for:
 - the proper development of the criminal proceedings;

1 New preventive measure – a person remains free but has to observe certain obligations set forth by the legal system.

2 New preventive measure – a person remains free but has to pay a bail and observe certain obligations set forth by the legal system.

3 New preventive measure – a person is deprived of liberty but under softer conditions (place of execution) than in the case of preventive detention.

- preventing the suspect from eluding criminal investigations or trial;
- preventing another crime from being committed.
- There is no cause preventing the start or development of penal actions.
- If the respective preventive measure is proportional to the charge brought against the person and necessary for the achievement of its purpose.

Regarding minors, any of the preventive measures applicable to minors can be imposed for a period the same as for adults. The new CPC specifies provisions for preventive measures that are less favourable to minors, while the former CPC had set out different lengths of measures for minors and adults, which has been discarded in favour of a more general specification.

Hence, Article 243 of the CPC specifies the following special conditions for preventive measures applicable to minors:

- Preventive detention and arrest can also be imposed on a minor criminal under exceptional circumstances, provided that the custodial measures do not have a disproportionate effect on the personality and development of the minor and are in line with the aim for which they are ordered. On the basis of this provision, a more complex condition was added to the four cumulative conditions for a preventive measure (specified by Article 202 of the CPC): the exceptional character of the deprivation of liberty and the evaluation of its possible effects on the minor's personality. A correctly ordered measure allows for a better understanding of the nature and length of the preventive measure applicable to the minor in a concrete cause.
- Upon establishing the length of the preventive arrest, the age of the criminal is taken into account upon issuing, extending or maintaining the measure. The aim of such a provision, also present in the old CPC, is to underline that the criminal's age is taken into account at the moment of disposal, extension or maintenance of the measure and not the age of the criminal at the moment of committing the crime. Acknowledging the current age of the criminal allows for a more effective measure and length of measure.
- When preventive detention or arrest of a minor is imposed; it is mandatory that their legal custodian be notified. This is also the case when the minor taken into custody chooses to inform a different person other than a member of their family (CPC specifies that in the case of custody or arrest, the authority which issued such measure, should inform a member of the suspect's family or a different person specified by them).

Article 244 of CPC also provides stipulations regarding special conditions for preventive custody and arrest of minors, that are: a special detention regime has to be established for minors, taking heed of their age, so that the imposed preventive measures do not hinder their physical, psychological or moral development. This special regime shall be established by the law on serving punishments and measures taken by legal authorities during criminal trials.

In this respect, Article 117 of Law No. 254/2013 on serving punishments and measures taken by legal authorities during criminal trials, specifies the following characteristics of the regime for detained minors:

- Minors taken into custody or arrested should normally be placed in common spaces separated from adults;
- During the preventive arrest, minors are to be psychologically assisted in view of diminishing the negative effects of the deprivation of liberty on their physical, psychical or moral development;

- To the extent that the correct functioning of the criminal trial is not obstructed, minors are to be provided contact with their family or the persons with whom they have an intimate bond, by allowing visits, phone calls or online contact;
- According to provisions of Law No. 245/2013 on detention conditions, rights and obligations, rewards and sanctions, means of restraint and their usage, are also to be respected in relation to minors, except in situations of quarantine, general compulsory education, intimate visits or other rights/obligations involving activities outside of the detention facility (such as: exceptions for humanitarian reasons, camps and trips). The explanation for such restrictions resides in the aim and nature of the preventive measures, generally involving a restricted freedom of movement;
- During preventive arrest, the right to education is restricted for the proper development of the criminal process;
- Rewards are granted and disciplinary sanctions imposed by a commission annually designated by the head of the unit. The commission includes the deputy of the head as president, the head of the detention centre, a legal officer, and a secretary (Article 117(6) corroborated to Article 110(4));
- During preventive arrest, minors can receive the following rewards: the revoking of a disciplinary measure previously enforced, additional online contact time, additional packages and/or visits (Article 117(4)(d) corroborated to Article 170(1)(a)-(c));
- Minors in preventive custody and detention centres can perform unpaid work, upon their request, in the interest of the detention centre, with the agreement of the prosecutor, who supervises the criminal process (Article 117(6) corroborated to Article 112);
- Rights of the minors, who are taken into preventive custody, can be supplemented under the conditions specified by the regulations provided for by Law No. 254/2013 (Article 117(7)). Currently, it is at draft stage, the old regulation being still in force (Law No. 275/2006);

Preventive detention (Article 209-210 CPC)

Custodial measures can be imposed on a suspect or a convicted person by the penal authorities (police) or by the prosecutor.

Note that the current CPC replaces the word “învinuit” (accused) with the word “suspect” (suspect), the difference being just a formal one, not one of substance. The current CPC maintains the term “condamnat” (convicted). According to Article 77-78 of the CPC, a “suspect” is a person who, due to existing data and evidence, is reasonably suspected of committing the acts **specified in criminal legislation**. Suspects are entitled to rights specified by law, unless otherwise stated. According to Article 82 of the CPC, “convicted” refers to a person against whom criminal actions have been initiated. According to Article 15 of the CPC, criminal action is initiated when there is evidence resulting in reasonable supposition that a person committed a crime and that there are no situations that prevent the start of such action.

Custody can be ordered only if the general conditions of a preventive measure specified in Article 202 of the CPC mentioned earlier.

Maximum length of custody is **24 hours**, both for minors and for adults. It does not include the time necessary to transport the suspect to the headquarters of the authority. If the suspect or convicted person has been brought before the criminal authority or to the prosecutor for a hearing, on the basis of a legally issued summons, the 24-hour term does not include the period during which the suspect or convicted person has been issued a summons.

As previously noted in the administrative arrest section, the current CPC does not include a stipulation similar to that of the old CPC that the length of the administrative arrest should

be deducted from the total length of preventive detention, based on the provisions of Article 31 (1)(b) of Law No. 218/2002 on the organisation and functioning of the Romanian Police Forces.

The person taken into custody is informed in language they understand about the crime for which they are suspected of having committed, as well as the reasons of custody. The custodial measure can be imposed only after the hearing of the suspect or charged person in the presence of their lawyer or an appointed lawyer. Before the hearing, the criminal authorities or the prosecutor are required to inform the suspect or charged person that they have the right to a lawyer and the right not to make any statements, except in the case of providing information related to their identity, and to emphasise that anything that they declare can be used against them.

The suspect or charged person taken into custody has the right to personally notify their lawyer or to ask the criminal authorities or prosecutor to do so. The method of notification is recorded in the meeting minutes. The person taken into custody cannot be denied the right to personally notify the lawyer except for serious reasons, also to be noted in the meeting minutes.

The appointed lawyer is required to come to the headquarters of the criminal authority within two hours after being notified. In case of absence, the criminal authority designates a default lawyer. The suspect's lawyer has the right to directly communicate with them under confidential conditions.

Custody is imposed by the criminal authorities or by the prosecutor via an ordinance, which includes the reasons for such a measure, the day and hour for the beginning and end of custody. The suspect or convicted person is handed a copy of the custody ordinance.

During the custody period, the criminal authority or prosecutor have the right to photograph and take the suspect's fingerprints. If the custody has been ordered by the criminal authorities, it is required to immediately inform the prosecutor of the measure by any means necessary.

The suspect or convicted person can file a complaint against the ordinance, issued by the criminal authority, with the prosecutor supervising the criminal procedures within the expiration period. The prosecutor is to immediately decide upon it by ordinance. If he finds that the legal provisions regulating the custody conditions have not been observed, he orders the annulment of the custody ordinance and the release of the suspect. The suspect or convicted person can also file a complaint against the ordinance of the criminal authority before the Chief Prosecutor of the Prosecutor's Office, within the expiration period, or to the next in superiority prosecutor. They should immediately decide upon it by ordinance. If they find that the legal provisions regulating the custody conditions have not been observed, they order the annulment of the custody ordinance and the immediate release of the suspect.

If preventive arrest is required following custody, the prosecutor should notify the rights and liberties to the judge within the competent court of law, in view of taking the appropriate preventive arrest measure against the suspect taken into custody, at least six hours before the expiration of the custody period.

The person taken into custody is to be informed in writing about the following rights and obligations:

- the right to not provide any statement during the criminal trial. If they refuse to give any statement, they shall not suffer any unfavourable consequences and if they choose to, such a statement can be used as evidence against them;

- the right to be informed of the facts for which they are suspected and its legal qualification;
- the right to read the file, under legal conditions;
- the right to have a private lawyer and, if they do not have one, in cases of compulsory legal assistance, the right to have a state-appointed lawyer;
- the right to require evidence under legal conditions, to raise exceptions and conclude proceedings;
- the right to formulate any other requests related to the criminal or civil solving of the case;
- the right to have access to free translation if they do not understand or cannot communicate well in Romanian;
- the right to have a mediator, under legal conditions;
- the right to be informed of their rights;
- the right to inform or solicit the criminal authority, issuing such a measure, immediately after being taken into custody to inform a member of their family or any other person designated by them on the nature of custody and on the place in which they are being held;
- the right of the person taken into custody, who is not a Romanian citizen, to notify or ask for the notification of the respective diplomatic mission or consular services or, if applicable, of an international humanitarian organisation unless they do not want to benefit from the assistance of the authorities of their country of origin, or from the representative of the competent international organisation, e.g. if they are a refugee or, for any other reason. The General Inspectorate for Immigration has to be informed in all cases of the custodial measure taken against people falling into this category;
- the right to emergency medical assistance;
- the right to be informed of the maximum length of the custody measure;
- the right to file a complaint against the measure taken.

One has to note that Article 209(17) of the CPC is much more ambiguous, because the expression is “to be communicated, under signature, in writing, the rights...”, which allows for other ways of fulfilling this obligation in practice, such as within the declaration they sign as a suspect or convicted person, or by drafting minutes to formally note the rights, than by being handed a written note explicitly stating these rights.

In this respect, Article 4 of the 2012/13/EU Directive on the right to be informed within criminal proceedings, specifically states the necessity of informing those deprived of liberty via a written note, including with regard to their rights related to their arrest. Such persons shall be offered the opportunity to read the written note and be allowed to keep it during the period in which they are deprived of liberty.

Thus, according to Article 4 of the Directive, persons suspected or charged with committing a crime, who are taken into custody or arrested, have to be promptly provided with a written note on their rights, written in a clear and accessible language, with the following information:

- the right to be assisted by a lawyer;
- the right to free legal assistance and conditions for obtaining such assistance;
- the right to be informed of the charges;
- the right to translation;

- the right to not declare anything;
- the right to access the process material;
- the right to inform consulate authorities and a person;
- the right to access emergency medical assistance;
- the right to be informed on the maximum number of hours or days for which a person suspected or charged can be deprived of liberty before going to a court;
- any possibility, specified by law to challenge the legality of the arrest measure, to obtain a revision or to ask for temporary release.

House arrest (Article 218-222 CPC)

House arrest is a preventive measure whereby the defendant is confined by the authorities to a certain residence for a specified period (30 days with the possibility of extension). The defendant must meet certain obligations and cannot leave their residence without the permission of the judicial body that ordered the measure, or before which the case is pending.

The law stipulates that the house arrest measure cannot be applied with regard to the suspect, but only to the defendant. This preventive measure can be applied equally to both adults and children, and its duration does not depend on the age of the defendant.

During the criminal investigation, the duration of house arrest can last a maximum 30 days, with the possibility of extending it several times by a maximum of 30 days (Article 222 of the NCPP). In total, during the criminal investigation, house arrest cannot exceed 180 days. The length of detention ordered by the house arrest measure is not taken into account when calculating the maximum duration of preventive arrest during the criminal investigation.

During house arrest, the defendant shall have the following obligations:

- to appear before the judicial authorities whenever they are called;
- not to communicate with the injured person or members of their family, other participants in the crime, witnesses or experts and other persons determined by the judicial body.

During house arrest, the defendant may leave the residence to report before the judicial bodies upon their request. Upon the written request of the defendant, the judge may allow them to leave the building to visit their workplace, educational courses or training, or other similar activities or to purchase essential means of subsistence and other cases duly justified for a period, if this is necessary, for the realisation of their rights, or if it serves the legitimate interests of the defendant.

In emergency situations, the defendant may leave the building for well-grounded reasons without permission from the judge for the time strictly necessary, immediately informing the institution, body or authority designated with supervision (in practice, the police) and the judicial body, which ordered the measure of house arrest.

A judge can order a house arrest measure at the justified proposal of the prosecutor. When issuing a house arrest, the gravity of the offence, the aim of the measure, the health, age and family situation and other circumstances of the defendant are taken into consideration. House arrest cannot be ordered in the following cases:

- a defendant against whom there is a reasonable suspicion of having committed an offence against a family member;
- a defendant has previously been sentenced for the crime of escape.

The defendant will be summoned before the judge, but the failure to appear before the court does not prevent from imposing a house arrest measure. Legal assistance and the participation of the prosecutor are required.

The person under house arrest shall be notified in writing against the signature of the arrested, about their rights and on the information about the arrest. This information is also communicated to detained persons (these rights are detailed above in the section on detention).

The judge may order the defendant to permanently wear an electronic monitoring device during house arrest. In practice, such a system is not yet operational. To ensure the enforcement of the house arrest measure, the institution, body or authority designated with the defendant's supervision (in practice, the police) should periodically check their compliance with the measure, and if they find a violation thereof, they should immediately notify the prosecutor during the criminal investigation, or the judge during later phases of the criminal proceedings.

To ensure compliance with the house arrest measure and with obligations imposed on the defendant, the police can enter the residence where the defendant is under house arrest, without their permission or the persons residing with them.

If the defendant in bad faith violates the preventive measure, their obligations, or if there is reasonable suspicion that they intentionally committed a new crime for which the initiation of a new criminal proceeding was ordered, the judge, at the reasoned request of the prosecutor or on his own, may order the replacement of the house arrest measure with preventive custody/arrest.

Preventive Arrest (Article 223-240 of the CPC)

Preventive arrest may be imposed on the defendant, not the suspect, which is clearly stipulated in the provisions of Article 223 of the CPC. In the former CPC, the defendant (corresponding terminology for the currently used term: "suspect") could be arrested for 10 days. The preventive arrest measure can only be ordered by the judge, both during criminal investigation¹ and during the preliminary chamber procedure² or during the trial, if the following conditions are met:

- 1) Based on evidence there is a reasonable suspicion that the defendant has committed a crime;
- 2) As a result, one of the following situations arise:
 - a) the defendant has fled or gone into hiding in order to evade prosecution or the court, or made whatever preparations for for such acts;
 - b) the defendant is trying to influence another participant in the crime, a witness or an expert; to destroy, alter, hide evidence; escape; or force another person to undertake such behaviour;

1 The judge, who rules on preventive measures during criminal investigation, is called the judge for rights and liberties.

2 The preliminary room procedure is a new legal institution introduced by the CPC and represents an intermediate stage between criminal prosecution and the trial phase, in which a judge (the judge of the Preliminary Trial Chamber) verifies the legality initiation of the trial ordered by the prosecutor (the court hearing the legality of the indictment and court referral), verifies the legality of evidence and the observance of procedural acts by the criminal investigation bodies. If the judge of the Preliminary Trial Chamber finds that that the court has been referred to legally, as well as the evidence and the criminal proceedings documents are legally assessed and gathered, he will start the trial phase. If the indictment is not in line with the regulations in force or the irregularities have not been remedied by the prosecutor within the deadline or has excluded all evidence gathered during criminal investigations or upon the express request of the Prosecutor, the judge of the Pre-Trial Chamber shall not order the trial commencement, but will return the case to Prosecutor's Office.

- c) the defendant is pressuring a victim and tries to make a fraudulent deal with them;
- d) there is reasonable suspicion that after the initiation of criminal proceedings against the defendant, they intentionally committed a new crime or are preparing to commit a new one;
- e) The evidence indicates, based on a reasonable suspicion, that they have committed one of these offences:
 - A deliberate crime against life;
 - An offence that caused injury or death to persons;
 - A crime against national security under the Criminal Code and other special laws;
 - A drug trafficking offence;
 - Weapons trafficking offence;
 - Trafficking in persons offence;
 - A terrorist offence;
 - A money laundering offence;
 - An offence of counterfeiting money or other valuables;
 - An offence of blackmail;
 - An offence of rape;
 - An offence of deprivation of liberty;
 - Tax evasion offences;
 - An offence of assault;
 - An offence of insulting the judiciary;
 - A corruption offence;
 - An offence committed by means of electronic communication;
 - Any other offence, for which the law provides imprisonment of five years or more;

If, in addition to committing any of the offences mentioned above, it is established on the basis of assessing the seriousness of the offence, the manner and circumstances of how it is committed, the social circle and the environment from where the person comes, the criminal history and other circumstances relating to the person, for which the deprivation of liberty is necessary to remove a condition of danger to public order.

If the preventive arrest measures concern a minor, in addition to the above-mentioned conditions stipulated in Article 223 of the CPC, the conditions under Article 243 of the CPC should also be mentioned, namely:

- The measure has an exceptional character and the effects of imprisonment on their personality and development are not disproportionate to the objective pursued by the measure.

The duration of the preventive arrest measure is the same as for adult defendants: preventive detention cannot exceed 30 days according to the new Criminal Procedure Code. During the criminal investigation, it can be extended several times in increments of up to 30 days. During the trial, according to Article 208 and Article 362 of the CPC, the court *ex officio* checks periodically until the end of the arrest, but not later than 60 days, in open court, if grounds remain for the arrest measure and/or for the measure ordered for the house arrest of the defendant.

During the criminal investigation, the total duration of preventive arrest (initial arrest and extension) cannot exceed 180 days, as required by Article 236(4) of the CPC. This is not included in the calculation of 180 days duration of home arrest. In this regard, the Article 222(10) of the CPC provides that the term of detention, ordered by a house arrest measure, is not taken into account in calculating the maximum duration of preventive arrest of the defendant during the criminal investigation.

During the trial,¹ the total duration of preventive arrest shall not exceed an absolute maximum term of five years.² The total duration of the preventive custody may not exceed half of the absolute maximum term, provided by law for the offence, which is the subject of the referral court. So, if half of the maximum term is less than five years, then the preventive measure shall legally end at the fulfilment of half of the term, not after five years.

The five year term and other terms (for calculating the half absolute maximum) is calculated from the court referral date, when the defendant is within custody awaiting trial, to the date of enforcement of the measure, when the arrest is imposed in the preliminary trial chamber or during trial or in absentia.

In conclusion, according to the current CPC, a preventive detention measure during the trial cannot exceed half of the absolute maximum provided by law for the offence, subject to court referral, but regardless of the length of the half term, cannot exceed five years.

If the preventive arrest measure cannot be imposed because the deadlines permitted by law have expired, the court may order other preventive measures, if the legal conditions are met (Article 239(3) of the CPC).

The judge, notified by the prosecutor with a proposal for ordering a preventive arrest measure or who ex officio notifies him/herself, shall set a deadline (date and time) at which the settlement will take place. In connection with this deadline, the prosecutor, the defendant and the defendant's lawyer will be notified. The lawyer, upon request, will be provided with the case file for study.

The decision on the proposal of preventive arrest is made only with the presence of the defendant, unless they are not present without justification, have disappeared, are not able to attend because of their health status, force majeure circumstances, out of necessity or cannot be brought before the judge. In all cases, the defendant is granted mandatory legal assistance by a lawyer, elected or appointed office. The prosecutors' participation is mandatory.

The judge hears the defendant, who is present in the court, in relation to the offence they are charged with and the reasons behind the proposed arrest. Before proceeding to hearing the defendant, the judge shall notify them of the crime of which they are accused and the right to abstain from making a statement, informing them that what they declare can be used against them.

The judge may order the preventive arrest of the defendant or may order less restrictive preventive measures or can order that a preventive measure be taken. The judge will make a decision, which can be appealed by the prosecutor or the defendant, within 48 hours of imposing the measure or, where appropriate, from the communication (Article 206 of the CPC). After preventive arrest measure is decided, the defendant is immediately informed of the measure and the reasons for it in a language they understand.

1 This refers to the first instance trial, because after the first instance trial, the detention measure of the person is no longer the effect of a preventive measure but of a judgment of conviction, even if it is not final.

2 The five-year period is introduced by Article 239 of the current CPC. The former CPC did not provide for a fixed deadline, but only the completion of half of the absolute maximum provided by law for the offence, which is the subject of referral to the court.

The person against whom the preventive arrest was ordered shall be notified in writing against their signature, of their rights and on the other information about the arrest. The same information is also communicated to the detainee. Immediately after the preventive arrest, the judge for freedoms and rights of the first instance or a higher court that ordered the measure notifies a family member of the defendant or another person designated by them.

RHC emphasises that, according to Article 243(4) of the CPC, when ordering the detention of a minor, the legal representative or, where appropriate, the person in whose care and supervision the minor is under will also be notified. This provision covers the situation where the child deprived of liberty should wish to notify a person other than a family member (a situation possible in practice under the CPC, which provides that in case of detention or arrest, the body that ordered the arrest shall notify a family member of the suspect/ defendant or another person designated by them about the arrest).

If the person arrested is not a Romanian citizen, they have the right to notify, or request to inform the diplomatic mission or consular post, according to their nationality or, if applicable, an international humanitarian organisation, unless they do not seek assistance from the country of origin's authorities, or the representative of the competent international organisation. The General Inspectorate for Immigration will be informed at all times about the preventive arrest measure ordered for such a category of persons.

Soon after their placement in a detention facility or after changing the place of detention, the defendant has the right to inform personally, or through the administration of the facility, a family member or another person designated by them about the place of detention.

The administration of the detention facility is required to inform the defendant in custody of their rights and on information about the arrest (provision applicable also to the individuals detained). The notification method should be recorded in protocol minutes. The defendant under preventive arrest cannot be refused the right to be personally notified, unless there are well-grounded reasons, which are recorded in a report prepared by the administration.

2.2.2. Criminal sanctions applicable to minors

Non-custodial educational measures

According to Article 114(1) of the CC, only educational measures can be imposed on the minor, who is criminally liable (involving non-deprivation or deprivation of liberty), but not punishment (imprisonment, fine). Educational measures can be applied to an adult, if they were a minor at the time of committing the offence (Article 134(1) of the CC). In this case, the court may order the execution of custodial educational measures in a prison (Article 134(2) of the CC). The rule established under Article 114(1) is that a non-custodial education measure should be applied to minors.

With exception, Article 114(2) of the CC states that a custodial educational measure can be imposed on minors in one of the following situations:

- if the minor was issued an education measure prior to the crime for which they were judged;
- if they have committed a crime for which the penalty provided by law is imprisonment for seven years or more or life imprisonment.

According to Article 115(1) of the new CC, non-custodial educational measures are:

- a) civic training course;¹
- b) supervision;²
- c) confinement during weekends;³
- d) daily assisting.⁴

In addition to the imposed non-custodial educational measures, the child will have to meet certain obligations that may be imposed by the court. Thus, according to Article 121 of the CC, during the execution of non-custodial educational measures, the court may impose one or more of the following obligations:

- a) to attend an educational or training course;
- b) not to go beyond the territorial limit set by the court without approval from the probation service;
- c) a ban on visiting certain places or certain sporting events, cultural or other public meetings set by the court;
- d) a ban on visiting or communicating with the victim or members of their family, the participants in the offence or other persons determined by the court;
- e) to report to the probation service according to a schedule;
- f) to comply with control measures, treatment or care.

According to Article 115(1)(2) of the new CC, custodial education measures are:

- a) admission to an educational centre;
- b) confinement in a detention centre.

According to Article 116 of the CC, the imposing of a specific educational measure is decided by the court in relation to the general criteria for individualisation of punishment and the assessment report prepared by the probation service, which will include proposals based on the nature and duration of rehabilitation programmes that the minor should follow, as well as other duties that may be imposed by the court. The preparation of the assessment report is required to solve the case (resulting from the mandatory wording of the text of Article 116 of the CC).

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- 1 A new educational measure introduced in the CC, which consists of requiring the minor to participate in a programme lasting four months, to help them understand the legal and social consequences of their criminal offence and to make them accountable for their future behaviour. The probation service ensures the organisation and participation of the juvenile in the training and supervises them without affecting the minor's school or vocational programme.
 - 2 A new educational measure introduced in the CC consists of controlling and guiding the minor in their daily programme for a period of between two and six months under the supervision of the probation service to ensure participation in educational courses or training and prevention activities meant to avoid entering into contact with certain individuals that might affect their rehabilitation process.
 - 3 A new educational measure introduced in the CC sets the obligation for the minor not to leave their home on Saturdays and Sundays for a period lasting between four and 12 weeks (one to three months), unless in this period, they are required to participate in certain programmes or to carry out certain activities imposed by the court.
 - 4 A new educational measure introduced in the CC obliges minors to respect the programmes established by the probation service for a period of between three to six months, which contains the timetable and conditions for conducting activities and the bans imposed on the minor. It is the most severe custodial educational measure. Basically, it includes the two educational measures listed above: monitoring and confinement on weekends. A deprivation of liberty measure can be replaced only with a non-custodial measure of daily assistance. Criminal Code, Art. 124(4)(a) and Art. 125(4).

Custodial educational measures

Admission to an educational centre

The admission into an educational centre, an institution specialised in the recovery of minors, is for a period between 1-3 years. At the centre, they will attend educational and professional training programmes according to their skills, as well as social reintegration programmes.

The period during which a person is subject to a custodial preventive measure shall be deducted from the educational measure of remand in an educational centre (Article 127 of the CC).

If during admission, the minor commits a new crime or they are put on trial for a concurrent offence committed beforehand, the court may maintain the measure of custodial education, extending its duration, although not exceeding the statutory maximum, or replace it with the measure of admission to a detention centre.

If the minor during admission shows constant interest in acquiring academic and professional knowledge, and makes good progress in social reintegration after serving at least half of the admission term, although not obligatory, the court may order:

- a) the replacement of the measure with the non-custodial measure - daily assisting,¹ for a period equal to the duration of their stay in the educational centre, but not longer than six months if the person admitted has not reached the age of 18;
- b) the release from the educational centre,² if the person admitted has reached the age of 18.

The court may decide to review the decision to replace the educational measure or the release from the education centre, if the minor does not comply, in bad faith, with the conditions under the daily assisting measure, the obligations or if the child commits a new offence.

The detention regime can be changed, if the court decides against the continuation of the execution of the educational measure in a prison, if the person admitted:

- has reached the age of 18.
- exhibits behaviour, which adversely affects or hinders the recovery and reintegration of another person's admission (Article 126 of the CC).

Note

Escaping from an educational centre or failure to present themselves in the centre after the expiration of the period in which they were legally free to move at liberty, constitutes an offence, breaching criminal penalties, and shall be punished by imprisonment of between three months and one year or a fine³ (Article 288(2) of the CC).

The incriminated facts are similar to those of the offence of escape (Article 285 of the CC), but they are punished less harshly than escape⁴ because it is considered that they represent an escape from safety measures, not from punishment. Hence, another form of sanctioning could be applied.

1 Along with replacing admission, the court will establish mandatory compliance by the minor of one or more of the obligations set out in Article 121 until the period of the admission measure is reached. Criminal Code, Art. 124(5).

2 Upon release from the educational centre, the court will establish mandatory compliance by the release of one or more of the obligations set out in Article 121 until the period of the admission measure is reached. *Ibid.*

3 Of course, if the perpetrator is a minor, an imprisonment or fine penalty cannot be applied, except for the education measure.

4 The punishment provided for escape is a prison sentence of between six months and three years and, when violence is used, from one to five years. Criminal Code, Art. 285.

Admission to a detention centre

Admission to a detention centre can be imposed for a period ranging between two to five years or, sometimes, between five and 15 years in an institution, specialised in the recovery of minors, with a security and surveillance system, where they will follow intensive programmes for social reintegration, schooling and training according to their abilities.

Regarding the duration measure, the rule is usually two to five years. In certain exceptions, the duration of the measure from five to 15 years can only be applied, if the penalty provided by law for the offence is imprisonment for 20 years or more or life imprisonment. Basically, an educational measure amounting from five to 15 years is applied very rarely since the current CC significantly reduced the maximum penalty for offences, rarely imposing punishments of 20 years or longer.¹

If, during admission, the minor commits a new crime or is tried for a prior, concurrent offence, the court may extend hospital care without exceeding the maximum (two to five years/ five to 15 years), which will be determined in relation to the maximum penalty as provided for by law. The educational measure is subtracted from the length of time served until judgement.

During their time in a detention centre, if the minor shows constant interest in acquiring academic and professional knowledge, and makes good progress in social reintegration after serving at least half of the admission term, although not obligatory, the court may order:

- a) replacement of admission to a detention centre with an educational measure – daily assisting², for a period equal to the duration of their stay in the detention centre, but not longer than six months, if the person admitted has not reached 18;
- b) the release from the detention centre,³ if the person admitted has reached 18.

The court may review the replacement of the education measure or the release from the detention centre, if the minor does not comply, in bad faith, with the conditions for implementing the daily assisting measure, the obligations or if they commit a new offence.

The detention regime can be changed and the court may rule that the continuation of the execution of the education measure be exacted in prison, if the person admitted:

- has reached 18.
- exhibits behaviour, which adversely affects or hinders the recovery and reintegration of other persons admitted (Article 126 of the CC).

Note

The escape from a custodial educational measure by running away from the educational centre or failure to appear at the centre after the expiration of the period in which they were legally free to move at liberty, constitutes an offence, breaching criminal penalties, and shall be punished by imprisonment amounting from three months to one year or a fine⁴, (Article 288(2) of the CC).

1 These offences are: murder (simple and qualified), determining or facilitating suicide of a minor under 13 or to a person without capacity to comprehend their actions; failure to comply with the regime of explosives that resulted in the death of one or more persons; crimes against national security; genocide; crimes against humanity. In addition to these offences, the penalties are less than 20 years in prison.

2 Along with replacing admission, the court will establish mandatory compliance by the minor of one or more of the obligations set out in Article 121 until the period of the admission measure is reached. Criminal Code, Art. 124(5).

3 Upon the release from a detention centre, the court will establish mandatory compliance by the release of one or more of the obligations set out in Article 121 until the measure reaches the period of placement. *Ibid.*

4 Of course, if the perpetrator is a minor, an imprisonment or fine penalty cannot be applied. Only the educational measure can be applied in such a case.

The incriminated facts are similar to those of the offence of escape (Article 285 of the CC), but they are punished less harshly than escape¹ because it is considered that they represent an escape from safety measures, not from the punishment. Hence, another form of sanctioning could be applied.

Provisions on the enforcement of deprivation of liberty educational measures contained in Law No. 254/2013

Law No. 254/2013 on the execution of custodial sentences and measures ordered by the court in criminal proceedings regulates the enforcement regime of custodial educational measures (Title V, Articles 134-184).² By law educational centres and detention centres are social institutions, specialised in the recovery of admitted persons. The centres are established by Government Decision, have legal personality and are subordinated to the National Administration of Penitentiaries (hereinafter: NAP).

The Educational Centre is a specialised institution for the social recovery of admitted persons, where they take part in educational and professional training programmes, according to their skills, and other activities and social reintegration programmes.

The Detention Centre is an institution, specialised for the social recovery of admitted persons, under a security and surveillance regime, where they can take part in intensive educational and professional training programmes, according to their skills, and other activities and social reintegration programmes.

These centres employ specialised personnel for educational, moral and religious, cultural, sports and recreational activities, as well as psychological and social assistance. They also employ specialised medical personnel, security and surveillance staff, well as accompanying technical and administrative staff. The Ministry of National Education provides specialised personnel for school training activities within the detention and educational centres through the County School Inspectorates.

The professional training activities are carried out by staff in the educational or detention centre, by the specialised staff from employment agencies and other accredited training providers.

In each educational centre and detention centre, the social rehabilitation work is organised and carried out based on an educational project. The educational project usually seeks primarily to achieve the following objectives:

- provide a favourable environment for personal development;
- confer benefits during admission;
- reduce psychological and social vulnerability;
- assimilation of knowledge and skills necessary for the formation of social reintegration.

In each educational centre, an education board is set up, whose aim is to individualise the regime of the educational measure by establishing educational, psychological and social assistance for each person. Each detention centre sets up a committee to establish the individualisation and review the enforcement of the measure of admission.³

1 The punishment provided for escape is prison from six months to three years and when violence is used, from one to five years. Criminal Code, Art. 285.

2 Correlatively, the enforcement regime of non-custodial educational measures is regulated by Law No. 253/2013 on the execution of punishments, educational measures and other non-custodial measures ordered by the court in criminal proceedings.

3 The educational committee is comprised of the centre's director (also chairman), the deputy director for education and

The regime in an educational centre is as follows: persons placed in an educational centre are housed jointly, may move unescorted within the centre, in areas determined by the rules and may be involved in educational training and professional, cultural, moral, religious, psychological activities; they may also receive specific social support or they may perform work both inside and outside the centre without supervision, under the Regulations of the Law No. 254/2013.¹

The regimes for educational measures in detention centre are:

- closed regime;
- open regime.

A closed regime applies to a person admitted for a period longer than three years. But, even for periods of more than three years, an open regime can be established in exceptional cases, given the nature and manner of committing the crime and the person's behaviour prior to imposing the measure.

Persons with educational measures admitted to a centre under a closed regime take part in educational, cultural, moral, religious training, receive specific social and psychological assistance and perform group work within the centre or outside under supervision, but in the latter case, as security and surveillance continues and only with the approval of the director of the centre².

Article 162(1) of Law No. 254/2013 provides that the rights and prohibitions stipulated in Article 56-82 of the Law for persons sentenced to imprisonment shall apply accordingly also to persons with custodial educational measures.

Article 161 of the Law No. 254/2013 provides for the right to education and adequate professional training for persons with custodial educational measures in accordance with their needs and capabilities. Education and training are provided by qualified teachers in classes part of public schools or inside the centre.

Also, Article 161 of the Law No. 254/2013 obliges persons with custodial educational measures to attend compulsory education.

Minors are provided eight hours of sleep per day (Article 162(3) of Law the No. 254/2013).

Marital visits are granted to persons, who are legally married or who wish to be married at the moment when the right is granted (Article 162(4) of Law No. 254/2013).

Persons admitted to centres can receive social or study grants by NGOs, educational institutions and other natural or legal persons (Article 166(3) of Law No. 254/2013).

Representatives of governmental and nongovernmental organisations, whose main activity deals with providing assistance to minors, may visit detention and educational centres and can establish contact with persons in the centre with the approval of the director of the centre (Article 162(3) of Law No. 254/2013).

psychosocial support, the educator responsible for the case, a psychologist and a social worker and the person responsible for the supervision, evidence and granting of rights to admitted persons.

1 Law No. 254/2013 on the execution of punishments, educational measures and other non-custodial measures ordered by the court in criminal proceedings, Art. 154.

2 According to Article 150(5) of Law No. 254/2013, the situations in which the activities can be conducted outside the centre without accompanying the admitted person will be determined by the Regulation of implementing the Law No. 254/2013. As of 17 November 2014, the Regulation implementing Law No. 254/2013 is in a draft form. The former Regulation of the former law on the execution of punishments and of the measures ordered by the court in criminal proceedings (Law No. 275/2006) is applied now.

Persons in educational and detention centres can perform work upon consulting with the doctor from the educational and detention centre. The work should be suited to their physical development, skills and knowledge, provided that their health, development, educational and vocational training are not in danger. Admitted minors do not perform work at night. A 50% share of the labour income earned by the person is returned to them and the other 50% of the income is transferred to the centre administration (Article 163 of Law No. 254/2013).

The admitted person can earn an income also by rendering a profit out of work performed during occupational workshops. The total income is transferred to the person after deducting expenses necessary to carry out the work (Article 164 of Law No. 254/2013).

Activities and social reintegration programmes are regulated by Articles 165-169 of Law No. 254/2013. According to the law, the educational, psychological and social development assistance of the persons admitted to educational and detention centres is based on a structured set of programmes and activities that offer them the possibility to acquire skills that lead to adopting constructive behaviour, autonomous and accountable to the community. It involves ensuring an adequate number of: teachers, priests, technical agents, sports monitors, specialised personnel for occupational workshops, as well as psychologists and social workers.

The educational, psychological and social assistance has the following components:

- educational training;
- professional orientation and training;
- educational activities;
- psychological assistance activities;
- social assistance activities;
- moral-religious activities;
- individual and group activities;
- activities for maintaining an active life.

Psychological and social assistance is carried out on the basis of the educational project of the centre.

For every person admitted, the Educational Council in each educational centre or, where appropriate, the commission responsible for establishing the individualisation and enforcement regime change in each detention centre, also adopts a recovery intervention plan. The recovery action plan is drawn up based on a multidisciplinary assessment from an educational, psychological and social perspective and is updated whenever necessary. The recovery action plan shall be determined according to the developmental needs of the admitted person:

- the duration and mode of execution of the custodial educational measure;
- the activities and programmes for educational, cultural, moral and religious training, as well as for the psychological and social assistance, in consultation with them.

2.2.3. Safety measures (Article 107-112(1) of the CC)

Safety measures aim to eliminate a state of danger and prevent certain conduct under criminal law. They can only be imposed on people who have committed offences under criminal law, even if the perpetrator is not criminally liable (Article 107 of the CC).

As such, safety measures can be imposed even if the minor has committed a criminal act, is not criminally liable, and where an educational measure is imposed on the minor.

According to Article 108 of the CC, the safety measures are:

- a) forced medical treatment;
- b) medical hospitalisation;
- c) prohibition of employment or the exercise of a profession;
- d) special confiscation.
- e) extended confiscation.

Of these, medical hospitalisation constitutes a substantial deprivation of liberty.

Medical hospitalisation

The safety measure of medical hospitalisation consists of involuntary admission to a specialised medical unit until medical recovery or until a threatening situation has been resolved, involving a perpetrator, who is mentally ill, chronically addicted¹ to psychoactive substances² or suffers from an infectious or contagious disease³ and presents a danger to society (Article 110 of the CC).

The measure requires a double limitation: confinement through medical hospitalisation in a medical unit and the obligation to undergo an appropriate medical treatment.

For the purpose of enforcing the safety measure, the law does not require the perpetrator to be suffering from a disease or chronic addiction at the time of committing the offence but it suffices to commit a criminal act and create conditions, posing a danger to society even after the commission of the respective offence. Therefore, safety measures may also be enforced when the appearance/contraction of disease or chronic addiction occurs after the commission of the offence.

Medical hospitalisation may also be ordered if a person is criminally liable, as it is not only applicable to those with mental health problems with no mental and physical capacity. For example, in case of an infectious or contagious disease, the affected person usually possesses their mental capacity.

The medical hospitalisation measure may be ordered only by the judge and only on the basis of a forensic report.

Unlike the previous CC, which provided that medical hospitalisation lasts until recovery (Article 114(1) of the former CC), the current CC (Article 110) stipulates that medical hospitalisation ceases earlier than the date of medical recovery that is after reaching a state of improvement and removal of the threatening condition. The current wording is more reasonable and closer to reality.

The medical hospitalisation measure may also be imposed provisionally during the criminal investigation phase, preliminary chamber or trial, as well as in cases when the judge orders but only on the basis of the forensic report⁴ (Article 247-248 of the CPC).

1 Chronical addiction involves repeated consumption for a prolonged duration. The chronic nature of consumption must be proven through medical tests that can identify traces of chronic consumption.

2 "Psychoactive substances" is a broader concept that also includes common narcotic drugs substances such as "ethnobotanics." Article 241 of Law 187/2012 on the implementation of the Criminal Code provides that "the psychoactive substances means substances established by law, on the proposal of Ministry of Health."

3 Disease that spreads easily and contaminates.

4 Unfortunately, there is a text mismatch within the provisions of Article 248 of the CPC. Article 248(5) of the CPC provides that when the proposal for temporary hospitalisation is not accompanied by forensic psychiatric expertise, the court, to which the referral has been made, orders the enforcement, if applicable, of the hospitalisation measure for the purpose of undertaking the necessary expertise. This provision leads to the conclusion that temporary hospitalisation

The suspect or defendant will be brought to the hearing on the basis of a warrant. The medical hospitalisation measure may also be enforced without their presence at the hearing if their health prevents it. If the hearing is possible, it will take place in the presence of an attorney, either selected by them or appointed *ex officio*.

When the suspect or defendant is already admitted to a medical unit and their transportation is not possible, the judge for rights and freedoms shall hear the respective person at the place of their location in the presence of a lawyer. Participation of the prosecutor is mandatory.

The suspect or defendant has the right to be assisted by a physician of their own choice when settling the medical admission or drafting the therapy plan proposal, whose conclusions are submitted to the judge.

The termination of the temporary medical admission measure may be ordered by the judge, on the request of the prosecutor or the doctor or on the request of the suspect or defendant or a member of their family, if medical recovery of the suspect or defendant was achieved or an improvement of their health condition has eliminated the threatening situation.

The medical hospitalisation safety measure ordered by a final judgment is enforced by notifying the competent public health authority in the county where the person in question lives with a copy of the operative part of the decision and a copy of the forensic report (Article 569(1) of the CPC).

Following their admission, the judge delegated to enforce the measure from the court, in whose territorial competency the health unit is situated, is required to check periodically, but not later than 12 months after their admission¹, whether the medical hospitalisation is still necessary. To this end, the delegated judge orders an expert forensic evaluation on the health condition of the person under a medical hospitalisation measure and, after the receipt of this expertise, shall notify the court in whose district the health unit is situated in order to decide on maintaining, replacing or terminating the measure (Article 569(3) CPC).

So necessarily, every 12 months, a new expert forensic evaluation must be carried out and, regardless of its result, the judge delegated with the enforcement of the measure shall address the court in whose jurisdiction the medical unit is located, so that the respective court can rule² on maintaining the medical hospitalisation measure (if the forensic expertise does not establish a medical recovery or an improvement of the conditions posing a danger to society), the replacement of hospitalisation with another safety measure (e.g. forced medical treatment – if the expertise recommends) or the termination of the admission measure (if the forensic expertise ascertains a medical recovery or an improvement of the conditions posing a danger to society).

must always be based on an expertise report. However, Article 248(9) of the CPC provides that the judge, who orders temporary medical hospitalisation of the suspect or the defendant, shall take steps for conducting a forensic psychiatric expertise, if it was not already conducted. This may lead to the conclusion that temporary hospitalisation may be ordered also in the absence of any expert report, with such being conducted only after the enforcement of the measure. The APADOR-CH considers that medical hospitalisation, even temporary, cannot be decided in the absence of expertise, taking into account the severity of such a measure. On the other hand, some action or measure should be taken against a person posing a threat to society until the completion of the expertise. Article 248(5) CPC provides for the possibility of hospitalisation for the purpose of conducting the forensic psychiatric expertise (Article 184(5) of the CPC regulates forced medical hospitalisation procedure for the purpose of performing the forensic psychiatric expertise).

- 1 Criminal Procedure Code (former), Art. 432(4). The deadline provided by the former CPC was six months.
- 2 The court shall decide on the complaint only after hearing the opinion of the Prosecutor, of the person against whom the hospitalisation measure was taken (wherever possible), of their lawyer (if the person has no lawyer, a lawyer is appointed *ex officio* (Criminal Procedure Code, Art. 571(4)) as well as of the expert who conducted the forensic examination, when deemed necessary (Criminal Procedure Code, Art. 571(2)).

In addition, the medical unit, where the hospitalisation is carried out, shall inform the territorial competent court, if it considers that the hospitalisation measure is no longer necessary; in such cases, the court shall order a expert forensic evaluation to be carried out¹ (Article 570(4), Article 571(1) of the CPC).

In addition to the judge responsible for the enforcement of the measure and the medical unit, the prosecutor or the admitted person may ask for the termination or replacement of the hospitalisation measure. In this case, the court orders an expert forensic evaluation to be conducted and settles the application² (Article 571(3) of the CPC).

Note

The act of absconding from the enforcement or non-enforcement according to the law of the safety measure of medical admission (Article 288(1) of the CPC) constitutes the offence of „non-enforcement of the criminal penalties“ and shall be punished by imprisonment from three months to two years or a fine, if the act does not constitute a more serious offence.

For example, leaving the medical unit without authorisation, or denial of adequate medical treatment, could be considered as the non-enforcement of the criminal penalties offence, as provided by Article 288(1) of the CPC.

According to Article 46 of the Law No. 487/2002 on the protection of individuals with mental health and mental disorders, the health conditions and mental health status of individuals, who are serving prison sentences, detained or remanded, and who are diagnosed with a mental disorder, as well as people admitted to a psychiatric hospital as a consequence of medical safety measures provided by the CC should not be discriminatory.

2.3. Non-criminal custodial measures of a medical nature

Forced hospitalisation is regulated by Articles 53-68 of the Law No. 487/2002 on the protection of individuals with mental health and mental disorders, and it can be decided only by the court. There is a legal obligation for the review of the hospitalised patient by a medical commission no more than one month later and subsequently as often as necessary.

The law also states that limiting the individual freedoms of the forced hospitalised patient can be justified only by reference to the health condition of the patient and the effectiveness of treatment. Nevertheless, the law includes rights that cannot be limited: a) communicate with any authority, family members, legal or conventional representative or lawyer; b) access to personal correspondence and phone numbers for private use; c) access to the media or publications; d) the right to vote, if their civil rights are also not restricted; e) the free exercise of religious beliefs (Article 68 of Law No. 487/2002).

Restraint measures are regulated by Article 5(q) and Article 39 of the Law No. 487/2002 and by the Order of the Minister of Health No. 372/2006 on implementing mental health law and the protection of persons with mental disorders No. 487/2002. Restraint is defined by law as the restriction of the freedom of movement of a person through the use of appropriate means

1 The court shall decide on the notification only after hearing the opinion of the Prosecutor, the person against whom the hospitalisation measure is taken, when their transportation to the court is possible, their lawyer (if the person has no lawyer, a lawyer shall be appointed *ex officio* (Criminal Procedure Code, Art. 571(4)), as well as of the expert who conducted the forensic examination, whenever deemed necessary (Criminal Procedure Code, Art. 571(2)).

2 After receiving the forensic report and the conclusions of the specialist doctor designated by the admitted person, the Court shall listen in a public hearing to the opinions of the Prosecutor, of the person against whom the hospitalisation measure was taken and their lawyer (if the person has no lawyer, a lawyer shall be appointed *ex officio* (Criminal Procedure Code, Art. 571(4)), as well as to the expert and designated physician, whenever deemed necessary, and decides either on the termination or the replacement of the medical hospitalisation measure (Criminal Procedure Code, Art. 571(3)).

to prevent the free movement of one arm, both arms, a leg or both legs or to completely immobilise the patient by specific protected means that do not cause bodily injuries.

Article 39 of the Law provides that persons may be hospitalised to restrict freedom of movement, using appropriate means to save their life or bodily integrity or the health of another person from a real and concrete danger. The use of restraining chains or handcuffs is forbidden on hospitalised persons. Equally, immobilisation through protected specific means that do not cause bodily injury, is allowed only in exceptional circumstances and with special intervention and restraint procedures, as stated by the methodology for applying the respective Law (more specifically, by the Order of Minister of Health No. 372/2006).

Also, Article 39 of Law No. 487/2002 also provides that:

- A restraint measure can never be used as a punishment; it cannot be part of the treatment or a solution for the lack of staff or treatment or to determine good behaviour or to prevent damage of property;
- This measure can only be used alternatively, proportionally and temporarily, if the application of less restrictive techniques was inadequate or insufficient to prevent any impact or injury;
- In case of suicide or self-isolation, the restraint measure cannot be used for more than two hours;
- Use of restraint must be authorised in advance by the head of department, except in cases of emergency; the chief doctor of the department shall be immediately informed of this situation;
- It is mandatory that the use and termination of the use of any means of restraint is recorded in a special registry to be held by every psychiatric unit.

Temporary isolation is regulated by Article 40 of Law No. 487/2002, which states that hospitalised persons may be temporarily isolated, without restraint, for the purpose of their own protection, if they pose a danger to themselves or others. This measure should be applied with extreme caution and only if all other means have proved ineffective. The law also provides that regulation regarding the restraint system shall also apply for temporary isolation (therefore, it cannot have the nature of a sanction, it must have a subsidiary character; the alternative must be proportional and temporary, it has to be authorised in advance by the head of department, and it shall be recorded in a special registry).

A provision worth mentioning is laid down in Article 47 of Law No. 487/2002, according to which representatives of NGOs operating in the field of mental health or human rights protection can visit psychiatric units or recovery and rehabilitation centres and can establish contact with the patients, in conditions of privacy, under visual supervision, on the basis of an authorisation, issued by the Director of the National Centre of Mental Health and Fight against Drugs.

Similar provisions are laid down in Article 57(2) and Article 162(2) of Law No. 254/2013 on the enforcement of sentences. According to these provisions, representatives of NGOs working in the field of human rights, may visit prisons/detention and educational centres and can establish contact with persons convicted or confined with the consent of the General Director of the National Administration of Penitentiaries.

3. Placement of children and young adults with mental disabilities in foster care centres and mental health facilities

The special law which regulates proceedings regarding the placement of children in foster care centres and mental health facilities is Law No. 272/2004 on the Protection and Promotion of the Rights of the Child. Since this law refers generally to children, it includes, by way of interpretation, children with mental disabilities. The law is also complemented by the general civil legal framework, represented by the New Civil Code regarding the protection of minors.

First of all, there are a series of legal provisions regarding the custody and the domicile of the child in cases of divorce.¹ These are general provisions applicable to all children in cases of divorce, thus they will not be detailed for the purpose of this report.

Article 93 of the New Civil Code stipulates that the domicile of the child, who is temporarily or permanently lacking parental care and is subject to special protection measures, is at the institution, family or persons where the child was placed. Article 106 provides that one of the protection measures for minors is the placement of the minor. In addition, the measures of protection regarding natural persons (thus, including children with mental disabilities) fall under the competence of the “tutelary and family courts established according to the law” (Article 107). Article 137 also stipulates that the minor who has been appointed a legal guardian resides in the domicile of that legal guardian.

In addition, Article 43 of Law No 272/2004 provides that the court of law is the only competent authority to make decisions regarding:

- the person who fulfills parental rights and obligations when the child is temporarily or permanently deprived of parental care;
- the means through which parental rights and obligations are fulfilled;
- the total or partial termination of parental rights;
- the reversal of the termination of parental rights.

Law No. 272/2004 stipulates that the **special protection measures** applicable to children (thus, including children with disabilities) are: placement; urgent placement; specialised supervision (Article 59).

Placement is a temporary special protection measure, which can be taken either by the Child Protection Committee (a structure part of the Child Protection Direction) or by the court of law. The measure is taken by the Committee, through an **administrative procedure**, only if the parents consent, in the following situations:²

- the parents cannot care for the child for reasons that cannot be attributable to them;
- the child has committed a criminal act and is not criminally liable;

The measure must be taken **through judicial procedure**, before a court of law, in the following situations:

- when the parents are deceased, of unknown whereabouts, their parental rights have been terminated in a civil or criminal trial, have been placed under interdiction, have been declared dead through a court decision, *if the measure of legal guardianship could not be instituted*;
- in the case of a child who is abused and neglected;

¹ New Civil Code, Art. 92, Art. 396-404, Art. 496.

² Based on Law. No. 272/2004, Art. 65 corroborate with Art. 60.

- in the case of a child who is found or abandoned in medical units;
- if the administrative procedure would be appropriate, but the parents do not give their consent.

According to Article 61 of Law No. 272/2004, parents, as well as the child who is at least 14, have the **right to appeal** in a court of law against any measures of special protection instituted according to this law and, for this aim, they benefit from free legal assistance.

The **urgent placement** is a special temporary protection measure which is applicable in the following circumstances¹:

- if the child is abused and neglected;
- if the child has been found or abandoned in medical units;
- if the legal caretaker of the child is being held, arrested, admitted to a medical unit or if the legal caretaker cannot fulfill their obligations, for any reason.

The urgent placement measure is initially an administrative procedure. Namely, it is taken by the Director of the local Child Protection Directorate. However, the decision must be validated by a court of law, meaning that the Director must notify the court a maximum of five days following the decision of urgent placement.²

The general civil legal framework (New Civil Code, Article 139) stipulates that the “tutelary court” cannot issue decisions without the hearing of the minor, if the minor is at least ten. The “tutelary court” has competence in the area of appointing a legal guardian (“tutor”) and taking other protection measures regarding the minor.

Article 29 of the Law No. 272/2004 on the Protection and Promotion of the Rights of the Child provides that **in any judicial and administrative proceedings affecting the child, they have the right to be heard**. It is mandatory to hear children over the age of ten. However, a child under the age of ten can also be heard, if the competent authority deems it necessary in resolving the case. The right to be heard gives children the opportunity to request and receive any pertinent information, to be consulted, to express their opinion and to be informed of the consequences of their opinion, if observed, as well as on the consequences of any decision regarding them. In all the above-mentioned cases, the opinion of the heard child will be taken into consideration and will be given due importance, in relation to the age and maturity of the child. Any child may request to be heard in accordance with the provisions quoted. In case of refusal, the competent authority will issue a reasoned decision. Similar provisions are included in the Civil Code (Article 264(1) and following).

Special provisions are those of Law No. 487/2002 on Mental health and the Protection of Persons with Mental Disorders regarding the assessment and diagnosis of persons (including children) in case of involuntary admission at the request of the legal representative under

Article 12 in conjunction with Article 56. Within these procedures it is provided that the decision of involuntary admission from the commission of the psychiatric unit is presented before the court. The hearing of such cases is urgent, it takes place in court and the participation and hearing of the child are mandatory, if their health permits (otherwise, the judge may order the child’s hearing in the medical unit).

A positive fact is that hearing the child and observing their opinions is mandatory, according to the law. At the same time, CLR considers that it is necessary for the law to explicitly mention that the hearing is also mandatory for children with disabilities.

1 Law No. 272/2004, Art. 68.

2 Law No. 272/2004, Art. 69-70.

There are no established responsibilities on informing children about their legal right to be informed. There is also no evidence that children are *aware* of their right to participate in such proceedings. There also do not seem to be measures to support the needs of children with mental disabilities in relation to their participation in proceedings. There is no indication in the legislation mentioned above regarding how children with mental disabilities are informed of their rights.

Regarding the methods and means available to children with disabilities to provide evidence, the only applicable rules are general stipulations discussed above. There are no provisions regarding the children's right to choose whether to give evidence or not. The right of children with mental disabilities to provide evidence does not differ under the Romanian legislation from that of children without mental disabilities. In the case of adults with mental disabilities, as opposed to children with mental disabilities, the main difference resides in the concept of "placement under interdiction" discussed above.

There is no specific legal aid system for children with mental disabilities. There are, however, some statutory provisions aimed at children (including, implicitly, children with mental disabilities), and persons with disabilities respectively (including, implicitly, children with mental disabilities). Thus, Law No. 272/2004 on the Protection and Promotion of the Rights of the Child (Article 57) stipulates that the parents, as well as the child, who has reached the age of 14, have the right to appeal in a court of law against the special child protection measures, established by the present law, and they have the right to "receive free legal assistance, in accordance with the law". Also, Law No. 448/2006 on the Protection and Promotion of the Right of Persons with Disabilities (Article 25) establishes that if a person with disabilities, irrespective of age, is either totally or partly unable to manage their personal assets, they shall benefit from "legal aid". CLR considers that this legal provision should stipulate "free of charge legal aid".

CLR further considers that, for an appropriate legislative correlation, the quoted provisions of the two laws should have been reflected in the wording of the Government Emergency Ordinance No. 51/2008 on public legal aid in civil matters. CLR considers it necessary to stipulate by law that legal assistance is free for children with disabilities in all judicial and non-judicial civil and administrative procedures.

Concerning the limitations of the right to have a legal advocate, there are a series of provisions regarding conflict of interest between the represented and the representative (e.g., Article 31 of Law No. 487/2002, Article 8 of Law No. 272/2004). Also, it is provided in the Law for the organisation and practice of the lawyer's profession that lawyers should not assist or represent parties with "conflicting interests" (Law No. 51/1995).

According to the general legal framework for the protection of the rights of children (Law No. 272/2004), the child has the right to maintain personal relationships and direct contacts with parents, relatives, as well as with any other persons with whom they have developed an attachment (Article 17(1)). This right can only be limited by a court of law, if it deems that there are serious reasons, which might endanger the development of the child (Article 17(3)).

In particular, the Order No. 21 of 26 February 2004 for the approval of minimal mandatory standards regarding the residential-type child protection services provides a special section for standards related to the right to maintain contact with persons outside the residential unit – *Standard no. 5: Maintaining connection with parents, extended family, and other persons who are important for, or close to, the child*. Thus, children in institutional settings must be offered "concrete support" and encouragement to maintain these connections. Residential institutions must draft special procedures for respecting this minimum standard. The file of each child must contain a reference to the right to maintain contact with family, especially where

parental rights were terminated or where the contact might endanger the development of the child. Residential institutions must organise private spaces where visitation can take place and where the visitor can also be accommodated if needed. In addition, the residential institution must keep a registry for each visit.

These general children's rights also apply to institutional settings.

The general legal framework of the national education system contains a series of provisions, which are applicable to children with mental disabilities.

According to the National Education Law No. 1/2011, **the category of children with mental disabilities is implicitly (not explicitly) included in the category of "persons cu with special educational needs"** (Article 11). The State guarantees the right to all persons "persons cu with special educational needs" and, as a consequence, the "special and special-integrated education" are organised as a component of the national pre-university education system (Article 12(6)).

Law No. 1/2011 stipulates that children are enrolled in the special education system once they reach the age of eight (Article 29(3)). Derogation is allowed for children between six and eight years of age, if the parent or other legal representative files a special request.

The Law No. 1/2011 further provides that the special and special integrated education is free of charge (Article 48) and it is regulated by Orders of the Ministry of Education.

According to Law No. 1/2011, special education is organised in accordance with each individual case in special education units and in mass education units (Article 49). The special integrated education can be organised in special classes or individually, or in groups which are integrated into the mass education system.

One of the principles of the general legal framework is that integration into mainstream education takes precedence (Article 50).

The categories of "special educational needs" are set by an order of the Ministry of Education and these forms of education "are ensured for all levels of differentiated education, according to the type and degree of deficiency" (disability). The evaluation, psycho-educational assistance, educational and school guidance for children, pupils and young people with special educational needs are performed by the County Councils of Resources and Support in Education (CCRSE) through the educational and vocational evaluation and guidance services, based on a methodology elaborated by the Ministry of Education (Article 49).

The "deficiency" degree of pupils with special educational needs is determined by commissions within CCRSE in cooperation with the child protection commissions part of the county Social Assistance and Child Protection Directorate (Article 50).

The law forbids the discriminative diagnosis of children, based on race, nationality, ethnic origin or any other criteria protected by law (Article 50).

Summing up all the above, the general legal framework on education does not refer specifically to mental disabilities, but it encompasses the situation of mental disabilities in a larger concept called "children with special educational needs". Further on, CLR presents the secondary legislation, which regulates the mechanism of school orientation for children with mental disabilities in Romania.

The decision concerning the place in which a child with disabilities will access education is referred to in the national legislation as "**school orientation**" and is done by a special CCRSE Commission.

The CCERA are organised on the basis of **Order No. 5555/2011 of the Ministry of Education**, which approves the general regulation regarding the functioning of the CCERA. The order has been issued based on the Law No. 1/2011 of the National Education, Article 99(2) and (7), which states that the CCERA are “associates units” with the pre-university education and that they shall be organised according to an Order of the Ministry of Education.

The CCRSE are under the subordination of the Ministry of Education and are coordinated by the County (or Bucharest) School Inspectorates. The main goal of the CCERA is to offer, coordinate and monitor specific education services to ensure access to quality education. To this end, the CCERA collaborate, *inter alia*, with school centres for inclusive education, psychological and pedagogical centres and offices.

One of the main objectives of the CCERA, related to children with mental disabilities, is to include and maintain in the mandatory education system all children, regardless of their psycho-individual and social specific features. There are other objectives of the CCERA, which include collaborating with decision makers, involving parents in activities, tackling and studying school dropout, juvenile delinquency and violence etc. Consequently, **the CCERA are not institutions specially targeting children with disabilities.**

In the absence of legal provisions specific for the educational system, it appears that the appeal for the classification of mentally disabled children in the category of “children with special educational needs” shall be in accordance with the general law - Administrative Litigation Law No. 544/2004. More specifically, the appeal is filed administratively, at CCRSE level, and then, if rejected, judicially, before the common law courts (in Romania there are no juvenile and family courts).

The **Order No. 6552/2011**, which contains the provisions for the issuing of the school orientation certificate, does not contain procedural safeguards regarding the hearing of the opinion of the child. However, the order should be interpreted in accordance with the general

legal framework for the protection of the rights of the child (Law No. 272/2004), which provides the right of the child to express their opinion in any administrative decisions that concern them.

The ***Conclusive Study, Based on the National Evaluation of Child Protection Directions, Public Social Assistance Services and Other Institutions and Organisations Involved in the Child Protection System***¹ features an evaluation of the degree in which local Child Protection Directorates have regulated methodologies and procedures regarding the special protection measures ordered by the Child Protection Council or the court of law.² Thus, the report finds that in 69.77% of cases, the directorates have an evaluation methodology of the reasons, which caused the ordering of a special protection measure in the case of each child. In 59,52% of cases, the local directorate have put in place a methodology for evaluating the way in which the special protection measures are applied in practice. In only 35,90% of cases, the directorates have put in place a procedure for informing parents regarding the consequences of the placement measure on their relationship with the child.

1 European Social Fund, Ministry of Regional Development and Public Administration, Ministry of Labor, Family, Social Protection and the Elderly (2014), “Studiu conclusiv, bazat pe evaluarea la nivel național a DGASPC, SPAS și a altor instituții și organizații implicate în sistemul de protecție a copilului”, revised on 1 July 2013, available on: <http://www.copii.ro/files2/Raport%20final%20studiu%20conclusiv.pdf>.

2 *Ibid.*, p. 22.

2. Monitoring results

INTRODUCTION

There are three categories of deprivation of liberty in Romania:

- Administrative measures (so called administrative arrest in a police station mentioned in Law No. 218/2002 on the organisation and functioning of the Romanian Police) that can be applied for committing a violation or a criminal act.
- Criminal measure (arrest, educational measures, safety measures, punishments provided by the CC) if a criminal act was committed.
- Medical measures that apply for individuals with mental health problems.

For criminal acts, the following institutions can detain children and youth:

- Detention centres, re-educational centres and prisons;
- Police lock-ups.

Since February 2014, a new law came into force on the execution of punishments, Law No. 254/2013. This law introduced amendments on the organisation of institutions detaining children. The former prisons for juveniles and children were transformed into detention centres, except for the prison in Bacau, which was transformed into a juvenile prison, detaining young people aged 18 to 21.

A detention centre is an institution where children are supervised with the aim of their re-education. It is no longer considered that they are serving a prison sentence. However, the organisation's representatives noted that the juveniles were treated the same as before the legal changes and that no efforts had been made to improve their daily activity schedule. Also, the re-education centres were renamed educative centres. Overall, the only substantive change was the new name for the institutions. The personnel in the centres remained the same and the buildings and rooms where children are detained did not improve. Theoretically, however, these institutions place more emphasis on educational aspects. In principle, this should be a positive step in the right direction. It remains to be seen if this is implemented, how and with what results.

Currently, the institutions specialising in detaining children that function under the National Administration of Penitentiaries (NAP), Ministry of Justice are as follows:

- two educational centres: Targu Ocna and Buzias;
- three detention centres: Craiova, Tichilesti and Targu Mures.

According to the Law No. 254/2013, the detention regimes applied in the detention centres are only open and closed. Moreover, these detention centres and educational centres can detain persons, who are older than 21, if the crime for which they were convicted was committed while they were still a child (older than 14 and under 18).

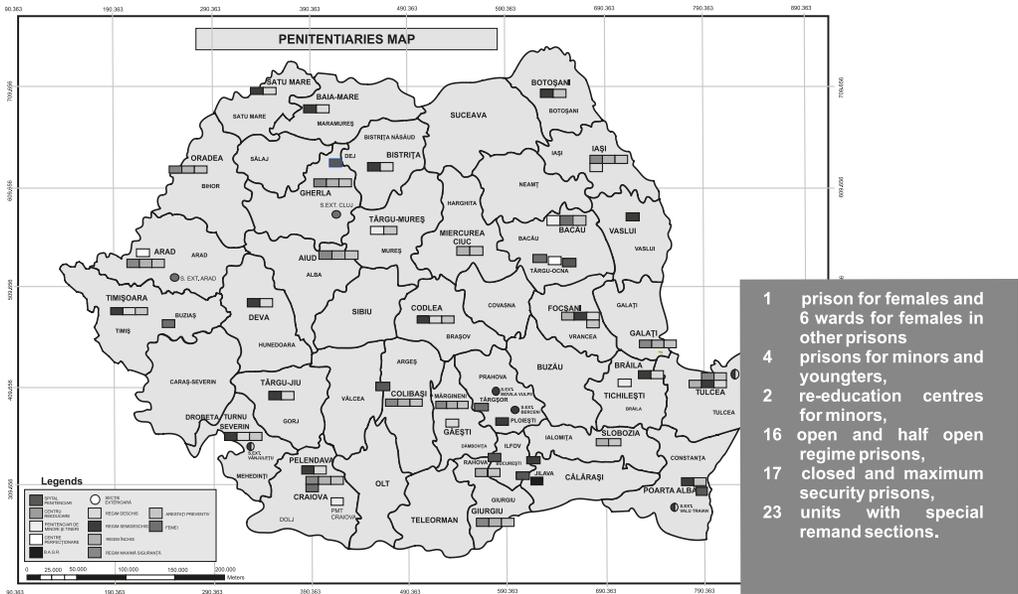
A child can be placed in an educational or detention centre after a court decision which, depending on the seriousness of the offence, determines the type of facility where the child should be placed and for how long.

Also, for shorter periods, children can be detained in prisons and police lock-ups. Children are detained in such institutions usually while in transit from another city to attend court proceedings.

According to the annual report of NAP for 2013,¹ as illustrated below in figure 1, the system of criminal justice detention facilities consisted of:

- 36 prisons (including those for children and youth);
- six hospital prisons;
- two re-educational centres (transformed into educational centres at the beginning of 2014).

Figure 1: Map of penitentiaries in Romania



Source: NAP

The NAP report² also shows the number of children and youth in detention during 2013:

- Children between 14-18 years old: 512 persons amounting to 1.53% of the total prison population;
- Juveniles between 18-21 years old: 1,636 amounting to 4.89% of the total prison population.

1 National Administration of Penitentiaries (2014), Annual report 2013, p. 2, available on: <http://anp.gov.ro/documents/10180/2256331/bilant+2013+engleza.pdf/b72eb9ef-b9cf-41cb-8ea7-4e1971213e2f>.

2 *Ibid.*, p. 3.

According to the same report, 262 children attended school courses in the academic year 2013-2014. This level dropped from 61% of children attending school during their sentence in 2009 to 52% in 2013.

The Romanian state spends RON 3.76 (EUR 0.86) on daily food per detainee, which corresponds to 2,855 calories and approximately EUR 113 per detainee per month for all expenses (food, heating, water, medicines, insurances, etc.)¹

Romanian police lock-ups are coordinated by the General Inspectorate of Police, under the Ministry of Interior.

In Romania, there are 40 such police lock-ups (one in every county, usually in the basement of the building of the County Police Inspectorate) and 12 in Bucharest, one being for minors and youth.

¹ *Ibid*, p. 17.

A. PRISONS

In the 17 months of detention research from April 2013 to August 2014, APADOR-CH visited 14 prisons:

Table 1: List of prisons visited by APADOR-CH (2013-2014)

	Prison	Date of visit	Number of children detained at the time of the visit
1	Drobeta Turnu Severin	16 April 2013 ¹	-
2	Rahova (Bucharest)	17 July 2013 ²	19
3	Mărgineni	28 August 2013 ³	4
4	Gherla	24 September 2013 ⁴	11
5	Timișoara	6 November 2013 ⁵	4
6	Târgșor (women's prison)	7 November 2013 ⁶	1
7	Arad	7 November 2013 ⁷	2
8	Tulcea	19 November 2013 ⁸	1
9	Slobozia	21 November 2013 ⁹	5

1 For more information, see: APADOR-CH (2013), *Report on the visit to the Drobeta Turnu-Severin Penitentiary*, available on: <http://www.apador.org/en/raport-asupra-vizitei-la-penitenciarul-drobeta-turnu-severin-3/>.

2 For more information, see: APADOR-CH (2013), *Report on the visit to the Rahova (Bucharest) Penitentiary*, available on: <http://www.apador.org/raport-asupra-vizitei-in-penitenciarul-rahova-bucureti/>.

3 For more information, see: APADOR-CH (2013), *Report on the visit to the Mărgineni Penitentiary*, available on: <http://www.apador.org/en/raport-asupra-vizitei-la-penitenciarul-mrgineni-2/>.

4 For more information, see: APADOR-CH (2013), *Report on the visit to the Gherla Penitentiary*, available on: <http://www.apador.org/en/raport-asupra-vizitei-in-penitenciarul-gherla/>.

5 For more information, see: APADOR-CH (2013), *Report on the visit to the Timișoara Penitentiary*, available on: <http://www.apador.org/en/raport-asupra-vizitei-in-penitenciarul-timioara-3/>.

6 For more information, see: APADOR-CH (2013), *Report on the visit to the Târgșor Penitentiary for Women*, available on: <http://www.apador.org/en/raport-asupra-vizitei-la-penitenciarul-de-femei-targor-3/>.

7 For more information, see: APADOR-CH (2013), *Report on the visit to the Arad Penitentiary*, available on: <http://www.apador.org/en/raport-asupra-vizitei-in-penitenciarul-arad-2/>.

8 For more information, see: APADOR-CH (2013), *Report on the visit to the Tulcea Penitentiary*, available on: <http://www.apador.org/raport-asupra-vizitei-la-penitenciarul-tulcea-3/>.

9 For more information, see: APADOR-CH (2013), *Report on the visit to the Slobozia Penitentiary*, available on: <http://www.apador.org/en/raport-asupra-vizitei-in-penitenciarul-slobozia-2/>.

10	Găești	27 March 2014 ¹	-
11	Brăila	13 May 2014 ²	-
12	Craiova	29 July 2014 ³	-
13	Baia Mare	19 August 2014 ⁴	-
14	Satu Mare	20 August 2014 ⁵	-

Source: APADOR-CH

These visits reveal various structural problems. Children detained in prisons must confront not only the general problems faced by the whole prison population, but also more specific problems.

The reports published regarding these visits confirm that Romanian detention facilities are still plagued with serious problems. The facilities fall short of ECHR and CPT standards, leading in many instances to serious human rights violations.

Some specific issues faced by detainees in Romanian prisons relate to:

1. Detention conditions
2. Educational and social cultural activities
3. Health care

1. Detention conditions

One of the most serious problems regarding detention conditions is the fact that Romanian prisons are severely overcrowded. According to official data⁶ from the National Administration of Penitentiaries as of 26 August 2014, the holding capacity and degree of occupation of the Romanian penitentiaries is illustrated in Table 2.

Table 2: Total number of persons detained, capacity and occupancy rate as of August 2014

Total number of persons detained	Legal capacity of detention facilities	Occupancy rate	Capacity of detention facilities as per 4 square metres for person
31,812	28,915	110.02%	19,041

Source: NAP

Table 1 shows that Romanian penitentiaries are overcrowded, at over 100% occupancy rate, calculated based on the official holding capacity in cubic metres. However, according to international standards, detainees should be allowed a minimum of four square metres. For

1 For more information, see: APADOR-CH (2014), *Report on the visit to the Găești Penitentiary*, available on: <http://www.apador.org/raport-privind-vizita-in-penitenciarul-gaesti/>.

2 For more information, see: APADOR-CH (2014), *Report on the visit to the Brăila Penitentiary*, available on: <http://www.apador.org/raport-asupra-vizitei-la-penitenciarul-braila/>.

3 For more information, see: APADOR-CH (2014), *Report on the visit to the Craiova Penitentiary*, available on: <http://www.apador.org/raport-asupra-vizitei-in-penitenciarul-craiova/>.

4 For more information, see: APADOR-CH (2014), *Report on the visit to the Baia Mare Penitentiary*, available on: <http://www.apador.org/raport-asupra-vizitei-la-penitenciarul-baia-mare-3/>.

5 For more information, see: APADOR-CH (2014), *Report on the visit to the Satu Mare Penitentiary*, available on: <http://www.apador.org/raport-asupra-vizitei-in-penitenciarul-satu-mare/>.

6 National Administration of Penitentiaries (2014), *The situation regarding the detention capacity of the detention units as of 26 August 2014*.

example, in a case against Romania the ECtHR agreed with the CPT that the recommended living space for a detainee should be no less than four square metres.¹ The ECtHR has also repeatedly held that “where the applicants had at their disposal less than three square metres of floor surface, the overcrowding was considered to have been so severe as to justify in itself a finding of a violation of Article 3.”²

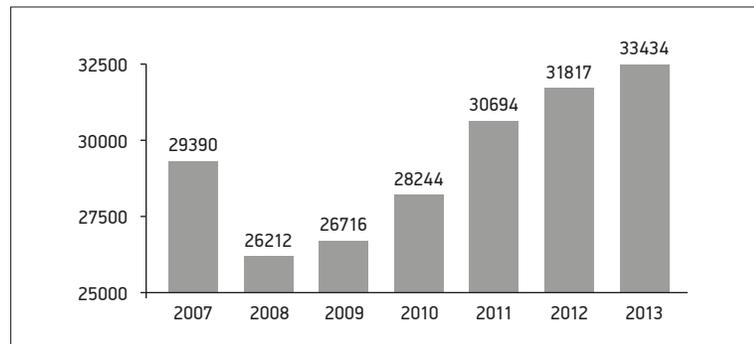
If one accepts the four square metres standards, then the level of overcrowding is even more severe in Romanian detention facilities. Table 1 shows that the capacity of detention facilities calculated at four square metres is 19,041, but there are 31,812 detainees, meaning that there are a little over two square metres per person.

The situation varies, however, from one facility to another. Some detention facilities have occupancy rates as high as 188.87%, as is the case in Craiova, or even 198.82% as is the case in Iasi. Some do not even offer two square metres per person, as is the case in Satu Mare and Baia Mare.

The high rate of overcrowding was also noted by APADOR-CH during monitoring visits. In the Craiova Penitentiary, in some rooms, the beds were arranged on three levels and each prisoner had a detention area of approximately 1.5 square metres, which constitutes a serious degree of overcrowding.³ In some instances, overcrowding was so severe that inmates had to share a bed. For example, in the Ploiești Penitentiary, during a monitoring visit APADOR-CH found in room 31, section II, a total of 31 detainees, who shared 24 beds and 32.24 square metres of living space, meaning a little more than one square metre per person.⁴

The problem is expected to worsen as the number of detainees has been increasing steadily, according to data from the National Administration of Penitentiaries illustrated in Figure 2.⁵

Figure 2: Population dynamics (in the period 2007-2013)



Source: NAP

The problem of overcrowding is prevalent throughout Romanian prisons. This also affects children detained in prisons, although they are usually offered a bit more space than the general prison population. For example, in the Rahova prison, researchers found six children in a

1 ECtHR, *Jiga v. Romania*, No.14352/04, Judgement of 16 March 2010, § 65.

2 ECtHR, *Svetlana Kazmina v. Russia*, No. 8609/04, Judgement of 2 December 2010, § 70; ECtHR, *Lind v. Russia*, No. 25664/05, Judgement of 6 December 2007, § 59; ECtHR, *Labzov v. Russia*, No. 62208/00, Judgement of 16 June 2005, § 44; ECtHR, *Mayzit v. Russia*, No. 63378/00, Judgement of /20 January 2005, § 40.

3 APADOR-CH (2014), *Report on the visit to the Craiova Penitentiary*.

4 APADOR-CH (2012), *Report on the visit to the Ploiești Penitentiary*, available on: <http://www.apador.org/raport-asupra-vizitei-la-penitenciarul-ploieti-3/>.

5 National Administration of Penitentiaries (2014), *Annual report 2013*, p. 3.

room no larger than 20 square metres, with eight beds. In comparison, the situation was better in the Gherla prison, which detained 11 children, nine of them male (of whom two were in transit and seven under preventive arrest) and two female, at the time of the visit, in a special section, which was located in Cluj. They were offered a bit more space than the general prison population. For example, room four in the boys' section measured about 15 square metres and had four beds and three occupants. The two girls were held in the same room as two young female detainees, which measured about 18 square metres, and had two double bunk beds.

Another general problem in detention conditions is that rooms are typically unhygienic and in a deplorable condition. This is a problem in most Romanian detention facilities. Consider this case in which the applicant criticised detention conditions in the Ploiesti Prison, the Jilava Prison and its hospital, the Margineni Prison, and the Rahova Prison and its hospital. The ECtHR found that the applicant experienced the following conditions while in detention: *“a limited number of toilets and sinks for a large number of detainees, toilets in cells with no water supply, sinks in cells providing only cold water for a wide range of needs (personal hygiene washing, clothing and personal objects, cleaning the toilets), limited access to showers providing hot water; poor sanitary conditions in general, including the presence of cockroaches, rats, lice and bedbugs, worn out mattresses and bed linen, and poor quality food.”*¹

In the Slobozia prison, at the time of the visit, there were five children detained, all of them in the same room, No. 53, which was equipped with eight beds. Their room was generally clean, with the exception of the lavatory, which was dirty. The children said that the food was good and that they received envelopes and stamps to write home. The prison management added that upon their arrival, children also received a personal hygiene kit that included soap, toothpaste, toilet paper and a disposable razor.

2. Educational and social cultural activities

The right to education is essential for preparing detained children for release.² According to international standards, children should have access to education outside the detention facilities in community schools.³ The right to education should also be guaranteed, at the very least, for children of compulsory school age.⁴ The right to education should also be guaranteed for children above the compulsory school age if they wish to continue their education.⁵ Children should also have access to sport, vocational training, recreation and other purposeful activities.⁶

However, in practice, only a little over 50% of children deprived of liberty are enrolled in school training courses. According to official figures, only 262 children out of 508 participated in such school activities in 2013-2014.⁷ This figure, however, shows children held in all criminal justice institutions, both adult prisons and juvenile prisons, but the situation varies between institutions. Children held in adult prisons and under police arrest are usually not enrolled in any form of educational programmes.

For example, of the 19 children detained in Rahova, none of them were enrolled in school; even though some have been there for months and some have difficulties in reading and writ-

1 ECtHR, *Iacov Stanciu v. Romania*, No. 35972/05, Judgement of 24 July 2012, § 175.

2 United Nations Rules for the Protection of Juveniles Deprived of their Liberty, GA resolution 45/113 of 14 December 1990, Rule 38 (hereinafter: Havana Rules).

3 *Ibid.*

4 *Ibid.*

5 *Ibid.*, Rule 39.

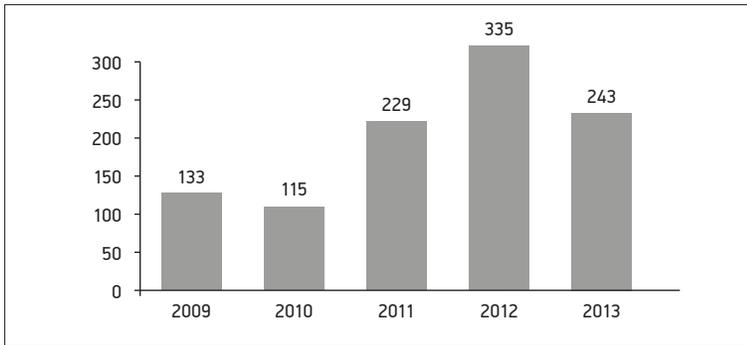
6 CPT (2011), *CPT Standards – Revision 2011*, CPT/Inf/E (2002) 1, p. 86.

7 National Administration of Penitentiaries (2014), *Annual report 2013*, p. 9.

ing. While it may be understandable to suspend school attendance while transferring a child to a prison to attend court proceedings for short periods of time, it is completely unacceptable to do so for extended periods. For example, in the Tulcea prison, there was just one child during the visit and he did not attend school while at Tulcea, where he would stay for one week before returning to the re-education centre in Targu Ocna where he attended school.

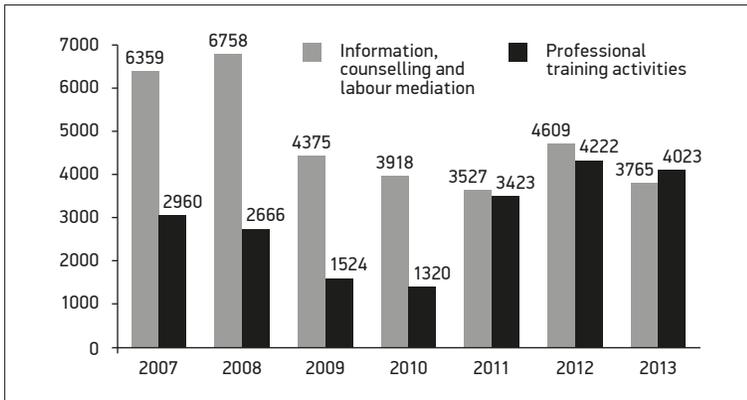
Besides formal schooling programmes, there is also a lack of general educational and cultural activities. Although some efforts have been made to improve educational and cultural programmes in Romania, a number of obstacles hinder their effectiveness. Firstly, these services are severely understaffed, meaning that not enough programmes can be implemented. In addition, they are also not properly suited to a detainee's real needs most of the time.

Figure 3: Professional training courses (2009-2013)



Source: NAP

Figure 4: Beneficiaries of vocational training (for the period 2007-2013)



Source: NAP

According to data from 2013, of the 1,042 official education and psycho-social assistance jobs provided for all the penitentiaries in Romania, only 659 were occupied, meaning that only 63% of these jobs/positions were occupied.¹ Also, as illustrated in Figure 3², the number of professional training courses for detainees decreased in 2013 compared to 2012.

1 *Ibid.*, p. 12.

2 *Ibid.*, p.3

The number of beneficiaries of these vocational trainings has also decreased dramatically since 2006, which illustrates the prisoners' lack of motivation to be involved in such projects. (see Figure 4)¹

Access to education and cultural programmes is a problem in most Romanian prisons, including juvenile prisons. Due to the lack of such programmes, children are mostly left sitting idle in their rooms, in many cases for up to 23 hours a day. Yet, according to the law, they should spend at least four hours a day outside their rooms.

Decision No. 304/20012 of NAP's Director states that children benefit from special provisions. *"They can spend four hours outside their cell, in which they participate in diverse activities organised by the authorities; there is also a programme for developing skills for an independent life for minors deprived of liberty and a collection of programmes in the penitentiary system, developed by the National Administration of Penitentiaries."*² This however, is not respected for children detained in prisons.

In the Rahova prison, children were only allowed to go outside to the yard for one hour a day, having access to a 20 square metres yard.

In Timișoara, children could stay in the exercise yard every day between 14.00 and 16.00 but said they did not want to go out. This was strange to say the least, given the lack of activities. This specific situation might be explained by a more general problem experienced by children detained in adult prisons. Children cannot be taken out to the yard while adults are there. In prisons with a small number of yards, adults must give up some of their time in the yard to allow children the possibility of spending time in the open. This creates tension between the two groups; adults may pressure children into giving up their right to exercise. This is what researchers thought might have happened in the Timisoara prison. This issue was raised with the prison administration, who were advised to investigate the situation.

3. Health care

Another important right for children held in detention is access to healthcare, which includes both preventive and remedial care, both physical and psychological.³

Access to healthcare is very problematic in Romanian detention facilities. One of the main issues regarding healthcare is that these services are severely understaffed. According to data from 2013, of the 1,148 official medical positions approved for all the penitentiaries in Romania, only 726 were occupied, meaning that only 63% of those positions were taken.⁴ The medical personnel are insufficient for the number of prisoners, given that, according to international standards, they must receive medical care, free of charge, whenever necessary or upon request. Because of severe medical understaffing, the existing medical personnel are heavily overworked, which inevitably undermines the quality of medical services provided. For example, in the Arad Penitentiary,⁵ a doctor had to examine an average of 80-100 patients a day. At the Margineni Penitentiary, given the disproportionate ratio between the number of prisoners and the prison medical staff, the number of daily consultations is very high - 166

1 *Ibid*, p.10

2 Council of Europe, Secretariat of the Committee of Ministers (2013), *Communication from Romania concerning the Bra-gadireanu group of cases against Romania (Application No. 22088/04)*, pp. 2-3, available on:

<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2335102&SecMode=1&DocId=2044406&Usage=2>.

3 Havana Rules, Rules 49-55.

4 National Administration of Penitentiaries (2014), *Annual report 2013*, p. 12.

5 APADOR-CH (2013), *Report on the visit to the Arad Penitentiary*.

per working day, and that would mean about two or three minutes for each inmate which undermines, obviously, the quality of medical care.¹

Assigned funds (State budget and social insurance) are insufficient for the needs of the prison system. Another major problem in many penitentiaries is the lack of vital medication. For example, in the Craiova Penitentiary, although the doctor said that the necessary medication for the penitentiary prisoners is guaranteed, the medical unit at the penitentiary did not always have all the medicines requested by them.² Prisoners were dissatisfied because they did not receive proper medicine or proper medical attention when they visited the penitentiary doctor. In the case of Mărgineni Penitentiary, the problem regarding the lack of medicine³ was reported by prisoners as a serious issue. They claimed that, in 2013, the doctor never gave them medicine when they requested it, and that when they asked to be allowed to buy drugs with their own money, approval was late in coming.

Mental health issues are particularly important because it seems that in most penitentiaries there is no psychiatrist. In practice, it appears that when a psychiatrist is needed, penitentiaries have to refer prisoners to a psychiatrist either from another penitentiary⁴ or outside of the prison system. In the Tulcea Penitentiary⁵ in October 2013, the medical assistant estimated that about 20% of prisoners had mental health problems and that hiring a psychiatrist was imperative. This was similar to the Mărgineni Penitentiary,⁶ where the prison management admitted that one psychiatrist is insufficient for the large number of prisoners, and that there are prisoners who pass through the penitentiary system without ever consulting a psychologist.

4. Conclusions

Prisons are inappropriate for detaining children. Children detained in prisons have to face severe overcrowding, lack of educational and socio-cultural activities and lack of access to health care.

Children's specific needs are not met by prisons and prisons do little to reintegrate or help children prepare for life outside.

Children should never be held for longer than five days in prison as a result of this. When they are detained in prisons, they should be offered conditions tailored to their age and specific needs.

1 APADOR-CH (2013), *Report on the visit to the Mărgineni Penitentiary*.

2 APADOR-CH (2014), *Report on the visit to the Craiova Penitentiary*.

3 The lack of medicine is also encountered in the Galați Penitentiary. APADOR-CH (2013), *Report on the visit to the Galați Penitentiary*, available on: <http://www.apador.org/raport-asupra-vizitei-la-penitenciarul-galati-2/>.

4 APADOR-CH (2013), *Report on the visit to the Rahova (Bucharest) Penitentiary*.

5 APADOR-CH (2013), *Report on the visit to the Tulcea Penitentiary*.

6 APADOR-CH (2013), *Report on the visit to the Mărgineni Penitentiary*.

B. POLICE LOCK-UPS

In the course of this project APADOR-CH visited eight police lock-ups.

Table 3: List of police lock-ups visited by APADOR-CH (2013-2014)

	Police lock-up	Date of visit	Number of children detained at the time of the visit
1	Mehedinți	17 April 2013 ¹	1
2	Cluj	25 September, 2013 ²	4
3	Timis	8 November 2013 ³	2
4	Tulcea	19 November 2013 ⁴	-
5	Constața	22 November 2013 ⁵	8
6	Prahova	4 April 2014 ⁶	-
7	Iași	13 May 2014 ⁷	-
8	Mures	2 July 2014 ⁸	-

Source: APADOR-CH

- 1 For more information, see: APADOR-CH (2013), *Report on the visit to the Mehedinți Police lock-up*, available on: <http://www.apador.org/en/raport-asupra-vizitei-in-centrul-de-reinere-i-arestare-preventiv-din-subordinea-inspectoratului-judeean-de-poliie-mehedini/>.
- 2 For more information, see: APADOR-CH (2013), *Report on the visit to the Cluj Police lock-up*, available on: <http://www.apador.org/en/raport-asupra-vizitei-la-centrul-de-reinere-i-arestare-preventiv-din-subordinea-inspectoratului-de-poliie-al-judeului-cluj/>.
- 3 For more information, see: APADOR-CH (2013), *Report on the visit to the Timiș Police lock-up*, available on: <http://www.apador.org/en/raportul-asupra-vizitei-la-centru-de-reinere-i-arestare-preventiv-din-subordinea-inspectoratului-de-poliie-al-judeului-timi/>.
- 4 For more information, see: APADOR-CH (2013), *Report on the visit to the Tulcea Police lock-up*, available on: <http://www.apador.org/en/raport-asupra-vizitei-la-centrul-de-reinere-i-arestare-preventiv-din-subordinea-inspectoratului-de-poliie-al-judeului-tulcea/>.
- 5 For more information, see: APADOR-CH (2013), *Report on the visit to the Constața Police lock-up*, available on: <http://www.apador.org/raport-asupra-vizitei-in-centrul-de-reinere-i-arestare-preventiv-din-subordinea-inspectoratului-de-poliie-al-judeului-constana/>.
- 6 For more information, see: APADOR-CH (2014), *Report on the visit to the Prahova Police lock-up*, available on: <http://www.apador.org/raport-asupra-vizitei-in-centrul-de-reinere-si-arestare-preventiva-din-subordinea-inspectoratului-de-poliie-al-judetului-prahova/>.
- 7 For more information, see: APADOR-CH (2014), *Report on the visit to the Iași Police lock-up*, available on: <http://www.apador.org/raport-asupra-vizitei-in-centrul-de-reinere-si-arestare-preventiva-din-subordinea-inspectoratului-de-poliie-al-judetului-iasi/>.
- 8 For more information, see: APADOR-CH (2014), *Report on the visit to the Mureș Police lock-up*, available on: <http://www.apador.org/raport-asupra-vizitei-in-centrul-de-reinere-si-arestare-preventiva-mures/>.

Also, before the start of this project, APADOR-CH visited a specialised police lock-up in Bucharest, which only detains children, police lock-up no. 12.¹ The visit was carried out in September 2011. During the course of the project, APADOR-CH carried out a follow-up visit to see if things had changed since the last report: the results of this visit are presented in the section on follow-up visits.

Police lock-ups, or as they are officially named, Centres for Preventive Arrest and Detention, can detain children shortly after police arrest or while in pre-trial detention for up to six months. The average length of stay is between two and two-and-a-half months. Based on

APADOR-CH's monitoring work, police lock-ups do not comply with human rights standards and are usually even worse than prisons.

Police lock-ups are an inappropriate place for children. Firstly, these institutions are not equipped to address children's needs and also, as observed by the CPT, "children run a higher risk of being deliberately ill-treated in police establishments than in other places of detention."²

Police lock-ups offer improper detention conditions. Also, often some basic children's rights are denied, such as access to healthcare, privacy and the right to pursue an education.

The most serious shortcomings in police lock-ups relate to:

- Detentions conditions;
- Contacts with the outside world;
- Health care;
- Education and activities.

1. Detention conditions

Detention conditions are generally poor in Romanian police lock-ups and in certain cases, amount to degrading and inhuman treatment.

In the Tulcea police lock-up,³ there were rooms in an advanced state of degradation, with dirty walls, dampness and mildew. Natural lighting was weak due to small windows covered by a dense mesh and grating. The windows could only be opened from the outside. The shower rooms for detainees consisted of two dirty shower taps placed in an inadequate location, while the only toilet cabin (Turkish style) was dirty, producing a pestilential stench that could be felt throughout the corridor of the unrenovated area. Detainees took a shower upon their arrival and on each occasion the chief of the facility noted they smelled inappropriately. There was no fixed schedule for showering. Near the toilet, the ceiling was damp from the toilet sewage pipes upstairs and the smell was unbearable.

In addition, at the Timiș⁴ police lock-up, the rooms were in an advanced state of decay, with unhygienic toilets and showers. The shower was positioned above the Turkish toilet, separated from the rest of the room only by a curtain. In all the rooms, inspected by researchers, the toilets were insalubrious and the stench filled the air. Detainees had placed plastic bottles in the toilets in order to prevent rats to come out via the sewage. The walls of the rooms were

1 For more information, see: APADOR-CH (2012), *Report on the visit to the Bucharest Police lock-up No. 12*, available on: <http://www.apador.org/en/raport-asupra-vizitei-in-centrul-de-reinere-i-arestare-preventiv-nr-12-din-incinta-seciei-regionale-de-poliie-transporturi-feroviare-bucureti/>.

2 CPT (1999), *9th General Report on the CPT's activities covering the period 1 January to 31 December 1998*, § 23, available on: <http://www.cpt.coe.int/en/annual/rep-09.htm>.

3 APADOR-CH (2013), *Report on the visit to the Tulcea Police lock-up*.

4 APADOR-CH (2013), *Report on the visit to the Timiș Police lock-up*.

dirty; many of them were damp and mouldy. The rooms were cold because the heating system had not yet been turned on.

In Cluj, the rooms had no windows, and thus, there was no access to natural light. The only source of light was a bulb in the corridor, in front of the door. The metal blind was half open and the light from the bulb barely lit the room. The absence of a light source is obviously a violation of minimal national and international standards. The mattresses were in a very poor state – old, soiled and uneven. The beds were old and in bad shape, the floor was covered in cigarette butts, indicating the room had not been cleaned in ages. The occupancy rate was approximately 200%. A room of about four square metres would detain three persons.

Detainees said that food was terrible and they mostly ate what they received from home or bought themselves. They said they rarely received sanitary items.

Another problem in some police lock-ups is that rooms lack toilets and detainees depend on the guards if they want to use the bathroom. In Mehedinti, detainees had to always ask the guard if they wanted to use the bathroom. The same situation existed at Cluj. Because the toilets were down the lock-up hallway, detainees had to announce when they wanted to be taken to the toilet and were accompanied by employees.¹ However, detainees said that they were not taken to the toilet when they asked. Hence, they sometimes had to urinate in plastic bottles. Similarly, in Tulcea,² at 10.00 PM, detainees had to go to sleep and if they needed to, they could no longer ask to use the toilet overnight because supervisors would not open the doors for them. Instead, they were given buckets in the rooms. The situation was the same in Iasi.

Besides being in a very poor condition, detention facilities also do not provide much privacy. One severe case is at Constanta. The lack of privacy could be clearly observed at the Constanța police lock-up, where in November 2013, video surveillance cameras continued to operate 24-hours a day in every room, despite being a serious violation of the right to privacy of the person found in pre-trial detention.³ In practice, people were under constant surveillance even in their room.

There are also positive examples of detention conditions. For example, in Mures, the police lock-up is in a new building, built in 2007. The facility has 22 rooms, of which 18 have only two beds and are spread out over approximately 10 square metres, while the other four rooms have four beds and are spread out over 30 square metres. The rooms are spacious and well lit and have toilets, showers and sinks. The rooms have tables, where detainees can eat. They have cold water at all times, while the hot water is turned out two times a week. The police give detainees all necessary items, including soap and toilet paper. Detainees without financial means can also receive envelopes and stamps to send letters.

2. Contacts with the outside world

The right to communicate with the outside world is also hampered in police lock-ups.

At the Tulcea police lock-up, detainees with no financial means do not receive envelopes, paper or stamps when they wish to exercise their right to correspondence.⁴

In Mehedinti, the visiting area consisted of two very small rooms outside the facility, in the same building where the officer on duty worked, near the gate of the County Police Inspectorate. One room was for check-ups and the other - for visits. The agent stood in front

1 APADOR-CH (2013), *Report on the visit to the Cluj Police lock-up*.

2 APADOR-CH (2013), *Report on the visit to the Tulcea Police lock-up*.

3 APADOR-CH (2013), *Report on the visit to the Constanța Police lock-up*.

4 APADOR-CH (2013), *Report on the visit to the Tulcea Police lock-up*.

of the door between the two rooms, so that conversation privacy was impossible. The phone and the mailbox were placed inside the facility along the hallway leading to the exercise yard. Detainees were allowed to call their families or lawyer if they had money to buy phone cards (ROMTELECOM cards had to be provided by visitors). Phones were not shielded by any screens to ensure the confidentiality of conversations.

In Timiș¹ there was only one public payphone for detainees and it was located in the office of the shift supervisor. Detainees did not have any privacy during their discussions, even during visits from families or legal advisors. Detainees complained that they could hardly use the phone because the necessary phone cards were difficult to find on the market. The mailbox was located at the entrance of the facility. It was placed outside of the detention area, so detainees who wanted to post a letter had to be escorted to the mailbox. Therefore, in exercising their right to freedom of correspondence, they have to depend on the security agents and police authorities in the police lock-up. The facility did not have funds to buy stamps, envelopes, pens and paper; at the time of the visit, the right to freedom of correspondence was violated because detainees were not provided with the necessary materials.

A new provision in the Law on the execution of criminal sentences, Law No. 254/2013, stated in Article 110(2) that persons who are in pre-trial detention can only receive visits and talk to the press if the prosecutor investigating the case approves. In some police arrests this has been interpreted as meaning that detainees can only talk to their lawyers if the prosecutor gives them permission, as was the case in Mures where the County Prosecutor's office issued a rule saying that a detainee needs the prosecutor's permission for visits from their family and lawyer. This contravenes the right to communicate with one's lawyer which is an essential element of the right to a fair trial. It also contravenes a new EU directive on the Right to Access a Lawyer in criminal proceedings, Directive no 2013/48/EU. This provision was also used to deny APADOR-CH's representative the possibility to talk to detainees in Mures. Also, in Iasi, police only allowed researchers to talk to a detainee after the prosecutor consented by phone.

3. Health care

Another problem in police lock-ups is access to healthcare. Many facilities do not employ a medical person to address detainees' medical needs and they have to rely on doctors who are hired by the Police Inspectorate for such needs. This was the case in Mehedinti and Cluj.

Also, in many cases, doctors who do work with detainees are also the general practitioner doctors of the police officers working in that facility. This can create mistrust between detainees and their doctors. This was the case in Iasi and Tulcea.

Or even worse, in Timiș, a doctor was not present at the police lock-up and, in practice, a nurse was providing the medical services, who was also working as a police officer. He had recently graduated from nursing school and was working at the facility both as a nurse and as a police officer. These situations can create mistrust; the two functions should be incompatible, considering that it is the doctor who examines the arrestee when they are brought in the section and the doctor should inform the police if they show any signs of violence. This is harder to do in practice if the doctor has to complain about one of his colleagues or even his boss.

Besides general practitioners, police lock-ups also usually lack a psychiatrist or psychologist, whose services are greatly needed. For example, in Cluj, of the four children detained at the time of the visit, three had been diagnosed with mental health problems.

¹ APADOR-CH (2013), *Report on the visit to the Timiș Police lock-up*.

Another vulnerable group in police lock-ups are drug addicts, particularly people suffering from drug addiction and who are experiencing withdrawal syndromes. There are also no services for them. One case documented by APADOR-CH is that of Ninel Onțică. He suffered from drug addiction for which he received a substitute treatment in prison, continuing his treatment upon release. Once he re-entered police detention, however, he was denied substitute treatment for three months although the law would allow for such treatment to be administered. This caused him great physical suffering.¹ He passed away two months after release at the age of 29.

4. Education and activities

Children held in police lock-ups cannot attend school and do not benefit from any educational programmes. They usually spend up to 23 hours a day in their room. It is very important that children “be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so.”²

Not providing any educational or socio-cultural activities for detainees violates their rights. It is even more serious when these detainees are children. In general, they are not afforded these rights and the police claim that because children are there just for a short time they do not need to offer them such opportunities. But during research visits, APPADOR-CH came across cases where children are detained for more than a couple of days. This was the case with a child in the Constanta police lock-up, which researchers documented. At the time of the visit he has been detained there for 10 months.

Also, in Mehedinti, in room 8, there was a child who had been detained for 16 days. The only activity he could participate in was a one-hour walk in the yard. But even then he was alone because he was the only child in the police arrest. He also did not have a TV in his room. Leaving their room for one hour a day is generally the only activity these detainees can participate in while in police lock-ups.

In other police lock-ups, the situation was even worse. In Timis, detainees said that they were allowed to stay outside for about half an hour and that on weekends they were not permitted to go out at all and had to spend Saturdays and Sundays locked in their rooms.

POLICE LOCK-UP NO. 12

On September 11, 2012 two representatives of APADOR-CH visited the Detention and Preventive Arrest Centre No. 12, attached to the regional Railway Police Station.¹ This is the only specialised police arrest that detains only children (14 to 18) and juveniles (18 to 21).

At the time of the visit, the Law No. 275/2006 on the execution of criminal sanctions still applied. However, the law was not respected in practice. For instance, all correspondence was registered; both received and sent, including information regarding the sender/receiver (mail). Privacy during conversations between detainees and their solicitors was not ensured, because the venue of these meetings – an office – was not set up so as only to permit visual observation. The door remained open at all times, while the guard stood in the doorway, thereby overhearing everything said there.

1 APADOR-CH (2013), *Report on the case of Ninel Viorel Onțică, detained at Centre no. 1 for Preventive Arrest and Detention attached to the București General Police Direction*, available on: <http://www.apador.org/en/raport-asupra-cazului-lui-ninel-viorel-onic-deinut-in-centrul-nr-1-de-reinere-i-arestare-pre-ventiv-din-subordinea-direciei-generale-de-poliie-a-municip/>.

2 Havana Rules, Rule 18b.

3 APADOR-CH (2012), *Report on the visit to Bucharest Police lock-up No. 12*.

Handcuffing was a rule for every detainee that left the premises, not an exception as Law No. 275/2006 provided. The most frequent justification for the regular use of handcuffs was the suspicion that all detainees intend to escape, in which case they can be handcuffed according to Law No. 275/2006. Of course, it is merely used as a pretext to facilitate the work of the guards in charge of escorting detainees. Escapes are rare and, in general, they are related to the negligence of the police escorts, not to handcuffing.

- **Detention space**

On the day of the visit, the Detention and Preventive Arrest Centre No. 12 held 14 children and young detainees (13 young detainees, one child).

Two of the juveniles were there on their way to prison. Regarding the duration of preventive arrest, the management said it never lasted more than two months. The facility had 20 beds in five rooms, of which only four were occupied.

Representatives of APADOR-CH visited all five rooms. They amounted to about 12 square metres each, including the lavatory. Only one of the rooms had all four beds occupied. In the occupied room, each detainee had less than three square metres of space, which is tantamount to overcrowding. Detainees said they never had to share their beds. The windows had thick metal nets on the inside with glass panes and bars on the outside. Natural light was scarce, so the light stayed on during the day. Lights could only be turned off from outside the cell, from the corridor. Windows could only be opened from the outside, by police officers. It was commendable that the facility had a fully functioning ventilation system. The sound alert system was out of order at the time of the visit, so detainees knocked on their doors to alert guards.

Centre No. 12 had a special room for conducting body searches when detainees are brought in. The body searches must be conducted by someone of the same sex. Money and personal belongings were kept in a safe, along with a list of all the confiscated items.

- **Hygiene conditions**

Each room had its own lavatory, including a Turkish toilet, a sink and shower. The cabins had curtains to ensure intimacy. A commendable fact was that hot water was available around the clock. Detainees were only provided with a bed, linen, a pillow and a blanket. The staff said there was a washing machine for laundry. Other items, like soap, toothpaste, toilet paper and razors, had to be brought by detainees. Razors were kept in separate boxes for each detainee in the guards' office. A hairdresser came in twice a month to cut their hair.

- **Food**

Food for detainees was brought in from the Rahova Penitentiary. Researchers from APADOR-CH visited the room where detainees stored their own food in fridges. The fridges were all working; each room had a separate compartment in one of them. The young men held at Detention and Preventive Arrest Centre No. 12 said they ate both what their families brought in for them and what the centre provided; they were satisfied with the quality of food.

- **Activities, correspondence, contacts with the outside world, other rights**

The facility had an exercise yard of about 20 square metres, which is not enough for exercise or even to walk around. Both detainees and guards said that the yard was used every day, for one or two hours.

The centre did not have facilities for detainee clubs and did not run any activity programmes. A treadmill was placed in the corridor, but out of order. The staff said that there were some TV sets which could be used in the rooms, but the protection boxes were broken. A few shelves with books were available in the corridor, if detainees wanted to take them to their rooms.

The mailbox was also in the corridor and letters were posted directly by detainees. Nevertheless, upon departure and arrival of letters, the destination/sender was registered. This practice was rather strange because upon sending a letter, the detainee had to first register the receiver's name in the guard's office before placing the letter in the mailbox. The phone was also in the corridor. Detainees were inspected as they spoke, so they had no privacy. Phone cards were provided by their families. Detainees were allowed at least one phone call per week, usually on Mondays, but if necessary they were allowed more. Each detainee had to provide a list of the numbers they used; phone calls to attorneys were unlimited.

The facility had video cameras installed in the corridor. APADOR-CH suggests that cameras should also be installed in investigation rooms. That way, the number of complaints, justified or not, about ill-treatment from police officers during investigations would be bound to decrease.

Detainees were allowed eight visits per month from family and friends and an unlimited number of visits from their solicitors. The inconvenience was that all visits took place in the same room, where visual supervision was not possible, so a police officer had to be present, which is in breach of the principle of confidentiality.

Parcels brought in by visitors were opened and verified by police officers in the presence of detainees.

- **Health care**

Staff at the facility said that, when necessary, the doctor was called in, or detainees were sent to the medical ward or they called emergency medical services.

Upon arrest, detainees who were drug addicts stayed at the Detention and Preventive Arrest Centre No. 1 for treatment and only then were they transferred to Centre No. 12.

Staff said that none of the detainees had any health problems at the time of the visit. There was no possibility for detainees to access any HIV/AIDS or other infectious disease prevention programmes. No condoms were distributed. No methadone substitution programme was available if required. The General Police Inspectorate does not approve drug substitution treatment, despite it being explicitly provided by the law.

APADOR-CH researchers talked to all the detainees at the centre. They said they had no complaints about the quality of food or detention conditions and that they were taken to the exercise yard every day. They also had no complaints about the behaviour of the police officers or other rights, including correspondence or visits.

5. Conclusions

Police lock-ups are completely inappropriate for children. Detained children do not have access to educational or cultural programmes, and are mostly left to sit idle in their rooms with the exception of a one-hour walk in a small courtyard. In addition, detention conditions are often unhygienic and in breach of most applicable standards. Also, children detained in police lockups face limitations on their rights to communicate with their family and/or counsel, and have next to no privacy.

C. DETENTION CENTRES

Romanian children (aged 14 to 18) and juveniles (aged 18 to 21) can also be detained in juvenile detention centres. These centres were formerly called juveniles prisons, but since February 2014, a new law has come into effect, Law 254/2013, which renamed all of the former juvenile prisons to detention centres. In Romania there were four detention centres for children and juveniles, formally known as juvenile prisons. Since February 2013, there are only three. The fourth one in Bacău has been transformed into a juvenile prison for young people aged 18 to 21.

In the course of this project APADOR-CH visited all of these facilities, as indicated in Table 4.

Table 4: List of detention centers visited by APADOR-CH (2013-2014)

	Detention centre	Date of visit
1	Tichilești	28 July 2013 ¹
2	Târgu Mureș	23 September 2013 ²
3	Bacău	3 October 2013 ³
4	Craiova	14 March 2014 ⁴

Source: APADOR-CH

Given the fact that these institutions are specifically designed for children and juveniles, more in depth observations about each of these institutions are presented below.

1 For more information, see: APADOR-CH (2013), *Report on the visit to the Tichilești Detention Centre*, available on: <http://www.apador.org/en/raport-asupra-vizitei-la-penitenciarul-de-minori-i-tineri-tichilesti/>.

2 For more information, see: APADOR-CH (2013), *Report on the visit to the Târgu Mureș Detention Centre*, available on: <http://www.apador.org/en/raport-asupra-vizitei-la-penitenciarul-de-minori-i-tineri-targu-mures-2/>.

3 For more information, see: APADOR-CH (2013), *Report on the visit to the Bacău Detention Centre*, available on: <http://www.apador.org/en/raport-asupra-vizitei-in-penitenciarul-de-minori-i-tineri-bacu-3/>.

4 For more information, see: APADOR-CH (2014), *Report on the visit to the Craiova Detention Centre*, available on: <http://www.apador.org/raport-asupra-vizitei-in-centrul-de-detentie-pentru-minori-craiova/>.

1. Tichilești Detention Centre

At the time of the visit, there were 289 detainees, exclusively male, of whom 45 were children; 18 were over 21, but still held at Tichilești to complete their educational programme; the rest were aged 18-21. Detainees were divided by detention regimes as follows: 20 under preventive arrest, 10 in quarantine, 41 under open regime (all of them living at the farm), 151 under semi-open regime, 47 under closed regime and 20 under maximum security regime.

The security personnel numbered 132 agents. The medical staff included six members, the socio-cultural department employed another seven (five educators, one psychologist and one orthodox priest); hygienic conditions were maintained by four janitors. Each security agent was in charge of a little over two detainees, a very good ratio according to international standards (which recommend four, or at most five, detainees per agent).

The legal capacity of the prison was for 391 places, while the number of beds at the time of the visit was 480. For the 289 detainees, the detention space fell well within, and even exceeded, the CPT recommended standard of four square metres per person – a commendable example for the Romanian prison system. Nevertheless, if all 480 beds were occupied, the living space per detainee would be a little less than four square metres per person, but the Tichilești prison management said that the facility had never been fully occupied since the inauguration of the new building.

1.1. Education and vocational training

A special school for grades I-VIII functioned on the second floor of the new building, while high school distance learning courses were organised in cooperation with a local high school and its teachers. For the school year that had just ended, the school had 162 gymnasium (5th to 8th grade) students and 82 high school students, who had all passed.

The County School Inspectorate employed 13 teachers and two auxiliary teachers (for high school) to work with the children at the special school. Starting 2014, the Tichilești prison for minors and youth planned to launch the “A Second Chance” programme, because, as the prison governor said, the priority of the facility was to educate detainees. Besides school classes, the detention centre also organised literacy courses and qualification training courses throughout the year, including the summer holiday. The masonry course exams were ongoing at the time of the visit. If they passed the final test, attendees would receive a professional certificate allowing them to work as masons.

The school had ten rooms, each with new furniture and all the necessary equipment of a community school. Each room bore the name of a Romanian celebrity to inspire the students, the prison management explained. Each had a teacher’s desk and desks for ten students. Commendably, classes united students from all detention regimes. A special room for IT courses with 13 functional computers was also organised on the ground floor of the building.

At the time of the visit, the school programme for the day was over and the students had returned their books. APADOR-CH’s researchers established the books were sufficient in number and in good condition. They also visited the workshops for carpentry, bakery, and masonry – all of them in good condition and well furnished with materials. The workshop functioned with 14-15 students and lasted for three or six months, depending on the complexity of skills they had to learn.

Both on the ground floor, and on the first floor of the new building, there were counselling rooms, educational video rooms and a library with an impressive number of books and musical instruments that the prison management planned to use for future activities. A chapel was organised in the same building where an Orthodox priest conducted various activities

with the children and young men. The prison management said that representatives of other denominations came to the detention centre upon request.

During their visit to the sections, researchers from APADOR-CH met a group of 11 detainees who had gone for a walk on the Danube bank, accompanied by four adult supervisors. The prison management said that such outings were frequent and that the children/young detainees did not have to wear their uniforms on outings.

1.2. Health care

The medical unit was organised in the new building and, like the other building areas, it was endowed with new furniture and equipment, including a well-furnished pharmacy. The medical unit included three quarantine rooms, with four beds each, a room for Tuberculosis (TB) sputum sampling, an isolation room for TB patients (unoccupied at the time of the visit), a dentistry room, a doctors' and a nurses' room. Although the dentist practice was fully equipped, it was not used because there was no dentist hired. Thus, detainees with dental problems had to be sent to the Slobozia detention centre, which had an operational practice.

Understaffing in the medical unit was a problem not only in the case of the dentistry practice, but also with the general practitioners (GP). At the time of the visit, only one of the three positions was occupied, and the GP in question was sub-contracted from a nearby hospital. Therefore, he could not be present on the premises every day, but only upon request, when health problems arose. PMT Tichilești (Penitentiary for minors and young adults) also had six positions for nurses, of which only five were occupied; the pharmacy was managed by an assistant pharmacist. The medical unit had available the necessary emergency drugs, while other medicine could be taken from the pharmacy. Although the prison management said there was no problem with drug procurement, the reality seemed different.

Researchers from APADOR-CH met several children and young detainees with untreated afflictions. The lack of sufficient number of medical personnel was most probably one of the reasons for a large number of sick detainees. They suffered from various diseases including skin problems and mental health problems. APADOR-CH asked the prison management to allocate priority funds to hire specialised staff to fill the vacant positions, especially since the detainees are boys and young men with special medical needs.

At the time of the visit, neither the doctor nor any nurse was present, only the pharmacy assistant. He said that there had been no serious health problems lately, just a few cases of chickenpox. He also said that during the previous year, about 30 detainees had been tested for HIV, even though the detention centre could make 70 HIV tests available every year. Condoms were available at the medical ward and at the conjugal visitation room.

Several cases of hepatitis were also being treated. When researchers from APADOR-CH asked if any detainees had skin conditions, they replied that no such cases were known to them. However, researchers discovered a very different reality, see Detention Conditions.

1.3. Detention conditions

Tichilești detention centre held detainees in two buildings, an older one and a brand new one, opened in January 2013.

Only young detainees categorised under maximum security/closed regime or as high-risk detainees, as well as those in pre-trial detention, were accommodated in the old building – a total of 72.

Maximum security regime detainees were held in two rooms and high-risk detainees in a separate one. The latter room had eight beds, seven of which were occupied at the time of the

visit. It measured about 25 square metres, therefore, a little less than four square metres of space for each detainee – the legal provision. To avoid overcrowding, this room should only have six beds, especially since maximum security detainees have fewer privileges compared to other detainee categories and spend most of their time in their cells.

Only one detainee was in the room, while the rest were in the exercise yard. The detainee said that accommodation and food were satisfactory and that hot water was provided twice a week. The room was well lit and ventilated, equipped with a TV set and a clean lavatory (shower, sink, and toilet).

Maximum security prisoners were not allowed to take part in vocational training courses. The association believes that maximum security detainees also need to be reintegrated, and their exclusion from professional training reduces their choices. An operative team is in place to intervene for this detention regime; a masked agent is always present in the section. APADOR-CH researchers noticed this agent during their visit. He was equipped only with a baton and a spray. As the prison management said, only maximum security prisoners and high risk detainees were handcuffed whenever they were taken outside the facility. The prison management also said that for high-risk detainees, regulations also stipulated the use of chains, but these were not applied in practice. APADOR-CH points out that handcuffing prisoners, whenever they are taken out of the facility, should be the exception, rather than the norm, and enforced only when strictly required.

Researchers also visited one of the three rooms for closed regime detainees. It measured about 55 square metres and had 22 beds, only 12 of which were occupied at the time of the visit. The amount of space per detainee was therefore, 4.6 square metres. The room was clean, with a high ceiling and enough natural light; it had access to its own lavatory. A problem encountered in both buildings at the detention centre was the huge number of flies that had invaded the rooms after the detainees had removed the windows for cooling purposes. APADOR-CH recommended that mosquito nets be fitted on the window frames.

One of the two rooms for pre-trial detainees measured 58 square metres and had 20 beds, all of them occupied at the time of the visit. This meant that there was only 2.9 square metres of space per detainee, resulting in overcrowding. Young men in the pre-trial detention area said they were generally satisfied with conditions. The only complaint was that they were not taken out of their rooms more often for various activities (especially sports – soccer and ping pong). This room was also full of flies. One of the detainees had visible marks on his legs (ulcerations) and told researchers that he had been given antibiotic treatment for the disease, although he could not say what it was.

The building also had a canteen where meals were served, as well as exercise yards measuring 12 square metres each (more appropriately called exercise boxes), without any equipment that would make any activity possible. APADOR-CH reiterates the necessity to install equipment, allowing detainees to do some physical exercise in the yard, such as pull-ups or ball games.

Half of the new building was occupied by the education, psycho-social and medical departments, while the other half was used for accommodation. Conditions were very good, not just because the furniture was new, but also because auxiliary spaces had been planned to cover various necessities, such as lavatories for staff members, laundry, canteens, waiting rooms, a barber's shop, storage for personal belongings, video monitoring rooms, and a visual alert system.

Researchers visited one of the rooms for children held under closed regime. The room measured 28 square metres and had eight beds, only four of which were occupied. Mattresses and beddings were new and well maintained, as were the walls and floor. There was no TV set

in the room and the prison management explained that it had been removed after being destroyed by the inmates. Three of the four boys held there had ulcerations on their legs. When asked about the ulcerations, one of them answered that he did not know what he suffered from, but that he had been treated with Oxacillinum. Although the treatment had been completed, the skin ulcerations were not cured.

Many detainees bore the same marks on their bodies as those under the closed regime; some of them said they had been treated with antibiotics for a short period, others had not. Since it afflicted so many detainees, the skin condition had obviously become an epidemic. The researchers asked to see the medical record of one of the young detainees who suffered from the condition and he agreed. He had been transferred from the Poarticlea Albă Detention centre, where he had been diagnosed with scabies and treated with Betadine, to the Focșani Detention centre, where he had been diagnosed with generalised folliculitis, but received no treatment. Currently, at detention centre, he was not under any kind of treatment.

During the visit to the semi-open regime section, researchers encountered a special case, involving a young man with apparent mental health issues. Upon seeing the researchers from APADOR-CH, he became agitated and started to list all his complaints about the detention centre, including the problem of keeping the doors locked during the day. With the detainee's agreement, the researchers checked his medical record.

The prison management also said that the young man had a difficult family situation and that they tried to contact his family and get them to visit, but nothing happened. The medical record contained no diagnosis to suggest a mental health condition, but a mention of a cut wound had been added that very day. The detainee had cut his hand on top of an older scar, in protest. The older incident was not mentioned either, although the detainee said it had taken place during detention.

At the time of the visit, most of the children and young detainees, who served their terms under the open regime, were out working or participating in various educational activities. Researchers visited one of the rooms, where there were only two young men. One of them suffered from the previously mentioned skin condition and said that he had been given an antibiotic, although he did not know for what. The detainees said that doors remained unlocked throughout the day. The room was clean and well maintained.

1.4. Contacts with the outside world

Detainees could personally post mail and access to the mailbox was not restricted in any way. Phones were available in every section, and so were info-kiosks, which detainees said they knew how to use.

Visits took place in the new building and were generally open visits. The special visiting room had 11 tables. For detainees held in the closed and maximum security regime (no children among them) there were separated cabins. Visitors were allowed to bring in parcels, containing at most ten kilograms of food, six kilograms of fruit and 20 litres of water/juice. Medicine could be brought only with the prior consent of the doctor.

The in-house shop, also visited by the researchers, was well stocked, except for fruit and vegetables. The prison management said that fresh products were only brought in on request. The prices were similar to those in local shops outside the prison.

2. Targu Mures detention centre

The building was very old, dating back to 1884, therefore, detention condition did not comply with current standards and much less so the standards for children. At the time of the visit,

there were 461 detainees (including the external section), while the capacity of the prison was only for 234 places (at a legal standard of four square metres / detainee), meaning that the facility held twice the number of persons it was supposed to. From data provided by the prison management, the facility had about 858 square metres exclusively for detention, which equalled 1.85 square metres per detainee.

The centre had one detention building and one administrative building. Only the latter had undergone renovation, so that offices and the staff canteen were very well maintained. In contrast, the detention building was in disrepair. There were no canteens, so the children and young men had to eat their meals in the rooms, often on their beds, because some of the rooms, accommodating around 13 or 14 detainees, only had a table for two.

The detention facility's management said that detainees came from 13 different counties and that the far away location of the centre prevented some of their families from visiting regularly, especially since they were from poor families, who could not afford the cost of transportation as well as bringing food for the detainee. The governor said that only a third of detainees received regular visits, making family and social reintegration more difficult for the remaining children and young men.

The staff working in direct contact with the detainees numbered 125 persons for security, seven for medical care (two doctors and five nurses) and 15 for social and educational activities. CPT recommends that an operative agent work with at most five detainees. At the Târgu Mureş Detention centre at the time of the visit, one agent dealt with no more than three or four detainees. Understaffing was a problem in terms of the number of medical, social and educational personnel. The prison management and the existing workers admitted the need for extra staff. The only reason for not employing more people was lack of funding.

The prison did not have a special intervention squad (masked squad) but it did have gear for special force interventions (batons, teargas – no firearms). Restraint equipment consisted of metal and plastic handcuffs; chains were used for high-risk detainees in special cases (previous escape attempts, for instance), the prison management said.

There was no visual or sound alert system; detainees had to simply knock at the door. The surveillance cameras were only installed in the corridors of the detention sections.

2.1. Health care

The medical office and infirmary were on the ground floor of the detention building, in section 1. The staff comprised: one GP, one dentist, four nurses and a pharmacy assistant. One of the nurses was always present overnight.

Researchers interviewed the GP who was at the office during their visit. He said that the medical staff was insufficient; he also said that most medical problems occurred because the children and youth had difficulty adapting to the custodial regime. In the case of young detainees, most medical problems arose from inappropriate food. Also, the stress caused by detention led to a series of violent exchanges or cases of self-mutilation.

The doctor said that 70 detainees had been diagnosed with mental health conditions and were under treatment. Nevertheless, there were more detainees, who required mental health care. Because of this situation, the detention centre had contacted a psychiatrist who came to the facility on a regular basis for consultations and treatment. Some detainees with mental health problems were held in the "psychiatric observation" room, where 11 persons were accommodated in 15 triple bunk beds. The room measured about 24 square metres. The patients confirmed that they were under medication (tranquillizers). Only one of them said that he was seeing a psychologist. They also said that their only activity is going out to the exercise yard. The TV in the room was switched off at 22.00.

2.2. Social and educational activities

The centre employed 15 people for social and educational activities, although the personnel scheme had 19 positions for that department. One of the 15 employees was on maternity leave, so only 14 were actually on the job at the time of the visit. Altogether, there were four psychologists, nine educators, one orthodox priest and the director (with administrative characteristics).

The staff said that recreational activities (including a camp) were organised in cooperation with a non-governmental organisation. Activities followed a monthly calendar, with three outings, for which detainees took turns. Because the facility lacked vehicles and a budget, detainees had to walk to their outings, which limited the number of participants and the destinations, for safety reasons. Outings also included the Târgu Mureş cinema and the zoo, with which the detention centre cooperated very well.

A candle manufacturing workshop and information sessions on the risks of HIV infection were also run by an NGO that worked with the detention centre on a regular basis.

The facility had a gym where detainees from all detention regimes (including maximum security) were taken in groups of 12, by rotation.

Among the most frequent qualification courses at the Târgu Mureş centre were those for carpentry, masonry, cookery and hairdressing. Fourteen detainees had just graduated from the hairdressing course and were about to pass their exam.

The facility had a library endowed with many books. It was kept locked and could be reached only after crossing three other rooms: the educators' room, the committee gathering room and the computer hall (also used for psychological counselling). It was not surprising that detainees only borrowed 15 books per month, according to library staff.

2.3. Education

The centre's school functioned in only two rooms, providing courses for grades 1-9. At the time of the visit, 89 students were enrolled for the new school year. Classes were scheduled to start on September 30, although school year had already begun in community schools. The prison management explained that classrooms needed to be cleaned and prepared after having accommodated training courses during the summer. For lack of space, high-school classes were held separately, in a club room in section 5. The classrooms accommodated two grades at a time (1st and 2nd grades together, 3rd and 4th and so on).

For the new school year, the schedule only included courses for grades 1-9 despite the fact that some of the students who had graduated the ninth grade wished to continue their studies. The department director said that there had not been enough requests to organise tenth grade courses. The condition was that a class should have at most 12, but a minimum of eight students. APADOR-CH points out that such a condition deprived detainees of their right to education; special education, as organised at the detention centre, allows for a class to have fewer than eight students if the situation arises. Nor is lack of space a reason to refuse to organise courses.

For each school year, thirty days were deducted from a detainee's sentence. The staff found that this reward system was discouraging because deductions were much more generous for detainees who worked, especially for children (one day deducted for one day of work).

2.4. Detention conditions

At the time of the visit, the detention centre held 461 detainees, all male, of whom 58 were children, 312 young detainees and 91 adults.

The detention sector was organised into six sections, as follows:

- Section 1: closed regime – young detainees and adults; a spare room was set aside for female detainees in transit;
- Section 2: closed and semi-open regime – children;
- Section 3: semi-open regime – young detainees;
- Section 4: maximum security regime, high-risk detainees and preventive arrest for young detainees and adults;
- Section 5: semi-open regime – young detainees;
- Section 6: the farm – adults under the open regime.

The 461 detainees were distributed by regime as follows: 85 under preventive arrest; 66 under open regime; 250 under semi-open regime; 45 under closed regime; 12 under a maximum security regime. Three detainees had not yet been categorised and were currently under observation/quarantine.

The lavatories in each room had no showers, only toilets and sinks. Each section had a shower room where detainees were taken to have their bath.

At the maximum security section, section 4, the researchers visited one of the rooms. At the time of the visit, it was occupied by four young detainees, who shared six beds (two triple bunks) in the eight square metres apiece. The glass panes of the windows had been removed at their request, but were going to be reinserted because the weather was starting to chill. The young men said that they were not involved in any activities other than the daily exercise and that food was of poor quality.

The confinement room was in the same section. A room with two beds, large enough to hold more than two detainees, was unoccupied at the time of the visit. The room was insalubrious, cold and with very bad mattresses. The staff said that the room was not used.

In section 2, where children served their sentences under the semi-open and closed regimes, the air was stuffy. Researchers visited Room No. 3 (children under semi-open regime), which was overcrowded: 21 beds (triple bunks) for 14 children in a space of about 30 square metres. Detainees said that although they were held under the semi-open regime, doors were locked at lunch time (13.00) and from 17.00 till the next morning. Neither the minimum standards nor detention regime conditions were respected. Each detainee had about two square metres of space if not less, given the high number of empty beds in the room. APADOR-CH recommended that the third triple bunk be removed and pointed out that no more than seven or eight people should be accommodated in the room in order to respect the four square metres per detainee standard. According to the regulations for the semi-open regime, doors should remain open throughout the day. The children said that they had been taking part in the candle-making workshop every Friday for the last few months. They were taken to the exercise yard every day and those with no incident reports were also taken to the cinema and football games.

A room from the closed regime section was also visited, which lacked good ventilation. The room measured about 20 square metres and its five occupants shared 9 beds (triple bunks). The children said they were satisfied with the food, but that they were not involved in any activities except going out for daily exercise. The mattresses were old and in bad shape, like elsewhere in the facility.

The detention centre had four exercise yards of about 100 square metres on the first floor, all covered in a metal wire net. They were not equipped for any type of activity.

2.5. Contacts with the outside world

Children had the right to be visited twice a week, for three hours, by two adults and two children at a time. The visits were open. The parcels they received were opened in front of the families. They could contain at most ten kilograms of food, six kilograms of fresh fruit and vegetables, 20 litres of water or juice. The prison management said that most children came from separated or dysfunctional families and only 30% of them received visitors.

The mailbox was located on the ground floor of the detention building and detainees had access to it every day to post their own letters.

Each section had a payphone. The cost of phone calls was paid by detainees. The facility also had three info-kiosks, in sections 3, 4 and 5, which could be accessed only by detainees held in the respective section. The prison management said that info-kiosks were planned to be installed in sections 1 and 2 as well.

2.6. Other activities

The centre had an orthodox church on the premises, but the governor said that it was also used by priests and pastors of other denominations, who came here at the request of the detainees (mostly catholic and protestants).

Detainees worked both at the farm and inside the facility, in maintenance and kitchen-related activities. Detainees were also employed in the community – cleaning the city parks, or working at the municipal greenhouses. The detention centre also ran two assembly lines for electric cable reels and cardboard boxes. At the time of the visit, 102 of the 461 detainees worked (about 22% of the prison population). 52 were paid for their work (14 worked within the facility, 32 in the community and six at the farm). The facility employed 12 young detainees and two adults, while 22 young detainees and 10 adults worked in the community. All farm workers were adults. The remaining 50 workers were not paid but received other compensation, like the deduction of days from their prison term (these were 33 young detainees, two children and 15 adults).

3. Bacau detention centre

Although the facility was earmarked as a Detention centre for Children and Youth three years ago, at the time of the visit it held children, young detainees, adults (of both sexes) and persons under preventive arrest from the counties of Bacău and Neamţ.

The total number of detainees at the time of the visit was 862, of whom 56 were children (9 female and the others male), 326 young men (18-21 years), 247 adult males (55 serving under open regime, and 192 on preventive arrest) and 233 adult females (55 under open regime, 106 under semi-open regime, 45 under closed regime, 5 under maximum security regime and 22 under preventive arrest).

The distribution of space by section was the following: Section 1 – 951 square metres and 312 detainees (3 square metres/person); Section 2 – 750 square metres and 245 detainees (3 square metres /person); Section 3 – 169 square metres and 46 detainees (3.6 square metres/person); Section 4 – 270 square metres and 71 detainees (3.8 square metres/person); Section 5 – 303 square metres and 102 detainees (2.9 square metres/person); and Section 6 – 303 square metres and 78 detainees (3.8 square metres/person). The occupancy rate in each of the six sections was around 125%, with each detainee having about three square metres of personal space, compared to the four square metres standard recommended by the CPT. Many of the rooms had triple bunk beds further enhancing the feeling of stiflingly cramped conditions.

Because the facility was an agglomeration of buildings with little space in between them, some of the sections failed to respect legal provisions regarding detention regimes. At the open and semi-open sections for children and young detainees, for example, room doors remained mostly locked, instead of unlocked as they were supposed to be. The prison management said that the structure and organisation of the buildings did not allow for a clear separation between different categories of detainees. In fact, most detainees were held in conditions similar to the closed regime, irrespective of how they were categorised.

The exercise yards provided very little space; they were narrow and crammed in between the buildings, only a little larger than rooms, partially covered with tin and containing nothing but a pay phone.

Sixty detainees went to work, mostly for in-house services. Eight female detainees were hired by the city hall to help maintain green urban spaces and ten male detainees worked at the prison farm. The farm included a vegetable garden, which provided raw materials for prison food, and looked after 400 pigs.

The visit made by APADOR-CH came two weeks after the centre's priest was arrested after being caught smuggling in mobile phone for detainees. The governor pointed out that an attempted riot took place after the incident. Adult detainees, in whose rooms the mobile phones were found, incited the children on the floor below to riot. The governor claimed that adults were the main beneficiaries of the priest's phone smuggling, therefore, the riot instigation was a vindictive move. Even though the riots were settled, the prison management made some changes after the incident, moving some detainees to other rooms, so that adults were no longer able to send messages to children and young detainees.

The facility did not have an intervention squad. Each shift had a group of five agents trained for special interventions. Masked guards were not seen on the premises during the visit.

The Bacău centre employed 210 officers and security agents (out of 220 existing positions); 12 officers and agents at the social and educational department (out of 22 existing positions); two doctors (out of five positions) and seven nurses (out of 12 positions).

3.1. Health care

The centre employed only two doctors, although there were five positions available. Only seven nurses were employed instead of 12, as provided by the personnel scheme. Nurses worked in shifts, to ensure 24/7 presence at the facility. The two female doctors, who were present at the time of the visit, worked full time. Every week, a dentist came to the detention centre to check and treat detainees.

One of the doctors ranked the most frequent health problems occurring at the facility and said that mental health problems were the most commonplace. 33 detainees were diagnosed with mental illnesses and received treatment, but the doctor said many others required a psychiatric assessment.

Heart conditions were the second most frequent ailments and digestive problems came third. However, many detainees suffered from skin conditions, which the doctor blamed on poor hygiene and lack of education, especially in the case of children and young detainees, who arrived at the facility without even the most rudimentary notion of personal hygiene.

Doctors claimed that they consulted about 200 detainees every day. All new arrivals at the centre are subjected to a set of medical tests. New arrivals often test positive for Hepatitis B or C. The doctors said they were supplied with medicines for the common ailments, but many detainees complained that they did not get receive treatment and that, in general, they did not receive much attention at the medical office.

Six detainees were held at the infirmary. One of them had difficulty moving and required a cane – another inmate helped him get around. The infirmary room was neat, with freshly painted walls and single beds. Detainees said conditions and food there were good. The lavatory was relatively clean; it consisted of a separate room with two sinks and mirrors, a shower and a Turkish toilet cabin (a problem for the detainee who used the cane).

3.2. Detention conditions

The different floors of Section 1 held young detainees under open regime, preventive arrest and closed and maximum security. Room 21 – semi-open regime – held 15 detainees in 20 beds (triple bunks). The room looked appalling, with damp walls and traces of former plumbing problems. New windows had just been put in and the head of the detention centre said that the room would be painted as soon as all the windows were installed. The lavatory had two Turkish toilet cabins, two sinks and a shower cabin. Detainees had hot running water around the clock – a technical error, the director said, because the water circuits inside the building were not entirely known.

Detainees held under the maximum security regime complained that they were not allowed to leave their rooms to participate in activities. One detainee said that he had not taken part in any activity at all since July. The only courses he had taken part in were “about the ozone layer and Ceauşescu”. Another detainee complained that he had never been able to consult with the psychologist in his two-year detention.

Room 24 (24.50 square metres) for persons under preventive arrest held eight detainees in 12 beds. They all complained about the bad food and the lack of variation – always potatoes. A detainee who had been there for nine months said he was only allowed to receive one visit, in a separate cabin, only because he could not take part in social and educational activities. He thought that the sanction was unjust because the detention centre gave him no chance to gather points and credits from participation in educational programmes.

Section 2 held pre-trial detainees in transit and under open regime. Room 23 (quarantine) held 14 detainees in 18 beds. Some complained that they were not allowed to bring vitamins from home, although the prison food was very poor. They complained about the lack of social and educational activities. Those under preventive arrest complained that they were not allowed to receive open visits. They received visitors only in separate cabins, despite the fact that the state of preventive arrest could last for long periods. Researchers met a man who had been in pre-trial detention for two years.

In this building, hot running water was provided only twice a week. However, the rooms and lavatories looked cleaner – detainees said they had painted their walls themselves and some rooms indicated that their occupants took an interest in organising and maintaining the place.

Room 34 (33 square metres, semi-open regime) accommodated ten detainees in 18 beds; the walls were recently painted; and overall appeared to be well-ordered. Detainees were unhappy with the food and the lack of vitamins – one detainee wanted to receive an apple with every meal, like in London, where he had been held for four months. Another wanted to work and complained that the doctor declared him unfit for work because he was insulin-dependent, despite the fact that, as a free man, he used to work, diabetes notwithstanding.

Boys were held in Section 3. Rooms were tidy and walls were freshly painted, or sometimes decorated with landscapes and different characters. Beds were neatly made and the children followed a military-like discipline. Each time someone came into the room, the occupants had to line up and wait to be “inspected”. Most of them were rather tense, even when they were left

only with the researchers. In room 6, four children were held under a closed regime. They said they took part in social and educational activities every day, but none of them went to school for various reasons. In other rooms, the situation was similar where children were held under semi-open regime or preventive arrest. Many said they had filed a request to go to school but were not included in any class. Most of them had barely graduated grades 3-5.

According to the chief of the social and educational department, children who ended up in prison in the middle of the school year could not continue their studies because often their documents did not include a school record. However, some of the children had been at this facility for more than one year and were still not in school. The prison management said that either they could not prove that they had attended any school year at all or they had already passed the level of schooling provided by the detention centre.

3.3. Disciplinary measures

For minor misdemeanours, children received various sanctions, from being prohibited to receive parcels to “confinement from the community”. Both the detention centre’s management and the children avoided calling this type of sanction “confinement”, because it is prohibited by law in cases involving children. However, it was used and, judging by the look of the confinement rooms, it could be categorised as degrading and inhuman treatment.

The three confinement rooms on the ground floor of the building were small, dirty, with no natural light or ventilation, barely spacious enough for two bunk beds. A Turkish toilet was hidden in a lateral niche. Two of the rooms were occupied at the time of the visit. Room 39 held one young man in a visible state of overexcitement. He said he was glad to be by himself (he said he had asked to be moved in there) because he did not get along with other inmates. The room was cold because it had no windows. Instead, it had just a small grid covering the small opening above the beds. The young man served his sentence under the maximum security regime. Room 38, as miserable as the former, held two young detainees who were not enlisted for any school courses, and one of them claimed he had never attended school in his life.

Female detainees were held in Sections 4, 5 and 6 – all in the same building, the newest part of the centre. The rooms were clean but most of them were overcrowded. In room 34 (open regime), 12 female detainees shared 12 beds; in room 45 (open regime), 17 female detainees shared 17 beds. In this building, the doors of rooms under open and semi-open regimes were left unlocked, but detainees preferred to stay in their beds because it was too cold. They complained that the ones who slept in the upper bunk (triple bunks) sometimes fell from the bed and injured themselves. They also said that the hot water schedule from 20.00 to 22.00 did not allow all of them to shower. The women’s section had a hairdresser’s shop, where one of the detainees provided hairdressing service to the others. The ground floor was accessible for the open regime section. Seven of the women detained here were at work in town and another 20 worked at the kitchen.

Room 44 for open regime held nine girls in ten beds. Although some of them had been at the detention centre for over one-and-a-half years, they had never been included in a literacy class. Most of them had finished elementary school but were still unable to read or write. They said they had filed applications to attend school but with no result. Their room seemed to be the only one in the women’s section to be in a derelict state – dirty walls, broken lavatory doors, a foul smell from the toilet, and low temperatures. Mattresses and bed linen were equally filthy. In fact, all detainees at the facility complained about the poor state of the mattresses.

In Section 5 for semi-open regime adult detainees complained about the bad food and the lack of social and educational activities. Most of them said they had only taken part in a course for

commercial workers. Detainees received personal hygiene products once every three months and said those who were not supported by their families or other visitors had to rely on the help of other inmates.

Detainees also complained that they were not allowed to receive personal items such as blankets or window curtains to decorate their rooms. The governor explained that such items were expressly prohibited by an order of the NAP (No. 2714/2008).

At the time of the visit, the heating system of the detention centre was not working and thus, the temperature was very low and rooms were cold. Under such circumstances, detainees asked to bring their own covers from home, but regulations prohibited it.

Section 6 held detainees under preventive arrest, maximum security and closed regimes. The four detainees in room 601 for maximum security said they were not visited by anyone, had no money to buy anything, and the personal hygiene products provided by the detention centre were often insufficient.

3.4. Contacts with the outside world

All sections had payphones in the corridors, provided by two different telecommunications operators. Detainees had personal phone cards, which indicated the available credit each time they were placed in the payphone. The existing Info-kiosks were no longer functional.

Each building had a mailbox. The prison management assured that correspondence privacy was respected and that only incoming correspondence was registered.

The visiting sector had two rooms with separators (five cabins in each room) for the adult detainees. Children received open visits in a large room with tables and benches. A child could be visited by two adults and three children at a time, eight times per month. Their visits could last for three hours. Other categories of detainees were allowed two-hour visits, two to four times a month, depending on the detention regime and the credit points they had earned.

3.5. Social and educational activities

The department was understaffed, given the number and type of detainees. The service was provided by three educators (out of nine existing positions), one psychologist (out of five), no social worker (out of five available positions). In addition, agents substituted educators, based on what was called “daily appointment”, meaning that they were detached on a daily basis to supervise various daily social or educational activities.

School classes for detainees at the Bacău Detention centre were taught by 15 teachers employed by the School Inspectorate. At the time of the monitoring visit, researchers did not observe any ongoing classes. The school also had a gym and a sports teacher. The gym was also not being used at the time of the visit. According to the chief of the department, 100 students were enlisted in grades I-VIII and in “Second Chance” programmes for those over the compulsory school age. The number of students was too small compared to the total number of children and young detainees at the facility.

The chief of the department said that the girls that complained about not being able to go to school were in fact too few to create a new class, since the law required a minimum of eight students. Moreover, those who had already completed their elementary education could not be enlisted for secondary school because the detention centre organised secondary education only for boys.

This detention centre was in charge of girls from all over the country (nine detainees), therefore, the issue of their enrolment in school required urgent improvement. The governor said

that the low number of educators and the weak activity in the social and educational department were the result of an out-dated personnel scheme, which had not yet been adapted to the new profile of the detention centre, now a facility for children and youth. The chief of the social and educational department said that she was running many activities with detainees: civic education, health education (with a component of sex education but mainly focused on elementary hygiene), the universe of knowledge, etc.

Two activity clubs functioned at the Bacău Detention centre. One of them, in the women's section, organised a course for commercial workers. At the library, three female detainees wrapped some Christmas cards they had made themselves. The detainees said they often did paper quilling, a recreational craft, and the results of the activity could be seen on the walls of the club. Gym equipment lay unused in the main room of the club for lack of space, the governor said. The club in the men's section was organised in a former shower room and still had tiles on the floor and walls as well as visible water pipes. No activities took place in any of the clubs at the time of the visit.

4. Craiova detention centre

This was the first juvenile prison, which APADOR-CH visited after the Law No. 245/2013 entered into force, which transformed all juvenile prisons into detention centres, except for the juvenile prison at Bacău. As a result of the reorganisation, a section for juvenile girls was created that would soon bring in all young girls from all the country's penitentiaries. *APADOR-CH commends the fact that a special section was prepared for girls, but points out to the NAP) that transferring all girls from the detention centre system to Craiova would make it difficult for them to receive parcels and be visited by their families, an important aspect for their future social reintegration. It is important for children to maintain contact with their families, but if they come from poorer environments, travelling all the way to the centre would be unaffordable for many parents and relatives.*

At the time of the visit, the centre still detained young detainees (18-21) and adults awaiting transfer to penitentiaries. According to the new law, only those who committed their crime while underage will remain at the centre.

The centre serviced the counties of Dolj, Gorj, Mehedinți, Olt, Giurgiu, Teleorman, Argeș, Vâlcea, Arad, Timiș, Caraș Severin, Ilfov and the capital, Bucharest. Thus, all of the children from these counties would be brought to the same place, even if for some of them this is far from their home, making it very hard for their families to visit.

The administrative building was separated from the two detention buildings. The latter were organised into six sections for children, youth, adults (male), infirmary and female children. At the time of the visit, there were 402 persons detained, of whom 169 were still serving a prison sentence (26 children, 138 youth and 5 adults), while 233 were accommodated at the detention centre (59 children, 143 youth and 31 adults). The director said that these sections were still in the process of reorganisation (after the new law), with the transfer of young detainees and adults to penitentiaries still pending. The legal capacity of the centre was 504 persons, if the four square metres/person standard was taken into account.

The director admitted that the staff employed at the medical and social/educational departments was insufficient for the new task, but claimed that prioritisations were made, so that emergencies and the most serious cases received immediate attention. The facility did not have a special intervention squad, but relied on three staff members trained to intervene in extreme situations, who are unarmed and do not wear masks. Children and young detainees were not handcuffed when taken to the court.

The video surveillance system consisted of a few cameras located in the yard, covering the outside fences to prevent escape attempts. The management said that footage was stocked for 30 days and then archived on CDs.

At the time of the visit, none of the detainees went to work outside the facility and only a few helped with in-house services. The only revenues supplementing the annual budget provided by the NAP came from renting some real estate owned by the centre.

4.1. Education

The detention centre had its own school, a separate unit under the administration of the County School Inspectorate that provided courses for grades 1-11. For high-school grades (9-11), professional qualification courses were provided. At the time of the visit, no school representative was present; all information about school activities was provided by the chief of the social and educational department.

For the 2013-2014 school year, there were 11 students in first grade, ten in the second grade, six in the third grade, eight in the fourth grade, two classes of 17 students for the fifth grade, two classes of 16 students for the sixth grade, two classes of 12 students for the seventh grade, one class of 16 students for the eighth grade; in the ninth grade, there were eight students in the woodworking class and eight in the mechanics class, in the tenth grade there were six students in the woodworking class and six in mechanics and in the eleventh there were only eight students learning woodworking. In total, at the time of the visit, there were 131 registered students, who had completed the first semester.

The chief of the social/educational department explained that when detainees were brought to the centre after the beginning of the school year, they could only attend classes, without being graded or able to receive a certificate. According to the same source, in the current school year, there were only two to three students, who accepted to attend classes under these conditions but soon lost interest. *It is obvious that this system does not work and that the children need to be stimulated to attend school. That is why APADOR-CH recommends speeding up procedures for obtaining the school records of new arrivals, so that they can be officially enrolled in school; at the same time, they should be allowed to receive credits or other benefits such as taking part in outings even as attendees.*

The school occupied two floors of a large, well maintained building, with eight classrooms, offices for the teachers and a generous library. The school schedule was 08.00 - 11:45 for the primary grades and 14.00 - 17.00 for gymnasium and high school years.

The chief of the social/educational department noted that a class needed to have at least eight pupils and at most 12. However, it was commendable that efforts were made to initiate classes with even fewer than eight students; in other former Children and Youth Penitentiaries recently visited by APADOR-CH, the minimum number was just an excuse to deprive juveniles of education.

4.2. Social and educational activities

Apart from school classes, detainees at the centre participated in three other types of activities:

- Educational programmes like *Life behind Bars*, *Health Education*, *Civic Education*, *Universe of Knowledge* etc.;
- Programmes for detainees in quarantine – adaptation to detention conditions;
- Education through sport – activities in the gym and on the sports field, under the supervision of the two sport instructors.

At the time of the visit, six children were rehearsing for a performance at the club of the centre. The children were part of a performing group who sang, recited and performed short sketches.

There were no qualification courses at the time of the visit. The management had announced a carpentry workshop starting from March 24, 2014, with 28 detainees. The previous course had been completed in August 2013 for IT and computer initiation; sixty detainees graduated from the course. The management said there had been no co-operation with the County Labour Agency for qualification courses since 2011. The conditions for registering for a qualification course are to have completed at least primary education and to have at most nine months until release.

With Austrian funding, the staff at the centre had the opportunity to visit penitentiaries in Austria in 2010 and 2011 and learn about their practices. With their support, three workshops were created at the Craiova centre: a printing house, a cooking/patisserie lab and a wrought-iron smithy, as well as the sports and fitness halls. The workshops only produced goods for the detention centre system but by the time of the visit, they had stopped producing altogether. The management explained that it was difficult to find orders on the local market.

The social/educational department had 26 employees, of whom 21 were educators, two sports monitors, one psychologist, one social worker and the director. The management said that the staff numbers were insufficient for the centre. Each educator had to run at least two programmes per week, with most programmes lasting for at least 12 weekly sessions in groups of a maximum of 12 detainees. Some of the programmes lasted for only three to four sessions. Everything seemed well organised so that each detainee could enlist for two to three such educational programmes each year.

As a reward for their activity, children accumulated credit points that were taken into account by the parole board. For misdemeanours, credit points were deducted or detainees were sanctioned by warnings, suspension of the right to shopping, suspension of the parcels or even confinement from four hours to ten days. There was no room designated specifically for confinement, but the sanctioned minor can be placed alone in a room, although he is allowed to attend classes if he was enrolled in school. The management said that misdemeanours were mainly age-related, consisting of bickering with roommates or fighting, but that confinement was rarely used.

The facility had a very large sports field, equipped for football and basketball, as well as generous exercise yards. At the time of the visit, the field was occupied by young men playing football. Detainees had access to the field and exercise yards according to a schedule by sections.

The facility also had a chapel where an orthodox priest officiated mass. Detainees of other denominations could be visited by priests upon request.

4.3. Health care

The facility had both a medical office and a dental practice. The dentist worked by himself, without an assistant, for seven hours a day, from 8.00 to 15.00. He said that medical supplies were insufficient, that the centre had ceased its contract with the Health Insurance Agency and now he had to ask the facility for any materials he needed to purchase. The medical instruments he used looked old, degraded and dysfunctional. The dentist said he generally treated only simple problems like extractions, emergencies, superficial cavities and manual removal of plaque. In recent weeks, he had seen two cases of jaw fracture after fights among detainees. The young men involved in the fight were taken for surgery at the Craiova Hospital and were then moved into separate rooms.

The medical office employed a GP and an internist, who covered the morning and afternoon shifts. The 24/7 care was provided by nurses. The GP was on call at the time of the visit. The staff included six nurses and a pharmacy assistant, but the personnel scheme had three additional vacancies for nurses.

The doctor said that 40-70 patients were examined every day. The most frequent problem at the time was respiratory infections (the doctor himself had a cold), a seasonal condition. Otherwise, hepatitis and hypertension were frequent and 90 detainees had been diagnosed with mental conditions, 23 being under treatment prescribed by psychiatrists at the Craiova, Colibași or Jilava Penitentiaries. A psychiatrist from the Craiova Detention centre came to the centre every month to check on patients.

One of the patients at the infirmary, transferred for a short period for a court trial, was HIV positive and continued his treatment. The centre did not run a detoxification programme for former drug addicts because, as the management said, they arrived only after being treated for addiction at one of the detention centre hospitals in the country.

The two infirmary rooms had damp walls; detainees had their meals brought to them. One of the patients was a minor. He said he was supposed to be in the 10th grade but did not go to school because he had no documents, proving his grade level.

4.4. Contacts with the outside world

The management estimated that 70% of the children were visited by their families, while the rest either did not have anyone or their families worked abroad.

Payphones, the mailbox and info-kiosks were accessible for all inmates in the corridors or at the entrance to each section.

Upon release, the usual practice was for the centre to inform the family and, for those who could not afford it, pay the transportation fare home.

Detention rooms had TV sets, some brought in by detainees, others provided by the centre. The TV signal was cut off every night at 22.00.

The visiting area was appropriately set and equipped, and parcels could be inspected by both the visitor and the receiving detainee at the same time. A parcel could contain a maximum of ten kilograms of food, six kilograms of fresh fruit and vegetables and 20 litres of water/juice. Visits took place around a table, but the separated cabins used by the maximum security detainees were still available.

4.5. Detention conditions

Detention rooms were located in two similar buildings, with two floors each, with 48 rooms for male detainees, nine for female detainees and three for the infirmary. There were two types of rooms: small – 31 square metres, and large - 78 square metres. Each building had three sections, one on each level. At the time of the visit, they were only temporarily organised, so there were rooms with more detainees than beds and rooms with a lot of space and just one or two occupants.

Detainees were provided with hot running water twice a week. Each section had a common shower room. The detention building had no alarm system; therefore, no matter what problem they had, detainees could only knock on the door until the agents heard them.

Building 1

Section 1 was on the ground floor and accommodated children under a closed and open regime. The rooms were relatively clean, with the exception of the toilets. Most rooms had improvised electric installations, like TV sets plugged in with uninsulated or socket-less wires. In some rooms, there were more detainees than beds, like in Room 1.11, measuring one square metres, where four detainees shared three beds. The management said the situation was only temporary, caused by the reorganisation of the institution, and would end with the transfer of all young and adult detainees.

Room 1.3, open regime, 78 square metres, held ten children in 12 beds. Occupants of the room claimed that in the summer of 2013, no fewer than 18 of them had to share the same 12 beds. The detainees said that doors stayed open from 8.00 to 12.00 and from 14.00 to 17.00 and that hot running water was provided twice a week (on Mondays and Thursdays). Asked their opinion of the food, detainees said it was acceptable but they did not recall receiving any fresh fruit or vegetables since the previous summer. Some of them claimed that the guards had an aggressive attitude, beating and insulting the children “when they didn’t behave”.

Room 1.6, a large room for detainees serving under closed regime, held 11 detainees in ten beds. The children complained about the bedbugs that gave them skin rashes, which they claimed were not properly treated. Most detainees had bite marks on their legs and other visible skin conditions. The walls of the room were dirty, bearing traces of bedbugs squashed by detainees. The mattresses in this room and everywhere else in the centre were old, dirty and lumpy, a perfect environment for insects to flourish. Detainees said that this has been the situation for over a year. They also complained that they were not taken to see the doctor and they had never seen the liaison judge. Three of them said they could not attend school because their school records were not available. They went to the gym once a week and spent the rest of their time in their room, watching TV.

Section 2, located on the first floor, held young detainees under the open and closed regimes. Room 2.4 held six detainees in 13 beds. One of them said that he had been at the centre for one year and had never attended school. None of the occupants of the room were informed that they could attend classes even if they were not registered and graded. They all claimed they were frequently hit by the guards “if they did something wrong”, but admitted they had never complained about it because they did not think anyone would believe them or that the management would actually do anything about it.

Section 3, located on the second floor, held young men under the maximum security regime. Room E 3.4 held one detainee categorised as high risk because he had attempted to escape. The room had six beds and measured about 30 square metres. Only two of the beds had mattresses. The young man said there were no activities other than one hour of daily exercise and watching TV.

Room 3.5 for young detainees under maximum security regime accommodated two detainees in six beds on about 30 square metres. They complained of bedbugs and said they did not receive any chemicals for pest control.

The women’s section was organised on the upper floor and held eight girls – seven under open regime and one under semi-open regime. None of the girls attended school because, as the management said, no solution was found to keep them separated from boys during classes. At the time of the visit, three of the detainees attended an educational course with an educator, decorating a club. The management said they intended to purchase bidets for the women’s section, so they can have better hygiene conditions than male detainees. The rooms here were spacious, but mattresses were in equally poor condition.

Building 2

Children under preventive arrest and adult detainees were held in section 4 on the ground floor of the building. Room 4.4, one of the larger, held four detainees in ten beds. They complained they had bedbugs and scabies (it was not clear if they meant that their skin conditions felt like scabies or they actually believed they suffered from scabies; the medical records did not mention that diagnosis). They said that the itching made them constantly scratch and that the medical office only provided them with “cheap medication, of no effect”.

On the second floor, adults under preventive arrest awaited transfer to a detention centre. Room 6.4 held ten detainees in ten beds. They did not participate in any social or educational activity, just daily exercise time and watching TV.

5. Conclusions

Detention conditions in detention centres are considerably better than those in prisons and police lock-ups. However, a couple of problems persist. For example, in Targu Mures, the detention centre was overcrowded and used triple bunk beds. Also, in Bacau, detention conditions were inappropriate. The rooms were dirty, many were infested with bedbugs and some even lacked windows.

A general problem was that the doors of room were not kept open throughout the day, despite that being stipulated in the rules. Instead they are closed during certain intervals, directly contravening applicable national legislation.

Another concern is that children are not provided with sufficient educational and socio-cultural activities. These services are severely understaffed and, when they are available, access to these services is hindered by bureaucratic obstacles. For example, in Craiova, there were serious delays with the provision of children’s educational records. Although they were despatched, the school transcripts took a very long time to arrive, making it difficult for them to enrol in school.

Also, access to health care was problematic. There was a shortage of medical personnel and children had a number of medical needs, which were not addressed. For example, in Tichileşti, the medical unit was severely understaffed and many of the children and young people showed symptoms of having contracted skin diseases that appeared to have spread throughout the detention facility.

All these problems must be resolved if these centres are to function in accordance with international standards as proper detention facilities for children, providing the slightest hope for their reintegration.

D. EDUCATION CENTRES

Children can also be detained in education centres. According to the new Law on the execution of custodial sentences, Law No. 254/2013, re-education facilities were renamed to education centres. Currently, only two such facilities function in Romania in Buziaş (Timiș County) and Târgu Ocna (Bacău County), each accommodating children whose residence is closer to the location. The first consequence of having only two such centres is that detainees are often far from home and families have a hard time visiting them. This is a problem for their future social reintegration, especially as they usually come from split, mono parental or socially challenged families.

In the course of this project, APADOR-CH visited both education centres, as follows:

Table 5: List of educational centres visited by APADOR-CH (2013-2014)

	Education centre	Date of visit
1	Tîrgu Ocna	4 October 2013 ¹
2	Buziaş	3 June 2014 ²

Source: APADOR-CH

Given the fact that these institutions are specifically designed for children and juveniles, more in depth observations will be presented on each of these institutions.

1. Tîrgu Ocna education centre

Since 2009, the Education Centre had been separated from the Tîrgu Ocna Military School and relocated in the vicinity to a former prison renovated for the purpose.

At the time of the visit, 73 boys were held at the facility. The director said that children were sent here by court order and they could stay until they turned 18. Most children were released before they came of age. The established procedure was to convene a committee once a year (usually at the end of the school year), which reviewed the case of each child and decided if release before 18 was recommended. The committee, consisting of teachers of the respective

1 For more information, see: APADOR-CH (2013), *Report on the visit to the Tîrgu Ocna Education Centre*, available on: <http://www.apador.org/en/raport-asupra-vizitei-la-centrul-de-reeducare-targu-ocna-3/>.

2 For more information, see: APADOR-CH (2014), *Report on the visit to the Buziaş Education Centre*, available on: <http://www.apador.org/en/raport-privind-vizita-in-centrul-educativ-buzias/>.

child, a representative of the security agents and the director, also convened three months prior to release to decide the release conditions. The committee had the power to propose either a quicker release or a postponement for further analysis. In 2013, the committee postponed by six months the release of two children. In one case, the purpose of postponing was to allow the child to complete the school year. The decisions regarding the release date took into account behaviour and school results.

Most children remained at the centre for an average of two years. There were no repeat offenders among them, but there were cases when some of them subsequently ended up in juvenile prisons. Children were of low socioeconomic status from a dysfunctional family, and were very rarely visited during their stay at the centre, which made their social reintegration after release even harder. The director admitted that distance also played a role. Some children came from the eastern part of the country, with poverty making it hard for families to visit regularly. In this way, their family connections were lost and, in many cases, when children left the centre, the managers had to contact specialised NGOs to support their reintegration (provide them with accommodation for a modest sum). The institutions proved to be powerless in addressing the real needs of these children after release. Centres do not keep in touch with released children.

The director led the researchers to understand that, as a general rule, children still had their hair cut short on their arrival. He argued that they arrived in an unkempt state and, as street children, they needed to learn hygiene and discipline.

For misdemeanours, children were sanctioned by reprimands, deduction of credit points, and even confinement for ten days. Several children had been sanctioned with confinement over the last year for hitting their friends or for gradual acts of indiscipline. Children also received incentives – credit points or praise in front of the other children. During confinement, children were still allowed to go to school.

Security agents wore their uniforms inside the centre and plain clothes when they accompanied the children outside.

After the Găeşti centre was closed, children there were transferred to Târgu Ocna, so the total population of the centre increased to 113 (the highest ever). The director said that the average number of children was 80-90.

1.1. Social and education activities

In 2013, the centre organised three summer camps. The institution owned enough vehicles to transport children and enough money for fuel. Every month, the facility organised two or three outings, painting sessions or other activities in the community of Târgu Ocna, where children were received with benevolence. The staff said that children were allowed to take part in these activities only if they behaved well. The facility provided the clothes for these outings from donations from foreign NGOs.

The walls of the centre were decorated with paper *quilling* arrangements, which were also offered for sale during various events in the community.

The centre had a basketball field, a soccer pitch and a Ping-Pong table.

The curriculum included health education, the alphabet of the good citizen, education for family life, healthy lifestyle and literacy. A child who managed to complete a programme and received the qualification “very well done” received 25 credit points.

The centre had a library, a room containing an impressive number of books that children were allowed to borrow and take to their rooms. The librarian said that children borrowed mostly

religious books or school reading and that he had created a programme for them, promoting reading. Since some of them could not read: the librarian read to them aloud and encouraged other children to form reading circles and read to the others.

The Târgu Ocna centre also had a very large festivities hall, with a spacious auditorium, with chairs, a set of drums and an audio system. It was the venue for the opening of the school year, birthday parties and other parties, where children at the centre invited children from the community.

A TV studio was used to prepare closed circuit programmes on past and present activities at the centre and successes of the children.

The computer room had 11 computers bought with PHARE money.

A workshop for pottery and painting was also available and objects crafted by the children in the centre had been exhibited at the Olănești public library. Researchers from APADOR-CH talked to the four children, who were at the workshop at the time of the visit. They complained that when their parents gave them money, it went through the administration and each time part of it was retained, without any explanation. The children confirmed that they participated in various activities throughout the day and were not locked in their rooms. Asked whether they were ever mistreated, physically or verbally, by the agents, the children answered with reservations, saying that only "bad" children were punished. This did not apply to them obviously, since they were allowed to spend time at the workshop.

Children, who asked for help or who were in trouble, received counselling at the psychologist's office at the facility.

1.2. Education

School classes were organised by four tenured teachers and a substitute. Primary school classes were taught to two groups, of respectively seven and eight children. The minimum number of students in a class was four. In this special education system, elementary school courses (literacy) were completed in one school year and then students were promoted into the 5th grade as soon as the second year. There were two 5th grade classes, with 13 students each; one 6th grade class, with 10 students; one 7th grade class, with 12 students; and one 8th grade class, with five students. For high school, three students were enrolled in a technology high-school nearby (one in the 9th grade and two in the 10th grade).

Four children who, according to their age, should have been in high-school, remained at the centre as observers in classes. This reflected their real level of knowledge as assessed by the centre. The school director was very firm when he said that all children needed to be assessed at the centre because the formal level of education did not match their knowledge; he offered the example of children in 5th grade, who were, in fact, illiterate.

The representative of the teachers said that all children at the facility attended school. The teachers were employed by the Ministry of Education. Some of them were paid per hour, as special education teachers. Classes had between four and 12 students, in accordance with legal provisions regarding special education. The graduation diploma did not mention their education was completed at an education centre.

Those who refused to go to school lost other privileges, such as taking part in outings. The director said that this sanction encouraged them to attend classes, eventually.

Those who arrived at the centre after school began could not be enlisted for the respective school year, but the management found a solution so that such children were not left out. They were allowed to attend classes, without being assessed or receiving grades. This was a

fortunate solution, because it enabled them to keep in touch with school. As a reward, those who assisted in classes were given credit points, and for each 30 credit points, they received a reward report (praise in front of the other students). After several such reports, they could be proposed for early release.

The classes were clean and well-equipped, with enough desks and chairs in each room. The facility planned a new 3,700 square metres building for a school that would respect the standards of the Ministry of Education.

The centre's director said that through European Union funding, the facility was able to send most teachers and staff to professional training and exchanges abroad.

Classes took place between 08.00 and 14.00. On the day of the visit, there were no classes because a tenure examination had been organised on the premises.

The centre had a separate budget line to purchase school textbooks and other materials; the director said the students had all the learning materials they needed.

1.3. Health care

The centre had a medical office but no doctor. The medical staff consisted of five nurses, who worked in shifts to ensure a 24/7 presence.

The nurse on duty on the day of the visit said that the most frequently encountered health problems were skin conditions and recurring colds. There had been some cases of scabies, contracted during their transfer to the centre, but the disease was currently kept under control. One child was diagnosed with hepatitis and was currently under treatment. The children were tested for hepatitis at the Târgu Ocna Penitentiary Hospital. The records also showed two patients, who required a diet. One HIV infected child formerly held at the centre had been transferred to the Jilava Penitentiary.

A makeshift quarantine room was set up whenever the situation required; otherwise, there was no space especially designed for isolation.

There was no psychiatrist working at the centre. A specialist generally checked the children before being brought to Târgu Ocna, or they could consult a psychiatrist at the Rahova Penitentiary Hospital. The nurse said that some of the children showed symptoms of mental disturbance and that the centre should hire a psychiatrist.

The nurse said that they were well stocked with medicine and that the doctor saw an average of 20 patients a day. Condoms were no longer distributed at the centre. Previously, they used to be placed in boxes in each section, to be used freely.

1.4. Detention conditions

The Târgu Ocna centre has two detention sections for the children, with the administrative sector just outside them; a separate building for the school; and a building accommodating workshops for various activities. From the point of view of detention conditions, this facility was exemplary. Everything was clean and very well kept. The two detention sections had about 395 square metres and a maximum capacity of 98 persons, so that the four square metres standard was observed. Children spent much of their time outside their rooms, frequently leaving the facility. They all attended school and were involved in a series of extracurricular activities. So it can be said that conditions fulfilled the centre's objective: the re-education and social reintegration of the children.

At the time of the visit, the centre employed 32 officers and agents for security (out of the 34 existing positions), five medical staff (seven positions available), 35 officers and agents of the

social and educational department (out of 41 positions) and seven teaching staff (out of ten positions).

Both detention sections were on the ground floor, and in fact the whole facility consisted of one-storey buildings.

Researchers from APADOR-CH visited a few rooms from each section.

In section 2, room E2.5, measuring 71 square metres, was furnished with 18 bunk beds and accommodated 14 children. Like in every other room, each child had their own wardrobe. The walls, beds, mattresses and floor were all clean and well kept; conditions here were among the best in the country. The director said that many infrastructural investments had been implemented with the help of donations from foreign partners. Children said hot water was provided three times a week, for one hour, and cold water was provided around the clock. The lavatory had a sink, a Turkish toilet cabin and a shower. All children in that room attended school and spent the rest of the day in various other activities – educational or recreational. They were not locked in their rooms after dinner and lights out was at 23.00.

Room E2.4 of the same section shared the same excellent conditions. But children here complained about the quality of the food, although they confirmed that they did receive fresh vegetables from the greenhouse at the facility. For breakfast, besides the biscuits, margarine and tea, they also received an egg every day. The room measured 47 square metres and accommodated eight children in 12 beds. Two of the children said that they were sanctioned by confinement several times for fighting with their friends. Several said that they were beaten by the agents for childish misdemeanours, such as merely arguing with each other or making noise in their room in the evening. The children described in detail how they were taken to the yard, handcuffed to a metal fence and beaten with clubs. One of them said that, after the incident, he asked to be taken to the forensic doctor to obtain a certificate but was not allowed to. He also said he was repeatedly denied release. The same boy said that one time he was beaten at the medical office for breaking a window, but the agents told the nurse not to mention it in the records. **The children said that such incidents also happened in the corridors, where the video cameras recorded every move and could support their statements.** It was said that the aggressive behaviour started a year ago, when a new agent was transferred to the centre from Miercurea Ciuc Penitentiary, who usually took the night shift. The children said that the director was informed about the incidents, since he was the only one they could complain to, but that he tolerated the behaviour of his employees and, even worse, took part in it, offending and threatening the children.

Room E2.1 accommodated eight children in eight beds. They all confirmed the aggressive behaviour of the new agent, who worked on the night shift. **One of the boys said he stayed in confinement for ten days, without going to school.** Children said they were beaten in a group by the agents, and three months earlier, it had happened right in front of the director. They described the objects used for the beating in detail: multilayer plumbing pipes covered in tape in order not to leave marks on the body. The children explained how they tried to report the incidents to the NAP but had their letters torn apart by the agents.

In this room, the sink was inside the room. A separate door led to the toilet. The occupants said hot running water was provided three times a week for one hour. One of the children said that he worked in ditch clearing and corn picking. The children confirmed that they were provided with vegetables from the greenhouse and that the money earned from selling the remaining vegetables was spent on dishwashing detergents. Some of the children had skin rashes and said they were caused by the mattresses (in this room, mattresses were older). They complained about the quality of the food and said in general they were fed vegetable soup, little meat for the main course and one egg for breakfast. The room was clean, well maintained and

naturally lit. The linen was changed once a week and washed at the in-house cleaning centre. The TV set in the room was out of order. All children said they attended school.

The lavatories in the rooms in section 1 only had a sink and toilet cabin, and the showers were in a separate room. The shower room was clean, with a new tile floor and walls and ten showers. It was planned to build a shower room for section two as well to replace the showers in each room.

In section one, APADOR-CH's researchers visited room E1.5, measuring about 27 square metres and accommodating seven children in eight beds, some of them double bunk beds. Children complained about the taste and content of their food. They confirmed what their friends at the workshop had said that approximately RON 15 (EUR 3.30) were retained every time their families sent them money. Aside from school, they participated in sports activities and in clubs; they were not locked in their room during the day; doors were locked only at night. One of the children had a visible skin rash and said he had received treatment for his condition at the medical office. The lavatory included a sink and a toilet, both clean and disinfected.

Another child said that five months earlier, the night shift agent beat him because he had a fight with a colleague. The system was the same as mentioned by children in section two: handcuffed in the yard and hit with a plumbing pipe covered in tape. Moreover, as an extra punishment his credit points were reduced and he had to spend ten days in confinement, without being able to attend school every day. Everybody confirmed that the night shift agent was violent with "the worst" of the children. They had complained to the director, but no steps were taken. They also said that they rarely received sanitary products, which did not last them long enough. The children said that a year earlier one of the children tried to hang himself. After the incident, all children were lined up in the yard and the boy was reprimanded in front of them for his suicide attempt. Later, at the psychologist's office, this statement was denied by the staff and the director. They said there had been no suicide attempts at the centre, either the year before or in previous years.

Regarding the RON 15 (EUR 3.30) retained from the children's money, the director said the sum was indeed retained, but only once, and was used for formalities required to get an ID card.

1.5. Work

Children over 16 took part in various cleaning activities for the community – easy work for which they were paid. The Târgu Ocna centre had even arranged a contract with the town hall for works such as ditch clearing. The salaries went to their personal accounts at the centre, with 50% for the centre and 50% for the children. Part of their share was given to the children to spend and part was kept for the time of release. For each two hours of in-house work, children received one credit point.

1.6. Contacts with the outside world

The mailbox was located in the courtyard, where children could access it without restrictions.

One pay phone was located in each section, locked in a wooden box. Every day after lunch, children had a scheduled phone time. They could talk for as long as they wanted or as long as their phone cards lasted. Children could not check how much credit they had on the cards; no such system was installed on the phones and there were no info-kiosks at the centre. The only way to check was at the financial department.

The visiting sector was in a separate building, outside the detention space. Visits were always open and there was no limit to the number of visitors a child could receive. The room was un-

der video surveillance, and so was the visitor's waiting room. The parcels brought by visitors were inspected in the visiting room and in the receiver's presence.

2. Buziaş education centre

The Buziaş Education Centre accommodated persons who had committed a crime when they were underage and for whom the judge selected this form of sanction, even if that person is over 18. The Buziaş facility also held all female children convicted for criminal crimes, so the centre accommodated both a male and female population, both under and over 18.

At the time of the visit, the centre held 75 persons (six female), of whom 69 were children and six over 18.

Judging by the four square metres/person standard, the facility had a total capacity of 128 places, distributed in four units, in two buildings with four separate entrances. According to data provided by the centre, each unit had 660.90 square metres of usable space. All units were organised in the same way: a large living room and a confinement room on the ground floor, and six bedrooms on the first floor. All but one room had a vestibule and bathroom and measured 25.45 square metres, or 18.45 without the vestibule and bathroom. Since most rooms had five beds, and some even eight (room E 1.17), they did not comply with the legal space standard. The room that had no vestibule and bathroom measured 19.52 square metres

The negative consequences of overcrowding were mitigated by the fact that none of the rooms had all the beds occupied and that the children stayed in their rooms only to rest (13.30-15.00/ 22.00-06.00). For the rest of the time, they had access to a 35.79 square metres living room, a 21.88 square metres study and a 20.61 square metres breakfast lounge.

The centre's department for Security, Records and Children's Rights employed 34 persons and had another five vacancies. The department for Education and Psycho-Social Assistance employed 29 and had four vacancies, while the medical department had all four positions filled. The centre did not seem to be understaffed, but given the presence of children with special needs, it would be recommended to have all positions filled and to employ specialised staff at the social and educational department to work with the children (pedagogical studies). According to the management of the centre, many of the staff of that department were former officers or security agents.

The centre consisted of several buildings - the visiting sector, the administrative unit, the canteen, the school and the accommodation units. Four such buildings were reserved for accommodation, but only two were used at the time of the visit. The children and young people were placed in one building or the other depending on when they arrived at the centre and their behaviour.

Each building had two entrances, on opposing sides, allowing to split each of them in two separate units and to accommodate two different categories of children. At the time of the visit, they were organised as follows:

- 1A – children with behaviour issues, dubbed “the naughty ones”;
- 1B – new arrivals, in quarantine;
- 2A – the ones causing no problems and the ones over 18 – separately;
- 2B – girls.

The centre had its own school for grades 1-10. For the 9th and 10th grades, classes were organised by teachers from the “Gheorghe Atanasiu” High School in Timișoara.

The deputy manager said that 95% of the residents came from a precarious social background, mono-parental families or orphanages. The children had massive gaps in their education, with a propensity to rebel and disobey rules, requiring huge efforts on part of the staff to help them adapt and making their reintegration more difficult.

It was estimated that the children spent an average of 18 months at the centre before release. The release takes place after serving at least half of their sentence, following a hearing by a committee, consisting of a judge, teachers and the psychologist. After early release, the child is monitored by a case officer from the probation department until the completion of the whole term. The committee listens to the juvenile before any decision is made. The centre maintains contact with the family, so they could inform relatives about the release and encourage the juvenile's return home. If the family cannot be found, or reintegration is not a possibility, the centre works with NGOs and social services to find a place for them to stay. Until a solution is found, the child is welcome to remain at the centre.

The new law also regulates sanctions for misdemeanours committed inside centres. Sanctions for reported incidents were expected to increase gradually, up to a maximum ten days of confinement (from 10.00 to 18.00 each day, so as not to miss school and other activities).

The deputy director and the chief of the social and educational department said that all the residents at the centre attended school, since this was the objective of the sanction: to help them re-enter society by providing educational services. For their presence in school, students were rewarded with credit points and two reports that helped them with probation.

The centre received its yearly budget from the National Administration of Penitentiaries in two instalments. A few sponsorships (washing machines, car repairs), revenues from working detainees and profit from the sale of items made during activities (paintings, decorations) can also be added to the budget. In the previous year, RON 17,000 (EUR 3,824) was collected from the residents' work and other revenues.

The centre followed a daily routine: classes in the morning, lunch and rest from 13.00 to 15.00 PM in the rooms, with closed doors, and social and educational programmes from 15.00 to 17.00 PM. After dinner, time was spent in the living rooms of each unit until lights off at 22.00 PM.

The management said outings were organised every week (swimming, picnics, and museums). However, this was not confirmed by the children. They said such outings were occasional, especially in summer, and they did not recall going anywhere over the last few weeks. According to the staff, children from the nearby orphanage visited the centre frequently and three camps had been organised the year before for the residents of the facility.

The centre had a strict anti-smoking policy. According to the staff, the children and young people did not smoke.

There was no in-house shop at the facility. Any items had to be bought by the staff, who made shopping lists for interested residents.

2.1. Social and educational activities

At the time of the visit, the chief of the social and educational department was a trained social worker. The other staff consisted of three coordinating educators (of four available positions, with the 4th employee on maternity leave), four educators (out of six existing positions), no sports monitor (out of one available position), 18 overseeing pedagogues with no pedagogical training (all positions filled), two psychologists (all positions filled), and no social worker (one position). In total, there were 28 positions filled, four vacancies and one person on maternity leave.

All new arrivals were included in an institutional adaptation programme, after which they all follow an educational programme geared towards their needs. Some of the extra-curricular activities helped their education regarding: family life, drug use, religious assistance, sports, motivational activities, emotion control, and development of social abilities. A programme had about 12 weekly sessions, in groups of 8 to 12 children. The chief of the department said that each child participated, on average, in three to four programmes per year.

The centre had a carpentry shop that sometimes produced furniture for in-house use, according to the needs. There was also a hairdressing shop where residents had their hair cut. There were photography, music, painting, tailoring and pottery workshops, but they were not used, the management said, because they lacked supplies and specialised personnel. At the time of the visit, the girls were enrolled in a cookery class. Sport activities were organised by supervisors or, in school, with the physical education teacher. The centre had an outdoors sports field and a gym, used in winter. From the summer of 2014, a foundation in Timisoara was going to organise a circus workshop at the facility.

The centre did not receive cooperation from the County Labour Agency to organise qualification courses as was usually the case in prisons. The chief of the social and educational department said that they had requested help from the Labour Agency, but there was no interest on the other side.

No priest was employed by the centre, but one Orthodox priest from Buziaş came to the facility on a regular basis and ran various activities with the children at the chapel. Residents of other denominations (Catholic, Protestant) were also visited by priests.

2.2. Education

All 75 residents of the centre attended school at the time of the visit – 58 enrolled as students and the rest as observers in class. First graders shared the class with third grade pupils and second grade with fourth grade – a solution found in order to comply with the rule of having a minimum of eight and a maximum of 12 students in a class. APADOR-CH commends the fact that a solution was found for all the residents to attend school, despite bureaucratic obstacles.

The teacher who was available at the time of the visit and who talked to the researchers noted that teaching materials and supplies were available. The centre also had a generous library, where a info-kiosk was recently installed, which was not functional yet.

2.3. Health care

The medical office employed a general practitioner, two nurses, and one hygiene assistant. The doctor worked for seven hours every day and the nurses had daily morning/afternoon shifts, with an average of seven to ten medical examinations per shift. During the night, the doctor and nurses were called only in case of emergency. The centre also had a dentist's office, rather riskily equipped, and a dentist who came in on Thursdays to work on small problems. For serious dental problems, the residents were sent to hospitals in Timișoara.

At the time of the visit, the nurse who was present at the medical office said that the most frequent health problems among residents were respiratory viral infections, dental problems, self-mutilation (25 cases) and injury, caused by brawls among children (27 cases). Seven persons were registered as having mental health problems and under psychiatric treatment. They were frequently taken to a neuro-psychiatric clinic in Timișoara for check-ups.

There were no cases of hepatitis, diabetes or HIV infections. According to the nurse, the residents did not have same sex relations; he said they were questioned in confidence whether they were homosexual or had same sex intercourse and none of them said they did. For that

reason, and for lack of funds, the centre had long ceased distributing condoms. APADOR-CH recommends that condoms be unconditionally distributed and that the management should be aware it was highly improbable for a child to declare their sexual orientation to an official representative of the facility. Condoms could help avoid the spread of STDs (HIV, hepatitis).

The nurse said that medical supplies were sufficient. The centre had three infirmary rooms, all clean and well kept. At the time of the visit, they were unoccupied. The nurse also said that there hadn't been any cases of death at the facility since its inauguration.

2.4. Contacts with the outside world

Near the entrance to each section there were payphones that residents could use. Each section also had phones where residents could receive calls from their parents on Wednesdays and Fridays from 7.30 to 19.30. Outside that interval, the respective phones were kept under lock.

The visiting right was regulated according to law. According to the management, only 25% of the children received regular visits from families, while 40% were visited only once or twice a year. In general, the facility received visitors only once or twice a week. Staff explained that most families had scant resources and they preferred to send money to their children rather than spend it on transportation.

On Thursdays and Fridays, between 11.00 and 13.00, parents could speak on the phone with their children's teachers. Children received an average of three to four parcels per year.

A single mailbox was available at the facility, next to the administrative unit. According to the staff, one of the children collected the letters from all the others and went out to post them. This was, however, unacceptable: a mail box should be installed near the football field, so that all residents have unrestricted access to it.

The centre had residents from 22 counties, and therefore, many of them were far from home. For that reason, supplementary steps must be taken to facilitate contact with their families and more frequent visits.

2.5. Work

Residents over 16 were allowed to have easier jobs, for which they were paid. About six or seven residents took part in such activities, depending on the available jobs.

According to the staff, the very small number of employed residents can be partly explained by the fact that they were all in school and had little time left for a job. It could also be explained by the absence of opportunities, due to lack of interest in employing young people from the centre.

Residents worked at vineyards (harvesting, maintenance) or splitting firewood. They went to work in the company of supervisors; the beneficiary provided transportation.

2.6. Detention conditions

The atmosphere at the centre was relaxed; the children who spoke to researchers from APADOR-CH did not mention any problems and said they were content with the conditions and the way they were treated by staff. In general, rooms were clean, well aired and naturally lit.

Video cameras were installed in communal areas. Footage was archived for 30 days.

Section 2 A

According to the management, the section accommodated the best-behaved children and young men. Researchers from APADOR-CH visited three of the rooms; in two of them – rooms

E 2.2 and E 2.6, the toilet was broken (did not flush). The third room did not have a lavatory, so residents had to use the toilet next door, which was more difficult, especially after lights-off at 22.00.

Section 1 A

Three rooms were visited, including the confinement room on the ground floor, No. E 1.10. The lavatory in this room had a malfunctioning toilet and a broken tap. According to staff, confinement lasted at most four hours per day and the room had recently been used for that purpose.

Researchers from APADOR-CH also visited rooms E 1.10, where the toilet was malfunctioning, and E 1.6, where the lavatory door had no lever.

The researchers also talked to the girls at the facility. At the time of the visit, the girls were having lunch. They had no complaints about the living conditions and said they were content with their treatment. One of the girls had visible cuts on her body; according to the staff, they were the result of self-mutilation, as the child in question suffered from a mental health problem.

3. Conclusions

The two education centres functioning in Romania both had decent detention conditions for the children although there were a number of problematic issues. For example, in Buzias, in most rooms visited by researchers the toilets were not functioning.

Also, in Tirgu Ocna there were numerous complaints about physical abuse from a guard. Many children said they were victims of violent acts carried out by guards. This is completely unacceptable and requires an investigation.

A general issue concerning education centres is that there are only two such centres in Romania, one housing children from half of the country and the other from the other half. In practice, this means that children are accommodated far from home, making it very difficult for them to maintain contact with their families, especially since many of them come from economically disadvantaged families who cannot afford the costs of travelling halfway across the country.

Also, it seems that these centres neglect children suffering from mental health problems. These children have little to no access to psychiatric services or even psychological consultation.

E. FOLLOW-UP VISITS

In order to evaluate the impact of monitoring visits, APADOR-CH conducted six follow-up visits. Through these visits researchers sought to establish whether any recommendations made during the previous visit had been followed through and if any improvements have been made regarding detention conditions. Researchers carried out follow-up monitoring visits at the institutions, indicated in Table 6.

Table 6: List of institutions, where follow-up visits were conducted by APADOR-CH (2014)

		Date of visit
1	Tichilești prison	23 June 2014 ¹
2	Târgu Mureș detention centre	2 July 2014 ²
3	Bacău juvenile prison	16 July 2014 ³
4	Târgu Ocna education centre	17 July 2014 ⁴
5	Craiova detention centre	28 July 2014 ⁵
6	Police arrest No. 12 from Bucharest	12 August 2014 ⁶

Source: APADOR-CH

Researchers sought to cover all of the types of criminal justice detention facilities in order to assess the impact of new legislation on the execution of judgements and the new Criminal Code and Criminal Procedure Code.

- 1 For more information, see: APADOR-CH (2014), *Report on the follow-up visit to the Tichilești prison*, available on: <http://www.apador.org/raport-asupra-vizitei-de-verificare-a-evolutiei-situatiei-din-centrul-de-detentie-tichilesti/>.
- 2 For more information, see: APADOR-CH (2014), *Report on the follow-up visit to the Târgu Mureș detention centre*, available on: <http://www.apador.org/raport-asupra-vizitei-de-verificare-a-evolutiei-situatiei-din-centrul-de-detentie-tichilesti/> <http://www.apador.org/raport-asupra-vizitei-de-verificare-a-evolutiei-situatiei-din-centrul-de-detentie-targu-mures/>.
- 3 For more information, see: APADOR-CH (2014), *Report on the follow-up visit to the Bacău juvenile prison*, available on: <http://www.apador.org/raport-asupra-vizitei-de-verificare-a-evolutiei-situatiei-din-penitenciarul-bacau/>.
- 4 For more information, see: APADOR-CH (2014), *Report on the follow-up visit to the Târgu Ocna education centre*, available on: <http://www.apador.org/raport-asupra-vizitei-de-verificare-a-evolutiei-situatiei-din-centrul-educativ-targu-ocna/>.
- 5 For more information, see: APADOR-CH (2014), *Report on the follow-up visit to the Craiova detention centre*, available on: <http://www.apador.org/raport-asupra-vizitei-de-verificare-a-evolutiei-situatiei-din-centrul-de-detentie-craiova/>.
- 6 For more information, see: APADOR-CH (2014), *Report on the follow-up visit to the Bucharest Police lock-up No. 12*, available on: <http://www.apador.org/raport-asupra-vizitei-de-verificare-a-evolutiei-situatiei-din-centrul-de-retinere-si-arestare-preventiva-nr-12/>.

1. Tichilești prison

Since the last visit, the institution was transformed into a detention centre for juvenile offenders in accordance with new legislation Law No. 254/2013 on the execution of sentences and measures involving deprivation of liberty. The management of the institution said that the new law and the entry into force of the new Criminal Code and Criminal Procedure Code led to a large transit of inmates to the centre. Even though there might still be prisoners waiting to be transferred to other prisons, the management of the institution expects that the situation will soon stabilise.

At the time of the visit, the centre housed 358 children and young adults (in comparison with the previous year when it hosted 289) under closed and open regime and pre-trial detention.

Of the 358 prisoners, 92 were children, 198 youths and 68 adults. The detention regime of the detained children is distributed as follows: 17 in pre-trial detention, 10 are not included in any detention regime, 36 under open regime, 28 under closed regime and one in open regime on a provisional basis. The centre also houses inmates between 26 and 29, who committed an offence when they were children and remained to serve the sentence in a detention centre.

The major issues raised in the report after the first visit remained, with few exceptions. In addition the following issues emerged:

Compared with the previous visit, the centre now had a permanent doctor, plus five assistants who ensure permanence of medical care. Another persistent issue at the centre is the dermatological condition of most children and young people. The management of the institution says that it established the rule of a general room clean one day a month. Bed linen is also changed weekly. In addition, inmates were taught hygiene rules and encouraged to agree to leave linen to the laundry unit to be disinfected. At the time of the visit, all rooms had beds with clean white sheets.

During the last visit, the researchers reported that the room doors were not open at all times during the day. This remained unchanged. The management of the institution insisted that doors are closed to protect the detainees' property and prevent other prisoners from stealing when nobody is in the area.

The law prohibits the sale of cigarettes to children; nevertheless, most underage prisoners smoke, which is a constant source of traffic and tension between inmates. Young prisoners are allowed to buy cigarettes from the kiosk centre and they trade them with other children for large sums, clothes, food or services. The management recognises that it cannot stop this scourge. Some children give their shoes for cigarettes.

As in the previous visit, the yards used for stay in the open for all regimes were still the same small cages without equipment. The management of the institution says that there is a plan to expand and modernise them, but did not know the specific start date.

2. Târgu Mureș detention centre

The overcrowding situation has improved. The centre now holds 162 inmates, about a third of the number of inmates on the previous visit. Most young people were transferred to Bistrița, hence, on the current visit only 76 young people remained (as opposed to 312).

The number of adults in transit also decreased significantly, from 91 to 12. The number of children has also declined from 58 to 47. A total of 162 persons were accommodated (858 square metres), which amounted to a little more than five square metres of personal space per

detainee. In conclusion, the detention centre Târgu Mureş is not overcrowded. In accordance to the detention regime, the inmates are presented as follows:

- Minors: 23 – open regime, 11 – closed regime, 11 – pre-trial detention;
- Young adults (18-21 years old): 49 open regime, 25 – closed regime, two – pre-trial detention;
- Adults: 18 – open regime, 11 – closed regime, and 12 in transit.

The management of the institution said that they expected the flow of inmates to stabilise in a few months somewhere below 250 prisoners. Thus, the management planned to furnish a dining room and the third row of bunk beds will be taken down.

One of the recommendations made during the previous visit was the need for specialised personnel, especially in medical and social services and education. As a result of the substantial reduction in the number of prisoners, the prison now had a sufficient number of staff working with the detainees if the plan for the personnel remains about the same.

3. Bacău juvenile prison

Following the legislation amendments, the institution has a hybrid status now. It has been transformed from a prison for children and juveniles into a juvenile prison, detaining young people aged 18 to 21. The other three prisons for children and juveniles were transformed into detention centres.

The management of the institution said that the new prison profile is temporary, given that the inmate numbers will be known only after the evaluation process for more favourable law enforcement. In autumn, it is expected that young inmates will be transferred to other prisons when the construction of the new wing of the building begins, replacing the current sections one and two. Occupancy is currently high relative to the space; the number of inmates released in recent months is extremely small - seven people.

At the time of the visit, Bacău prison accommodated 758 inmates compared to 862 during the previous visit.

The occupancy rate in four of the six sections is on average 125%; every person deprived of liberty has approximately three square metres of space, compared to the norm of four square metres as recommended by CPT. Moreover, the management of the institution recognises that the highest overcrowding was registered in room E6.5, amounting to 45 square metres, which ideally should be occupied by 11 persons, but instead had 21 beds for 20 women.

Prison staff has remained the same: 210 officers and safety agents (out of 220 staff in the establishment); 12 officers and agents in social and educational department (out of 22 staff positions); two doctors (out of five positions available) and seven nurses (out of 12 available positions).

Many of the problematic issues raised in the first report remained, with some improvements:

The secondary school has remained following the transformation into a juvenile prison. In the school year 2014 that just ended, 76 youths were enrolled, of which 41 have passed the year and the rest have been transferred. Thirty-two of them were enrolled in the Second Chance programme, 12 were enrolled in the fifth grade, 15 in sixth grade and eight in seventh grade and eight in eighth grade. Seventeen youths attended high school at a distance at a high school in Bacău: a youth took the baccalaureate and another is a student.

The management of the institution said that since the last visit from APADOR-CH, they have

improved the appearance of the classrooms through sponsorship, consisting of construction materials.

The prison concluded an agreement with the newspaper “Deșteptarea din Bacău” to receive the daily newspaper so that detainees can inform themselves about events outside the facility.

The prison now collaborates with the Foundation Episcop Melchisedec a Arhiepiscopiei Romanului și Bacăului, so that church priests get to know the detainees in prison and help them integrate in the community upon release. The agreement had entered into force and the first cases were undertaken by the foundation in August.

The management of the institution maintains that the prison has only one isolation room and that the others were turned into warehouses. According to the director, more are needed because in the last few days prior to the visit, there had been several recalcitrant prisoners from Tichilești, who were difficult to work with (including two fugitives from Tichilești).

According to the director, one of them tried to attack an agent with a shard of glass. According to the sharing room table, however, that prison has four isolation rooms in section one and one isolation chamber in women’s sector, section four. At the time of the visit, none were occupied.

The management of the institution stated that there have been repeated attempts to improve hygiene but bugs still persist, mainly originating from the luggage of transferred prisoners. In addition, the old mattresses reported in the previous visit have a high degree of use. In the rooms, relatively clean at the time of the visit by APADOR-CH researchers, there were no prisoners with dermatological problems.

The unit doctor admitted that skin diseases (allergic dermatitis) prevailed among the main medical problems in the facility, followed by mental health illnesses, chronic hepatitis and cirrhosis. The doctor said that due to available financial resources during the first part of the year, he was able to conduct 333 tests for hepatitis C and eight cases were diagnosed.

As for overcrowding, the management is confident that the planned reconstruction during the next year will improve the detention conditions. Starting this autumn, construction will begin on a modern building with Norwegian funding in place of sections one and two, the most damaged unit. The prison will have the most modern station in the country. During construction, the inmates from sections one and two will be moved to other prisons in the country. Overcrowding remains a serious problem in the women’s sector.

4. Târgu Ocna education centre

At the time of the visit, the centre accommodated 59 inmates (14 inmates less compared to the previous visit), 13 young people and 46 children, all males. Capacity for effective capacity of detention is 395.7 square meters, thus abiding to international standards.

Due to recent changes to the criminal and criminal executive law, the number of detainees at the centre has decreased. Many of those released took advantage of the more favourable law enforcement. Another change is that the centre now accommodates youth (18-21 years), which, according to the management of the institution, introduces several complications.

Another change introduced by new legislation is that the centre now has a supervisory judge on the deprivation of liberty and that children can now participate in committee meetings when their cases are being reviewed and can express their opinions. Also, the new regulations replace the isolation penalty with the separation from the collective measure (meaning

the child is accommodated alone in a separate room), which may be imposed for a maximum period of four hours per day, but for no more than five consecutive days.

At the time of the visit, the education and psychosocial support department employed 34 people (out of 41 listed positions); the safety, record and the children's rights sector employed 31 people (out of 34 positions); and the medical sector employed five people (of seven positions).

The centre still does not employ a doctor, reported during the previous visit. The management of the institution explained that efforts were made to identify a physician but without success. At the time of the visit, there was an agreement with a doctor to come to the centre twice a week and for emergencies. The centre also lacks psychiatrist services.

During the previous visit, a high prevalence of skin diseases was reported among children. The situation improved by changing medical treatment and through increased hygiene measures.

In terms of accommodation, the conditions remain good. All rooms visited by APADOR-CH researchers have large windows opening out towards the corridor, which is an invasion of privacy, with children and young people being subjected to continuous visual supervision. APADOR-CH recommends purchasing blinds (or any other device/ material) to cover the windows and thus, ensure a minimum of privacy.

During the previous visit, several children claimed to have been beaten by a guard. As a result, an official investigation was initiated. However, during the investigation all of the children retracted their declarations and during the follow-up visit they refused to talk about abuse from the guards or claimed no such abuse took place. The investigation concluded that no abuse took place, but the guard suspected of hitting the children was moved to a post, which did not require any direct contact with children.

5. Craiova detention centre

At the time of the follow-up visit, 282 children and young adults were in the detention centre. All the girls, women and pre-trial detention inmates were in quarantine. The detention regimes are only open and closed. The centre's capacity remained the same at 504 places according four square metres standard per person.

The institution management noted that the institution's title remained "Prison for juvenile offenders" because the government still need to issue a decision to formalise the new title. Nevertheless, the activities inside corresponded to a detention centre. The staff remained the same, both in terms of numbers and training.

APADOR-CH believes that personnel engaged in socio-educational activities with the inmates should have access to on-going appropriate training to enhance service quality.

Some positive aspects included the repainting of the rooms, electrical installations repair, and socket and panic button replacement. Seventy new mattresses were purchased and placed in the juveniles' rooms and bidets were installed in the girls' bathrooms. The director claims that 95% of rooms have visual and audible alarms and soon all will be equipped. The rooms visited by researchers appeared clean, although some of the detainees complained about not having cleaning materials, despite being required to maintain cleanliness.

Also, the kitchen was equipped with a blackboard with the menu of the day for each regime. Prisoners were given apple dessert on the recommendation of APADOR-CH, but for a short period after the monitoring visit. APADOR-CH appreciates the efforts and recommends that they continue, especially as the season allows for cheap fruit purchases. The management of

the institution argues that bureaucratic management makes it very complicated to buy melons, for example, because they are sold mostly without a receipt.

A negative aspect concerns the workshops, organised in the centre; the management stated that it took steps to use the three workshops for pastry-making, wrought iron works and printing-flexography, organised in 2011 with Austrian funding, and hopes to employ instructors as soon as possible. The workshops are still unused, except for the bakery, which also prepares donuts for prisoners. Unfortunately, the management stated that producing various goods in the shops could not become a money-making venture. At most, the shops could produce certain goods for the prison system and juvenile justice system, like envelopes, binders or toilet paper.

6. Police arrest No. 12

During the follow-up visit, there were 12 boys and three juveniles detained at Police arrest No. 12 in Bucharest, which is the maximum capacity. Since the last visit, one bed has been removed from each room, allowing for more space per detainee.

Nevertheless, children detained had no access to any educational or socio-cultural activities. They were only allowed to walk in a yard for one to two hours a day. The yard was still in a bad condition; the only improvement being that it was now freshly painted.

There was still no funding for envelopes and stamps for detainees. Also, there is still no room where the child could talk to their lawyer privately. There is a room but with no window/glass door for visual supervision, so a police officer has to be present in the room during the meeting.

One improvement is that children are no longer handcuffed when escorted out of the police arrest.

Detention conditions have otherwise not improved since the last visit.

7. Conclusions

The follow-up visits indicate that detention facilities have partially responded to the monitoring visits. As a result of the visits and recommendations, detention facilities made minor changes but the more persistent problems remained.

In general, it seems that detention facilities introduced changes, which are less costly and easier to implement. Also, detention facilities tend to react to allegations in reports. For example, in Targu Ocna, as a result of the report, which highlighted accusations of abuse from the guards, an official investigation was opened. However, the investigation was plagued by shortcomings and yielded no results, apart from the guard suspected of violence being moved to a post, which does not require direct contact with children but no penalties were imposed.

In most cases, the problems that persisted are structural problems, which require consistent efforts and financial resources. For example, the lack of personnel, particularly medical personnel, persisted in many detention facilities.

F. RESIDENTIAL INSTITUTIONS

This chapter presents the most pressing problems identified based on the observations of the CLR monitoring experts during unannounced visits to residential institutions. Throughout this chapter, the problems are presented in a concise manner, with the indication that more detailed individual reports will be available on the CLR website (www.crj.ro). CLR teams of monitors have conducted a number of 40 ad-hoc visits and 20 follow-up monitoring visits.

1. Denial of access to justice

During monitoring visits, the CLR researchers established the following issues:

- **There are no procedures to record and settle complaints;**
- To justify this situation, the representatives of the institutions often argue, in contradiction to CLR findings, that there are no complaints from admitted persons;
- Almost no institution keeps a registry for recording complaints, not even formally; in most cases, **the information about beneficiaries' rights, addresses and contacts of public institutions or non-governmental organisations is not displayed;**
- The admitted persons do not receive copies of national and international regulations and are not informed about them;
- Law No. 272/2004 states that the circumstances for special protection measures taken by the Child Protection Commission or the court must be verified quarterly by the General Directorate for Social Assistance and Child Protection. In practice, the review of the circumstances is carried (in the instances when it is actually performed) only once a year. There is no unitary procedure for reassessing admission and no guarantee for a frequent and transparent reassessment;
- During some visits,¹ the children's files were found to contain court decisions for placement, but the decision did not mention the actual placement centre where the child should be sent, meaning that **the transfer between different centres within the county can be done even when the child opposes the measure;** both aspects mentioned here show to what extent children's rights can be affected by the practice of designating the officials of centres/ GDSACP as the children's legal representatives.
- At the Centre for Recovery of Neuropsychiatric Young People in Babeni, only one young man went to an community school, although, as the centre's personnel admitted, there

¹ For example, the Psychiatric Hospital in Voila.

are more beneficiaries who could attend community schools, but, due to social and family problems, they do not have access to this system (this would require support measures, including measures to catch up with the curriculum in the community schools). Young people are aware of the social stigma attached to going to a special school and that going to a special school reduces their future opportunities.¹ There is no way to regularly review placement in such a centre, especially because placement is justified by school orientation, and, as the young people stated - "once in a special school, there is no way back to an ordinary school".

- There are cases (e.g. School Centre for Inclusive Education Peris) in which the beneficiaries' documents regarding the reasons for placement, the authority that made the decision, the day and hour of admission, transfer and discharge, the physical and mental problems etc., are not kept at the centre, but at GDSACP headquarters, and this is against United Nations Rules for the Protection of Juveniles Deprived of their Liberty (Rule 21, Havana Rules);
- CLR representatives have found that there are situations in which children are brought to the Sanatorium for children within the Psychiatric Hospital in Voila because they are not admitted to community schools; a very special case (E. I. N, aged 7)² was identified in this Sanatorium and CLR requested that the management of the hospital to take all legal steps related to the authorities of the Ministry of Health to find a solution to this case.

The laws, mentioned in legal analysis in on the rights of persons living in residential institutions, state that such persons' rights and interests are also protected by the "legal representative" against acts and deeds of the representatives of the institutions they live in. During monitoring visits, CLR observed a practice in residential centres for people with mental disabilities, which violates the above-mentioned provisions, as well as those of the relevant international treaties to which Romania is a party: namely designating the manager of the General Directorate for Social Assistance and Child Protection³, a social worker within the institution⁴ or the institution of social assistance⁵ as "legal representative" of the institutionalised person.

Such a practice runs contrary to the national and international legal framework for the following reasons:

- It has no legal foundation;
- It constitutes a conflict of interests, understanding that the main obligation of the "legal representative" is to care for the interests of the represented person (i.e. the child's rights laid down in Law No. 272/2004 must be respected also by GDSACC and its subordinate centres);

1 At Babeni, a young man declared that he was placed in CRYPND against his will from a placement centre. He stood before the representatives of GDSACP and argued that he did not want to be in a centre for young people with mental disabilities, and during the hearings he was alone with the manager of the centre who, as he states, "is the one acting as a representative for all children in the centre". He argued that the reason for this transfer was a correction measure following a dispute with a member of the personnel from the centre where the young man was transferred.

2 E. I. N. was admitted to the sanatorium because she was no longer allowed to attend the community school in Bordenii Mari, near Campina. The patient told CLR that she was placed in the sanatorium after she had been hit by the teacher - "the teacher used to hit me." The teacher refused to accept her in the school and asked her parents "to take her where her sister is." E. I. N. has an older sister (aged 9) with a mental disability, who is a patient at the sanatorium. Both sisters currently attend the hospital school and are in the second grade. As the hospital representatives admitted, E. I. N. has no mental disability, but is a victim of the fact that she is no longer allowed to attend a community school. Researchers noticed that E. I. N.'s intellect seemed to be above average (she was very communicative, her discourse was above her age of 7 years and she was trying to protect her older sister suffering from a mental disability). This was also noticed by hospital employees who assisted in the conversation with E. I. N. However, E. I. N. was a patient there, even though she had no mental disability or disorder. The girl confided that she did not want to be there and she would love to go back to school in the village.

3 For example, the Neuropsychiatric Recovery and Rehabilitation Centre in Cotesti.

4 For example, the Recovery and Rehabilitation Centre for Persons with Handicap in Pastraveni.

5 For example, the School Centre in Peris.

- By assuming the status of a "legal representative" of the persons living in such centres, GDSACP also assumes the role of a protector of the rights and interests of such persons against the acts and deeds of its subordinate centres;

A concrete example of special child protection measures is the specialised supervision measure (Article 67(2)): "Upon consent from the parents or the legal representative" (which, in the cases mentioned above is GDSACP, an institution subordinated to the county council/ local councils of the districts of Bucharest), "the specialised supervision measure is taken by the Child Protection Commission" (an institution also subordinated to the county council/ local councils of the districts of Bucharest). Another similar example can be found in the provisions of Article 68: "(1) The circumstances that lead to imposing special protection measures by the Child Protection Commission or by the court must be verified quarterly by GDSACP. (2) If circumstances provided for in paragraph (1) have changed, GDSACP has the obligation to notify immediately the Child Protection Commission or the court, as the case may be, in order to change or end the measure, as necessary.

- It deviates from the provisions of Law No. 448/2006; an example is Article 25 (1) and (6): (1) Persons with disabilities are entitled to protection against negligence and abuse, irrespective of where they are. (6) The parent, the legal representative, the guardian, as well as the non-governmental organisation, where the person with disabilities is a member, can assist them before competent courts;
- It also violates Law No. 487/2002; for example, Article 29 states that the psychiatrist can establish treatment without the patient's consent if the patient is a minor or is under interdiction, in which case the doctor must request and obtain the legal representative's consent.

Consequences generated by such a practice are exemplified in the case of the child A. B., aged 13, now living in the Family-type House under the GDSACP Maramures. Due to a mental disability, the child A. B., who behaved violently, but not towards others, has changed foster care families four times. CLR representatives have considered the possibility that the child's mental health problems are the reason behind the "transfer" from one foster carer to another, and the lack of specialised services, in this case, may have contributed to the aggravation of the mental health problem.

The practice of moving children from one foster carer to another a common practice within the system and it raises the question of how ready a child with disabilities is to be heard by a judge in order to change the placement measure. According to Law No. 272/2002, hearing a child is mandatory after the age of ten. In practice, sometimes judges do not hear the child on the grounds that they hold a certificate of disability. Such children are more vulnerable in such circumstances in a closed system. Such situations place the child in an even more disadvantageous situation due to the practice of designating the manager of the centre/GDSACC as the legal representative: if a child is abused by their family, GDSACC takes them out of the family; if a child is abused within the centre/ house, the manager of the centre, their legal representative, should file a complaint against himself, on the child's behalf.

2. Torture, inhuman and degrading treatment

At the Home for Elderly and Adolescents in Aldeni, Buzau County (CVDA - Aldeni), during the first visit on 21 November 2013, serious infringements of patients' rights were found. During the visit on 14 February 2014, CLR researchers once again found serious infringements of the rights of patients:

- Lack of hygiene, persistent smell of urine, number of patients exceeding the real capacity (number of beds) and legal capacity (metres/person) of the visited building; beds without

pillows or mattresses; all persons had ecchymoses, wounds or swollen limbs due to having been tied with rope;

- There were only three functional toilets for about 60 persons and they were used by both men and women;
- In a locked room, three beds accommodated six persons under deep chemical sedation (by Order of the Minister of Health No. 372/2006 on Implementing Rules for the Law of Mental Health No. 487/2002, Article 21, only "physical" restraint is allowed); their limbs (both legs and hands) were tied with rope and presented serious injuries;
- In another locked room, which the personnel insistently claimed was empty, there was a person completely covered by a blanket, left without supervision, with strong tremor;
- All persons, who spoke to CLR researchers, mentioned that the medicines received post-admission did them harm and the researchers' findings agreed with the patients' statements; their situation had visibly worsened in the three months since the first visit, without exception. All persons asked desperately for help to be brought back to Bucharest: "they are going to kill us all if we stay here";
- All patients' heads were shaved "in order to avoid a head lice epidemic";
- All patients were very lightly and inadequately dressed, with ripped clothes (trousers were tied with rope because they were too large); due to lack of cold-weather clothes, they were not allowed outside;
- All patients said the food was "gross";
- They do not have access to specialist doctors;
- Any form of external communication is removed;
- Other infringed rights: forced abortion, infringement of privacy, infringement of dignity (the personnel are helped by workers or young beneficiaries (men) in order to undress the girls, to wash them using force, to tie them).

Taking into account the inhuman and degrading treatment applied to such institutionalised persons and considering the great number of deaths in recent years, there could be a direct causal link between the treatment and the deaths. Although District City Halls in Bucharest pay RON 2,200-3,480/ month/ person (EUR 495 – 783/ month/ person) for the services provided by this Home, it has been found that the beneficiaries' rights are seriously infringed and their life is in danger. Considering the high number of deaths, six young people in less than three months (as compared with, for example, the Centre for Recovery and Social Reintegration, Canaan Sercaia, where patients have more serious disabilities: nine deaths in the last five years), CLR strongly calls for a denunciation of the above-mentioned acts and legal measures to protect the life and physical wellbeing of detainees.

At the Centre for Assistance to the Child with Special Education Needs in Galati, one of the beneficiaries (E., aged 12) has complained that one of the trainers sometimes pulls her hair as punishment (and she does the same with the other girls). At the Centre for the Protection of the Child with Disabilities in Turnu Rosu, for example, because there are two types of patients living together (some of normal intellectual development, but socially disadvantaged, and others with mental disabilities), some abuse the others. Not monitored by the personnel, at the Complex for Social Services in Campulung Muscel, a girl was thrown out the window by a colleague suffering from schizophrenia and suffered serious injuries and mental trauma.

Regarding the restraint of persons placed/admitted, there were situations in which this measure was excessively applied and the means used for immobilisation were inadequate and caused psychical injuries to the patients. Two such cases were found at the Placement Centre

in Tancabesti.¹ In the Placement Centre in Tancabesti, as well as in other institutions (e.g. the Placement Centre No. 2 in Slobozia, the Family-Type House in Bora, the Centre for Recovery of Young People with Neuropsychiatric Disorders in Babeni), illegal chemical restraint is common practice, as shown above. The absence of procedures and records for restraints is common in almost all centres visited. Some of these irregularities have also been found by the National Agency for Payments and Social Inspection (NAPSI) and mentioned in its report in October 2013. CLR had access to the report on the basis of a request submitted according to Law 544/2001 on free access to information of public interest; the document is published on CLR website at http://www.crj.ro/*articleID_1284-articles.

3. Failure to investigate deaths

Although they occur in institutions involving deprivation of freedom, there are no clear records regarding these deaths, and people are buried without a medical certificate and without performing autopsy or other further investigations regarding the causes of death (e.g. the Home for Elderly and Adolescents with Disabilities in Aldeni, NRRC Brancovenesti, the Family-Type Houses in Bora, CRYPND Babeni). CLR strongly calls for changing this practice as soon as possible, so that an autopsy and medical certificates are mandatory in all cases of death, as this obligation is provided for, for instance, in Law No. 254/2013 on execution of sentences and measures involving deprivation (Article 52(2)) but, unfortunately, is not stipulated in Order No. 559/2008 of the National Authority for Persons with Handicap, on the approval of specific quality standards for residential centres, day centres and protected homes for adults with handicaps (Standard 12.12).

At CRYPND Babeni, for example, if the death occurred within the centre, the family doctor and the head of the centre are called to "record the death, documents are prepared and then the burial takes place" (in case of a death in the hospital, "the case manager and the head of the centre go to the hospital, documents are prepared, the burial takes place, the family participates. Not all deaths occurring in the centre are considered suspicious, so that no intervention by police or prosecutors and no autopsy are requested").

4. Inadequate living conditions and social and medical rehabilitation

In many cases, accommodation conditions are inadequate, the spaces used for this purpose are unaired, unheated and receive little natural and artificial light – in some situations they constitute inhuman and degrading treatment themselves.

At Foster Care No. 2 in Slobozia, the requirements for separation of adults (over 18) and children, as well as boys and girls, are ignored. The centre operates in an old building which is quite untidy and had not been sanitised for a long time. The upstairs bathroom was not adjusted for persons with special needs, it had a slightly pestilential smell and received poor natural and artificial light. Facilities were not sanitised – dirty walls, damp, old sanitary appliances, no soap, no toilet paper or holders for toilet paper, no towels etc.

¹ In one of the boys' bedrooms, there was a young man on a bed (D.I.), whose hands were tied behind his back with strips of cloth. His legs were also tied together (with strips of cloth). His head, shoulders and body were covered with a piece of blanket. He was NOT tied to the bed. The personnel argued that the boy suffered from autism and if he were untied and uncovered, he would harm himself. He had scars and traces of healed wounds that probably came from being tied and the materials used for tying him. Another young man with serious mental health problems was physically restrained in four points like a "boat" and his head was covered with a blanket.

In many residential institutions, persons living there complain about the quantity and quality of food. NAPSI Report of October 2012 also mentions similar findings, *inter alia*, at NRRC Balaceanca¹.

Another example is the Centre for Integration through Occupational Therapy Tantava where food is insufficient and lacks variety. The persons living there rarely receive meat, milk, butter or eggs. They eat mainly tinned vegetables and cooked vegetables. On the morning of the visit, they had eggplant dip and tea and cooked green beans for lunch. The manager of the centre confirmed that their food lacked variety and, moreover, in recent days the catering company had not provided food because they had not been paid, so employees had to feed the beneficiaries using the centre's own resources (eggplant dip, tea etc.).

With rare exceptions,² the situation is almost the same in all other visited centres: lack of almost any organised form/method for recovery and socialisation. T.V., cartoons and, rarely, Lego or puzzle games are the only ways of spending time, even in house-like centres arranged according to standards. Besides living in centres and, therefore, having their freedom of movement restricted, children and young people have only partial access to school and to correspondence; they are not visited by parents etc. Even the above-mentioned NAPSI Report states that almost 65% of children and young people "do not participate or participate only occasionally in recovery programmes. The programmes are not provided due to lack of personnel, adequate space, materials etc. or they are not sufficient or adapted to the beneficiaries' needs or the beneficiaries are not involved or stimulated to participate.

CLR's report on the visit to RSRC Ramnicu Valcea emphasises that: "Children have no information when they will leave the centre, taking into consideration that the services are oriented towards provision of accommodation, food and healthcare". CLR reiterates that recovery and rehabilitation are the main reason why they are locked up in these institutions.

CLR researchers (e.g. when visiting the "Sf. Andrei" Complex for Children with Disabilities in Bucharest) found that children and young people living there needed to be provided with implementation of proper and active assessment and therapy procedures in order to ensure full care services, according to international regulations, such as: psychotherapy, specialised for each disorder – schizophrenia, autism, Down syndrome etc. – with clearly defined objectives (e.g. improvement of communication, training and development of independent skills, socialisation, improvement of affective behavior, higher self-esteem), in conjunction with individualised schemes for intervention and periodic assessments. For instance, at the Psychiatric Sanatorium for children within the Psychiatric Hospital in Voila, there were young people with autism spectrum disorders, who were not provided the necessary specialised services (13 cases in 2013).

Regarding contact with the outside world, there is usually no limitation for visits. Nevertheless, several problematic issues were registered. At CRYPND Babeni, young patients can meet their visitors only in a specially arranged room, "the visiting room", which is small, has only a few pieces of furniture and was kept locked on grounds that "we had problems, they are ag-

1 According to the NAPSI Report: "At NRRC Balaceanca, the team of social inspectors found that most beneficiaries were underweight as mentioned in the reassessment records. From discussions with beneficiaries, they noted the lack of varied food and the poor quality of the menu. For clarification, discussions were held with the employees of the centre, relevant documents were analysed (notification was sent to the manager of GDSACP, Ilfov, the report of findings etc.) and the content of the lunch was verified during the entire inspection mission. All this highlighted that the menu provided by the catering company did not meet NRRC's requirements, the food was not of proper quality, i.e. although the first course was supposed to contain meat, it did not. It was also found that the daily allowance for food is not established by county council decision, although it meets the legal provisions in force, amounting to RON 8.3/day. The representatives of GDSACP in Ilfov argued that the sum was increased with RON 2/day/beneficiary without documented evidence.

2 Such as the Residential Service for the Recovery of Children with Disabilities (RSRC) in Ramnicu Valcea.

gressive". The manager of the centre mentioned that he forbade visits to the young people's rooms because "arguments might occur".

Generally speaking, children and young people who ask are granted "permission" to go into town and, as the case may be, to visit their families. CLR call for this right to be ensured with as few restrictions as possible. The findings of CLR researchers have shown that the rules regarding permission for admitted children and young people are unclear (see, for example, the report on the visit to SCIE Peris). Therefore, CLR demand that this aspect be regulated as soon as possible, as clearly as possible, and with the least limitation. CLR also calls for urgent involvement of GDSACP in Ilfov in clarifying the situation and finding the two children who left the Peris Centre with permission but have not returned.

5. Health care

The main problem related to health care was the lack of oral medical care. This problem is related to insufficient medical personnel, but also to the discrimination that persons with disabilities who live in institutions face.

At Center of placement of children with disabilities "Domnita Balasa" in Bucharest, although three of five children to whom CLR researchers spoke had dental problems, some serious, they did not have access to a dentist.

6. Personnel

CLR researchers observed that there is a personnel shortage and poor remuneration in the institutions visited. CLR considers that this situation is a cause for many other problems regarding the violation of the rights of persons with mental disabilities.

At School Centre for Inclusive Education in Peris, no fewer than 19 persons from the staff establishment plan are missing and the absence of two social workers, one administrator (this function has not been filled for two years), one psychologist, one doctor (they have none), four nurses and auxiliaries is most acutely felt; in the girls' house 20 girls live together with

12 little boys (most of them with enuresis). These 12 small children were accommodated in the space intended for girls so that the girls could take care of them from time to time.

7. European Structural Funds

From information available to CLR, a lot of funds have been invested, mainly coming from structural funds (within the Operational Regional Program 2007-2013, Priority Axis 3, Key Area of Intervention 3.2), for "the rehabilitation, modernisation, development and equipping of the infrastructure of social services" for persons with disabilities (including children). Such investments have been flagrantly in conflict with the principles regarding the provision of social services mainly within the community and the transfer from institutional to community services. This principle has been enshrined by the international treaties to which the European Union (EU) and Romania are party, by the specific strategies of EU and Romania and by the Romanian laws as follows.

In December 2010, Council Decision 2010/48/EC of 26 November 2009 the EU adhered to the UN Convention on the Rights of Persons with Disabilities, which was signed on behalf of the Community on March 30, 2007. This way, the EU undertook to promote, through all its relevant laws, programmes and funds, the rights of such persons, as defined by the Convention

(including Article 19¹). In November 2010, the European Commission adopted the European Strategy 2010-2020 for Persons with Disabilities: a Renewed Commitment to a Barrier-Free Europe. Romania, being a EU member state, must respect the following commitments that the Commission has undertaken and namely, to promote the transition from institutional to community-based care by: using Structural Funds and the Rural Development Fund to:

- support the development of community-based services and raising awareness of the situation of people with disabilities living in residential institutions, in particular children and elderly people;
- to achieve the transition from institutional to community-based care, including use of Structural Funds and the Rural Development Fund for training human resources and adapting social infrastructure, developing personal assistance funding schemes, promoting sound working conditions for professional carers and support for families and informal carers;
- to achieve full participation of people with disabilities in society (...) by providing community-based services, including access to personal assistance.

Commitments, such as those included in the Partnership proposed by the Government to the EU for 2014-2020², contain provisions, which are not in conformity with the above-mentioned strategy. For example, the "acceleration of transition from institutional to alternative care for children deprived of parental care"³, is not dedicated to the target group of children and young people with disabilities, who are institutionalised.

The Foster Care Centre/ the School Centre for Inclusive Education in Peris, Ilfov County (RON 3,499,987), the Centre for Integration through Occupational Therapy in Tantava, Giurgiu County (RON 3,491,373); a building of the Neuropsychiatric Recovery Centre for Adults in Movila was rehabilitated in 2012-2014 with EUR 800,000 from European funds.

1 "Living independently and being integrated in the community": Parties to the present Convention recognise the equal right of all persons with disabilities to live in the community, with choices equal to others, in order to have access to a range of support services and personal assistance to support living and inclusion in the community and to prevent isolation or segregation from the community.

2 Second draft, February 2014.

3 Chapter on Social inclusion and poverty, Thematic Objective No. 9 Promotion of social inclusion, fighting poverty and any form of discrimination.

3. KEY FINDINGS AND CONCLUSIONS

In total, in the 17 months of monitoring research from April 2013 to August 2014, APADOR-CH visited 34 criminal justice detention facilities, including 14 prisons, eight police lock-ups, three detention centres, one juvenile prison, two education centres and six follow-up visits. The CLR visited 40 social protection and mental health institutions for children with mental disabilities as following: 40 ad-hoc visits and 20 follow-up visits.

1. Criminal and juvenile justice system

The results of the monitoring visits show that the facilities fall short of applicable international standards or offer inappropriate detention conditions for children.

Prisons and police-lock-ups are the most ill equipped to detain children. These facilities are severely overcrowded, detention conditions are generally unsuitable and children usually have access to little to no educational activities. Children are often left to sit idle in their rooms for up to 23 hours a day. Monitoring visits revealed that police-lockups are even worse than prisons. Even a specialised police lock-up designed for detaining children was not much better than other detention facilities visited. This is why it is generally recommended that children should not be detained in prisons or police lock-ups.

Detention centres, which were formerly called juvenile prisons, offer somewhat better detention conditions but still present a series of problems and limitations in terms of opportunities for re-educating children detained there.

Some institutions visited were still overcrowded and provided improper detention conditions. Also, there were limited opportunities for children to participate in educational and socio-cultural activities.

The two education centres functioning in Romania both have decent detention conditions for the children, although there were a number of issues.

During monitoring visits the team came across allegations of physical abuse from the guards.

One general issue regarding education centres is their low number. There are only two such centres in Romania, one housing children from half of the country and the other from the other half. In practice, this means that children are mostly detained far from their home, which makes it very difficult for them to maintain contact with their families, especially since many

of them come from families with a low socioeconomic status who cannot afford the costs of travelling half way across the country.

The follow-up visits established that detention facilities only partially responded to monitoring visits. However, because of a series of structural problems and general lack of funding, detention facilities implemented only recommendations, which are less expensive and require fewer resources.

2. Social care system for children with disabilities

By ratifying the UN Convention on the Rights of the Child, in accordance with Article 37, Romania has undertaken "to see that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment." Romania also signed the Optional Protocol to the Convention against Torture on September 24, 2003 and ratified it on April 14, 2009. Now, when the second deadline for the establishment of the National Mechanism for the Prevention of Torture (NPM), set by the UN Committee against Torture, is around the corner, Romania must apply the Protocol in 2014, no later than August. In 2009, Romania was granted a three-year postponement for the establishment of the mechanism. In 2012, when the first deadline expired, Romania asked for and received a two-year extension. It is the only country in the world that asked to postpone the establishment of the mechanism twice.

In 2009, the CLR published a legislative proposal concerning the establishment of the NPM. In 2013, in the context of numerous abuses against institutionalised persons with disabilities, the bill was discussed and supplemented together with other non-governmental organisations and members of the Commission for Human Rights of the Senate. Nineteen senators and deputies proposed the legislative initiative in the Parliament. On December 18, 2013, the bill was silently adopted by the Chamber of Deputies. It will be debated within the Senate, which is the decision-maker in this case.

During public debates, organised for the establishment of NPM, one of the proposals was that the Ombudsman take over this role. The CLR considers that the Ombudsman would prove inadequate for such a mission because its members do not respect the standard of independence established by the OPCAT. The Ombudsman and the Ombudsman's deputies are appointed according to political criteria. In June 2014, the Romanian government passed an emergency ordinance that designates the Ombudsman as the National Preventive Mechanism.

Adequate allocation of European Union Structural funds

The CLR considers that European funds must be adequately allocated, which implies:

- Ceasing any allocation of current and future European funds for the "rehabilitation, modernisation and development" of institutions for persons with disabilities (adults and children);
- For the programming period 2014-2020, allocating European funds to Romania in the reference area, only for closing down 395 residential institutions and moving them to community-based care, only after the government has proven, genuinely and not only formally, on the basis of parameters determined as precisely as possible, the fulfillment of the following ex-ante conditions, general and thematic, established by the Regulations of the European Parliament and the Council, regarding the Structural and Investment European Funds (on the date this report was drawn up, the government had not yet published these regulations on the website of the relevant ministry, the Ministry of European Funds);

- Promotion of social inclusion and transfer from institution services to community-based services - ex-ante conditionality for funds from the European Regional Development Fund. The existence of administrative capacity for the implementation and application of the UN Convention on the Rights of Persons with Disabilities in the field of ESI Funds, according to Council Decision 2010/48/EC – general ex-ante conditionality;¹
- The European Structural Funds should promote transition from institutional to community-based care. The funds should not support any action that contributes to segregation or to social exclusion;²
- Community-based services should cover all forms of in-home, family-based, residential and other type of services which support the right of all persons to live in the community, with an equality of choices, and which seek to prevent isolation or segregation from the community.

1 Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006, OJ L 347, Annex XI Part I Point 9 and Annex XI Part II Point 3.

2 Regulation (EU) No 1304/2013 of the European Parliament and of the Council of 17 December 2013 on the European Social Fund and repealing Council Regulation (EC) No 1081/2006, OJ L 347, Preamble, § 19.

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