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Children under fifteen in the youth justice system.

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Summary

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The publication presents an analysis of the findings obtained within the framework of the research project "Children under fifteen in the youth justice system", the primary aim of which was to describe and evaluate the situation in the treatment of children under fifteen in the youth justice system. In particular, it monitored the fulfilment of the basic purpose and principles defined in the Youth Justice Act (YJA), the assessment of the current situation of children in terms of ensuring their procedural rights and their treatment during proceedings. Attention was also paid to the imposition and enforcement of measures in the context of criminological knowledge on effective forms of intervention. The findings identified within the secondary aim of the research aimed at the analysis of registered acts otherwise criminal of children under the age of 15, with particular attention to violent crime. The changes in its severity, have already been published in a separate publication (Hulmáková et. al., 2023). In the context of this publication, youth justice refers not only to proceedings before the youth court under Chapter III YJA, including the enforcement of imposed measures, but also the section of the criminal proceedings where an otherwise criminal act is investigated and the procedure of the prosecutor's office after the case has been closed in criminal proceedings pending the filing of a petition for the imposition of measures under Chapter III YJA.

The publication contains an analysis of the legislation, case law and important international documents that focus on the issues of ensuring the rights of criminally irresponsible children, as well as a comparison of the situation in the approach to these children in the context of selected European legislation and also in the context of important foreign findings on the effectiveness of various types of intervention. The purpose and basic principles of the YJA reflect the principles that are based on the requirements of important documents dealing with youth in the conflict with law. These are based on criminological knowledge on appropriate approaches to dealing with youth crime, such as the emphasis on reintegration, prevention of recidivism, principles of promoting restorative justice, the need for individual assessment of the child with regard to his/her specificities, prevention of stigmatisation, etc. However, previous findings from the application practice suggest that these have not always been met. At the same time, it should be noted that the justice system in cases of criminally irresponsible children, based primarily on the welfare model, faces similar criticism in terms of the requirements for ensuring the procedural rights of children, both in the Czech expert discussion and in important international documents and bodies, e.g. the UN Committee on the Rights of the Child or the European Court of Human Rights, as other legislation based on it. This is significantly reflected, for example, in the issues of securing legal aid or the application of diversions, as well as other rights or legal institutes. This was also reflected in the European Committee of Social Rights Decision of 20 October 2020 in Case No. 148/2017 – International Commission of Jurists (ICJ) v. Czech Republic, on the basis of which the YJA was amended with effect from 1 July 2024. Among other things, it introduces mandatory legal representation already in criminal proceedings for an otherwise criminal act committed by a child under fifteen and the possibility for the public prosecutor not to file a petition with youth court for the imposition of a measure under certain conditions. The strengthening of the elements of the justice model in proceedings, which is at the same time associated with the formalisation of proceedings in cases of criminally irresponsible children, is closely related to the

issue of the overall setting of the treatment of youth in conflict with the law. Related to this is the question of the minimum age of criminal responsibility (MACR). In European comparison, we are one of the countries with a relatively high MACR. However, looking more closely at the treatment of the child within the whole system, the position of these children is largely comparable to some countries that have a lower MACR. At the same time, there is no lower age limit for proceedings under Chapter III YJA in the Czech Republic.

The research findings are also based mainly on the analysis of statistical data, court files analyses and expert surveys among youth judges, public prosecutors specialising in proceedings with children under 15, probation officers specialising in youth and curators for children and youth (staff of Authority for Social and Legal Protection of Children – hereinafter referred to as OSPOD) and staff of educational facilities where protective education is provided (protective education facilities). A supplementary source of information was the public opinion survey conducted in 2021. Among the more significant limitations of the findings obtained, it is necessary to mention the problems in the changes in methodology during the period under our observation in the case of police statistics. In the case of length of proceedings, police statistics are primarily collected for a different purpose and can therefore only be taken as indicative. Also, police officers were not involved in the expert survey. For protective education facilities, youth correctional institutions were not included. It should also be pointed out that the return rate of the questionnaires was low for judges and staff of protective education facilities, this was probably affected by the situation caused by the covid-19 pandemic. The other findings, given that the analysis of the files covered the year 2018 and the expert surveys, except for the staff of protective education facilities in 2021, covered the year 2022, should not be affected to any significant extent by this influence.

The analysis of the statistical data covered the period from 2012 to 2022. According to the police statistics, it can be stated that in the case of otherwise criminal acts committed by children under 15 years of age, after a long-term trend of a decline in acts in the previous period, there was a stabilization in 2012. A more significant increase can be observed in 2019 and then in 2022. A similar trend can be observed according to the statistical data of the public prosecutors' offices for the number of children whose otherwise criminal acts were dealt with in criminal proceedings. Here, the increase has been occurring since 2016, more pronounced since 2018. However, in terms of conversion to the respective population in the given age category, the situation does not change much throughout the period under review. Demographic influences are also at work here. Of the total number of children whose otherwise criminal acts have been dealt with in criminal proceedings, children aged 13 and 14 are most often represented, i.e. the strongest birth cohorts in this age category in recent years. However, from the end of 2020 onwards, significant decriminalisation in the field of property offences must also be taken into account. Within the trends described above, the period 2020 and 2021 stands out, associated with a significant decrease in both otherwise criminal acts and children, their otherwise criminal acts being dealt with in criminal proceedings, even in relation to the respective population, which can be explained by the covid-19 pandemic. In terms of the structure of crime, it is still the case that property crime is the most common crime in this age group. However, over time, a decline in the proportion of property crime according to police classification can be observed. Theft is still the most frequent offence committed by children under 15, but there

is a clear downward trend, and on the contrary, there is a significant increase in damage to foreign property under Section 228(2) of the Criminal Code (CC) – so-called graffiti spraying. In recent years, this can be attributed in part to the aforementioned decriminalisation. An increase can also be noted in the proportion of sexual acts, where sexual abuse is most frequently committed. The proportion of these acts has mainly increased in the last four years. However, there has also been an increase in the category of other sexual acts otherwise criminal, which is mainly attributable to the production and other disposal of child pornography. Very serious forms of crime, such as murder, are rare. Rape is also not very common, although an increase in recent years has been noted (see Hulmáková et. al, 2023). Interesting is the increase in the proportion of obstruction the execution of an official decision and police residence order since 2018 relative to previous years. A similar trend as for the development of crime is observed in the number of petitions filed by the public prosecutor's office before the youth court.

According to court statistics, throughout the period under review, youth courts most frequently used the option of waiver of the imposition of a measure or the admonition with a warning. The more frequently imposed measures, albeit by a considerable margin, include educational obligations, supervision of a probation officer and therapeutic, psychological or other appropriate educational programme in the centre for educational care. Conversely, educational restrictions are very rarely used. The number of protective educations (which consist in the placement in protective educational facilities) imposed is also very low, although there has been an increase in their application since 2018 compared to a large part of the previous period. However, their share in the structure of measures remains unchanged. Protective treatments are imposed quite sporadically. The courts also do not impose more than one measure at the same time too often. In terms of the length of proceedings, in 2016–2022, most of the cases in criminal proceedings were completed within 3 months, and quite often the case was disposed between 3 and 6 months. The proportion of these cases ranged between 26% and 35%. The shortest period of time is for the entire period of case processing by the public prosecutor's office after the case has been closed in criminal proceedings pending the filing of a petition for the imposition of measures. More than 90% of cases were completed within one month. In the case of youth court proceedings, with a few exceptions, cases were resolved within 4 months. However, the proportion of cases, where youth court proceedings lasted 6 months or longer ranged between one fifth and one quarter. In the case of youth court proceedings, an increase in the average length of proceedings can then be observed from 2015 onwards compared to the beginning of the period under review. At the same time, it is clear that the length of all stages of the proceedings has been negatively affected by the covid-19 pandemic and related measures. However, with the exception of youth court proceedings, the situation did not improve even in 2022. The statistical data of the Probation and Mediation Service (PMS) then show that the involvement of probation officers in the area of an enforcement of the imposed measure in the second half of the period under review is lower. It is probably related to the decrease in the supervision of probation officer imposed. In the area of the child's pre-decisional report agenda, it is clear that the involvement of the PMS is by no means the rule. At the same time, since 2019, there has been a noticeable decrease in this agenda, which does not correspond, leaving aside the covid period, with the number of children in the youth justice system. The situation has not changed significantly, although there has been some increase in 2022, where the competence of the PMS in this area has

been explicitly defined in connection with the amendment of the YJA and the Probation and Mediation Service Act. Victim-offender mediation is carried out to a negligible extent throughout the period. In the case of family group conferences these are only very rare cases.

The file analysis covered files from 24 courts. The research sample consist of 256 children who were the subject of a Chapter III YJA proceeding. The sample consisted of 80% boys and 95% children of Czech nationality. The most frequent age groups were 13 and 14 years old (59%). The proportion of children under 10 years old was less than 10%. In 46% cases of the children, none of psychological, psychiatric or behavioural problems were observed. About 18% of the children had experience of previous educational measures under family law. Only 13% of the children had a history of involvement with the youth court. The acts committed by the children in our sample did not differ significantly from the overall pattern of otherwise criminal acts committed by children younger than 15 in the whole country in 2018. Property crime was the predominant act otherwise criminal, most commonly theft (20%), damage to property (19%) and disorderly conduct (11), with robbery (8%) and sexual abuse (6%) at some distance. None of the other otherwise criminal acts in the sample exceeded 5%. Also in our sample were the otherwise criminal acts of production and other disposal of child pornography (3%), which usually took place in an online environment using social networks. Here, but also for other otherwise criminal acts, doubts arose in the context of the existing case law as to whether an otherwise criminal act had been committed in terms of the fulfilment of the culpability, or in terms of the assessment of degree of social harmfulness. A similar proportion was involved in the illicit production and other disposal of narcotic drugs, psychotropic substances and poisons. Here where the typical act otherwise criminal was the offering of marijuana to peers. Cases of very serious forms of violent crime with more severe consequences were rare. In over two-thirds, children were dealt with for only one offence. In 56% of the cases, the child committed the act in cooperation with another person or persons. If property damage was caused, it ranged from CZK 5,000 to CZK 24,999 in more than half of the cases. In terms of the handling of the case by the youth court, in the vast majority of cases the measure was waived or imposed. Only in 10 cases was the petition dismissed. The most frequent measure applied by the courts was the waiver of the imposition of a measure (43 %), followed by an admonition with a warning. (28 %). Compared to the situation in the whole country, the courts used the waiver of the imposition of a measure slightly more often, and the admonition with a warning less often, and similarly, although with a smaller difference, the supervision of a probation officer and educational obligations. This may be partly related to the structure of otherwise criminal acts in our research sample. However, e.g., the availability of programs that can be imposed as educational obligations within specific judicial districts or the availability of programmes in in a centre for educational care may also play a part. As the number of psychological, psychiatric or educational problems increased, youth courts imposed more intensive measures such as supervision of a probation officer and protective education. Also, if children or others had previously been subject to any educational measures under family law, and if they had a history in youth court, courts were more likely to impose more intensive measures. In the case of theft or damage to property, the courts often refrained from punishment or imposed a admonition with a warning, whereas in the case of robbery they used the full range of measures more evenly. However, given the relatively very small numbers of such children, it was not possible to consider statistical relevance. In the case of waivers, the majority were

cases where the court no longer considered it necessary to impose a measure (92% of all waivers). The frequently used measures, albeit by a considerable margin, were therapeutic, psychological or other appropriate educational programme in the centre for educational care (9%), supervision by a probation officer (9%) and also educational obligations (7%). The most frequent were obligations to perform socially useful activities (something like community service) in their free time (in particular, one court), followed by obligations to participate in various types of therapeutic or social training programmes. For these types of measures, there were differences in their application by observed courts. It was also possible to note a case where, although an educational obligation was formally imposed pursuant to Section 15(1)(c) of the Code of Criminal Procedure, without reference to Section 93 YJA, its content was therapeutic, psychological or other appropriate educational programme in the centre for educational care. A certain problem can also be seen in two cases where the court imposed as an educational obligation under Section 93(1)(a) of the YJA the obligation to complete a specifically designated probation programme. This is despite the fact that probation programmes cannot be imposed on children under the age of 15. Protective education was imposed only in 7 cases. Most often it was in cases of violent acts otherwise criminal, especially robbery or a combination of robbery and theft. Most of these children had multiple psychological problems, 4 of them had already been repeatedly brought before the youth court. Protective treatment was imposed only once in outpatient form. The courts also did not make much use of the possibility of combining two or more types of measures. In terms of the background information available to the courts before deciding to impose a measure, in the vast majority of cases (80%) they had the report of the OSPOD, although the extent of information in these reports sometimes varied considerably. In 18% of cases, they had information from two or more of these sources (usually the OSPOD and the school) and in 2% they had only the report from the school or educational facilities. PMS reports were rarely present. Previous educational-psychological examinations, which, according to § 93 (1) of the YJA, should usually be available to the court, were available for only 13 children; only 9 courts in our sample had them. These were mainly rape cases.

In terms of enforcement of the imposed measure, at least 2 years after the final decision on its imposition, enforcement was still ongoing in 23% of the imposed measures. Problems with the serving of the imposed measure were noted in 42% of the cases of children who served the measure.

The research sample also included 24 children under 10 years of age. One third of them had no psychological, psychiatric or behavioural problems at the time of the offence. These children also had no serious learning or behavioural problems at school. Only one case involved a child with a history of youth court involvement. Half of the cases involved property crime, typically just petty theft or damage to property. The courts waived from imposing measures in 63% of the cases and in 7 cases imposed an admonition with a warning on the child. Only in two cases was a more intensive measure imposed, namely a programme in the centre for educational care and supervision of a probation officer. Only in the cases of two children younger than 10 years did the court have the results of a previous pedagogical-psychological examination pursuant to Article 93(1) of the YJA before making a decision.

In monitoring the investigation of an otherwise criminal act in criminal proceedings, we were sometimes limited in a number of questions by the absence of an investigation file within the court file. So here the sample consisted of only 230 children for these questions. An attorney (advocate) was present to interrogation of a child in criminal proceedings in only 3 cases. Thus, it is clear that this right is not practically realized at all within the application practice. This may be partly due to the fact that in approximately 13% of cases the legal guardian was notified on the day of the interrogation, but it was not possible to ascertain from the file whether this was before or after the procedure. In 75 % of the cases, he was informed before the act, but sometimes only a few minutes before the act took place. In 10 % of the cases, it was not possible to establish from the file whether he was informed at all. The legal guardian was present at the interview in only 30 % of cases. In the vast majority of cases, the police authorities arranged for the presence of OSPOD staff, or another person experienced in child-rearing, in accordance with the relevant Instruction of the President of the Police. However, in 15% of cases such a person was not present during the interrogation of the child. In these cases, the legal guardian was usually present. However, in the case of 8 children, it could not be traced from the file that a person other than the police authority took part in the interrogation. This concerned four judicial districts. As regards the conditions under which the interrogation took place, it may be noted that in almost 91% of cases it lasted no longer than 1.5 hours. In more than two thirds of the cases it was during the morning. In only two cases did such an interrogation take place during the night hours, contrary to the terms of the relevant instruction of the President of the Police. The custodial interrogation was rather sporadic. The detention of a child under the Police Act was also rather exceptional. The majority of the children (86%) confessed fully or partially to the otherwise criminal acts during the investigation. In proceedings before the youth court, where legal representation by an attorney is mandatory. The attorneys were always present at the hearing, with one exception where one of them was not there for the entire hearing. In the vast majority of cases, the child was present at the court hearing, with only less than 4% not attending. Interviewing the child was the rule, with less than 5% of children not being interviewed. In terms of ensuring the child's participatory rights to be heard, in only 11 cases could it not be traced that the child's opinion had been ascertained. Also, in the hearing before the youth court, the vast majority of children made full or partial confessions. Unlawful coercion of a child in criminal proceedings, which would have been mentioned by the child or other parties was recorded in only 3 cases. Ordinary appeals were used in only 3% of cases, and no extraordinary legal remedies were filed. In the vast majority of cases, the rules on the presence of persons in court ensuring the protection of the child from stigmatisation were also observed. Problems were found in cases of 7 children in our sample. This was mainly the practice of one court. This court joined the cases on the basis of separate petitions for the imposition of measures by the public prosecutor's office on children who had jointly committed an otherwise criminal act. It then heard them together. Only very rarely did the youth courts award the State the costs of a legal representation against the child or other persons within the meaning of Section 95(3) of the YJA.

The time elapsed between the commission of the otherwise criminal act and the entry into force of the final court decision was also examined. In more than half of the cases, the period ranged from more than six months to one year. In a fifth of cases, between one year and 18 months. Longer periods were not very frequent (7%). The average length from

the initiation of criminal proceedings to the final court decision becoming into force was 9 months, with the most frequent range being over 6 months to one year. The processing of the case by the public prosecutor's office after the case has been closed in the criminal proceedings until the filing of the petition with the youth court did not exceed one month in 70% of cases. Proceedings before the court from the filing of a petition for the imposition of a measure to the delivery (announcement) of the decision on the imposition of a measure lasted on average 3 months, with the most frequent occurring within a period of over one month to 3 months. The average time from the filing of the petition for the imposition of the measure to the legal force of the decision in the case was less than 5 months. The most frequent timeframe for dealing with a case was between 3 months and 6 months.

PMS involvement before the court has decided to impose the measure occurred in approximately one-fifth of the children's cases, in case of 14 of observed courts. Prior to the imposition of the measure PMS was most often involved in court proceedings. The most common, at 18% of cases of PMS insolvement, was in the context of enforcement of imposed measures. It was in 14% of children's cases. The presence of probation officers in youth court hearing was quite rare, with only 9 cases, and this was in cases of 6 courts in our sample. The victim-offender mediation or family group conferences occurred in only 3 children's cases, in cases of 3 observed courts.

A number of the issues were also addressed in the expert survey. As regards the principle of hearing the case without undue delay and within a reasonable time, two thirds of the judges and more than half of the public prosecutors did not perceive a problem in respecting the above-mentioned principle, in contrast to 59% of the probation officers and two thirds of the curators for children and youth. In the open-ended questions, respondents most frequently mentioned delays in criminal proceedings. However, with the exception of judges, other professions also mentioned delays in court proceedings. In terms of the reasons that prolong proceedings, problems in securing the participation of children or legal guardians were mentioned in particular, but difficulties in producing expert reports were also mentioned. Related to this is the finding that the vast majority of judges and all public prosecutors feel that there is a shortage of child psychiatric experts within their district. In the case of forensic psychological experts, only 9% of judges agreed with their sufficiency and 2% of public prosecutors agreed somewhat.

With regard to the question of the obligatory duty of the public prosecutor's office to fill a petition to impose a measure with the youth court, the vast majority of judges (97%) and public prosecutors (almost 90%) and two-thirds of probation officers expressed the opinion that they considered it superfluous under certain conditions. At the same time, approximately 24% of probation officers indicated that they were unable to assess this. Curators for children and youth differed more widely from other professional groups. The majority (54%) of them were in favour of maintaining this obligation. In terms of judges and public prosecutors, who also assessed the specific conditions where it would be appropriate, most agreed in cases where, given the nature and seriousness of the act, the child's previous way of life and his or her behaviour after the offence, the previous hearing is already sufficient, or the child has already shown effective remorse, has repaired or attempted to repair the harm caused by the otherwise criminal act, and there is no need for further educational intervention given the nature and seriousness of the act and the child's circumstances. On

the contrary, the least agreed to in a situation where the child has already been punished for the act (e.g., by a legal guardian, another person responsible for his/her upbringing, school, etc.) and this can be considered sufficient. A not entirely inconsiderable proportion of judges and public prosecutors did not have a clear opinion on the matter (in the range of 15 to 16%). In their answers to the open-ended questions, respondents, especially probation officers and curators for children and youth, also mentioned circumstances that corresponded to diversions. They also often mentioned cases where the matter had already been sufficiently resolved otherwise or the very young age of the child. At the same time, some respondents here referred to the possibility of "diverting" or not filing a petition now in such cases, which is also consistent with existing case law. Public prosecutors also mentioned the situation where the child is already currently being prosecuted as a juvenile or has already been sanctioned as a juvenile. In the area of promoting the principles of restorative justice, the opinions of experts also confirm that the practice is not entirely optimal. Here, the professions varied in their assessment of their application at different stages of the proceedings. With the statement that restorative practices are sufficiently applied in cases involving children under 15 years of age before filing a petition with the court disagreed 65 % of probation officers and 70 % of curators for children and youth. For judges and public prosecutors, the proportion of those who agreed and disagreed was balanced. Conversely, there was a fairly even split for probation officers with their sufficient application in appropriate cases in youth court proceedings. The majority of respondents from other professions (65–68%) disagreed. At the same time, more than half of probation officers reported that they had no experience in conducting mediation activities in cases involving children under 15 years of age. Judges, public prosecutors, and curators for children and youth most frequently cited PMS capacity as the specific reasons limiting its application. In particular, curators for children and youth then stated that the PMS, or no one else, offers such procedures. Less frequently, they then said, for example, that this was limited or hindered by the attitude of the public prosecutor's office, general systemic obstacles, lack of interest of victims, unsuitable cases for such procedures, or a problem in the training of judges, that the case is handled differently, or the workload of the PMS. On the other hand, probation officers most frequently mentioned the lack of interest of the child's family or other potential participants in these procedures, as well as problems from other actors in the procedure, such as the lack of a mandate, not being notified by the police of suitable cases, less frequently, for example, that this is not a common practice, lack of time in the procedure, lack of suitable cases, or lack of funding or specialists at the family group conferencing. Some probation officers also reported specific differences in the implementation of these procedures for children under 15 compared to juveniles. In particular, they pointed to the child's age and the associated lower maturity, reduced communication skills or attention span, which places increased demands on preparation and implementation methods, and they emphasized the greater role of legal guardians in these cases.

In this regard, cooperation between the various actors within the youth justice system is also important and is also emphasised as one of the important principles in the YJA. It should be noted here that, with very few exceptions, youth judges rate cooperation with entities involved in the administration of youth justice as very or rather good. They were most satisfied with the cooperation with the OSPOD, PMS and public prosecutor's office. This was similar with public prosecutors. They were most satisfied with the cooperation

with the youth courts. Probation officers also rated the cooperation with the assessed entities as mostly positive. However, they more often point to certain shortcomings in cooperation with the police authorities and the public prosecutor's office. In the case of cooperation with attorneys, the negative assessment even slightly prevailed. Also, curators for children and youth are mostly satisfied with the cooperation with other entities. A significant majority of judges and public prosecutors also rated positively the quality of OSPOD reports concerning the child's circumstances. In terms of specific information that they lacked, some respondents mentioned mainly information about legal guardians, less frequently, for example, specific proposals, information about custody proceedings or the absence of information from schools. Less than a third of the curators for children and youth said that they are not informed in time when a child is being interrogate during investigation in criminal proceedings. The majority were then sceptical about the extent to which information obtained for reporting purposes can be verified for its veracity. An accessible and detailed methodology for processing reports would be appreciated by more than half of the respondents (54%).

The experience with PMS reports had 60% of judges and 41% of public prosecutors. The overwhelming majority of them rated the PMS reports very positively according to all aspects assessed. In the vast majority of cases, probation officers did not experience any problems with the lack of time to carry out the requested activities, in cooperation with legal guardians or in the possibilities to obtain information and verify its veracity. More than half of the probation officers and two-thirds of the curators for children and youth did not agree that there was overlap in their activities. Those who mentioned overlap in their responses to the open-ended question mentioned in particular the area of identifying the child's social and family circumstances or communication with the school. In terms of the assessment of the cooperation of the different actors with the PMS, the low involvement of the PMS prior to the imposition of a measure by the youth court can be inferred from the fact that, according to approximately three quarters of judges, public prosecutors and curators for children and youth, the PMS is not involved in any of the cases or is involved in only a minority of cases. Yet, a significant majority of probation officers also reported (83%) that the number of assignments has not changed significantly since 2022, with only 13% reporting that it has increased, most often in the processing of pre-decision reports. At the same time, two-thirds of probation officers reported that they never or rarely attend youth court hearings. Reasons given included time and capacity reasons or the fact that attendance was not necessary. Others, on the other hand, pointed to the importance of their attendance, for example, where they propose specific measures or in cases where contact with the child has already been established, where they have been working with the family for a long time. In terms of the involvement of the workplaces where the respondents worked in platforms such as Youth Teams, a relatively large number of respondents indicated that their workplace was or had been involved in them. However, at the time of the survey, just under a third of youth courts and a quarter of public prosecutors' offices, 42% of OSPOD offices and 62% of PMS centres where respondents worked were involved. They saw the benefits of being involved in these platforms mainly in mutual cooperation, information transfer and exchange, but also in finding solutions to crime problems at the local level and development of preventive programs. There was also criticism of the closure of the platforms in their district.

Regarding the discussion related to ensuring the procedural rights of the child, almost 64% of judges, 56% of public prosecutors, 90% of probation officers and 80% of curators for children and youth agreed that children under the age of 15 should be afforded the same procedural rights as prosecuted juveniles when investigating an otherwise criminal offence in criminal proceedings. However, the views of the various professions already differed significantly on the question of mandatory legal representation (by attorney) in the investigation of an otherwise criminal offence. A significant majority of probation officers (69%) and curators for children and youth (71%) agreed with this and, on the contrary, a majority of public prosecutors (65%) and judges (59%) disagreed. This was similarly the case of opinions on whether a child should be obliged to have mandatory legal representation in criminal investigations for acts in which he or she is personally involved. The length of experience did not have an impact here for the different professions. It is also worth mentioning that according to a significant majority of opinions, especially of probation officers and curators for children and youth, the involvement of attorneys in youth court proceedings is rather formal. For judges and public prosecutors, the ratio of agreeing and disagreeing views was rather balanced. All professional groups, except for public prosecutors, where the ratio was balanced, agreed that attorneys often confuse their position with that of defence counsel in criminal proceedings. Here, too, a relatively large proportion of probation officers said they could not assess this. Respondents were also asked whether they had encountered any mention of unlawful coercion of a child by litigants in the context of a criminal investigation. Almost all respondents across professional groups said that they had either not encountered this at all or only very rarely. On the other hand, 41% of judges, 33% of public prosecutors and 29% of curators of children and youth had sometimes (albeit exceptionally) encountered it. At the same time, 19% of curators for children and youth reported that they had already had to intervene because of unlawful pressure on a child during an interrogation in a criminal investigation of an otherwise criminal act.

In terms of the imposition of measures, the vast majority of respondents from all professions overwhelmingly agreed that the existing catalogue of measures in the YJA is sufficient, as stated by 82% of judges, 62% of public prosecutors, 65% of probation officers and even 94% of curators for children and youth. Nevertheless, in the context of the answers to the open-ended questions, there were also suggestions for adding to this list, e.g., the possibility of imposing institutional education (measure of family law), confiscation of thing. On the contrary, a majority of respondents from all professions (62% of judges, 67% of public prosecutors, 70% of curators for children and youth, and even almost three quarters of probation officers) disagreed that there is a sufficient range of programmes within their district that can be imposed on children as educational obligations. The most lacking were programs that focused on experimentation, abuse or addiction to narcotic and psychotropic substances, as well as other forms of addiction, problems with aggressive behaviour, psychological and psychiatric forms of intervention, and quite often, especially among probation officers and curators for children and youth, those that would focus on the whole family, e.g., family therapy, counselling. The lack of educational programmes focused on legal awareness, or specifically on the abuse of social networks and the Internet, on cyberbullying and inappropriate sexual behaviour on the Internet, on sex education, and less frequently on bullying or financial literacy, was mentioned quite often by all professional groups. Probation officers and occasionally curators for children and youth mentioned the

absence of programs aimed at changing attitudes about otherwise criminal act committed. More rarely, there were mentions of the lack of entities where children carried out socially useful activities. Some respondents pointed out that there were no programmes available in their district, or that accessibility was problematic, including the need for children to commute. There was slightly better satisfaction with the availability of programs at the in the centre for educational care. However, with the exception of the courts, where a slight majority agreed with their availability, the opposite was true for other professions. 53% of public prosecutors, 63% of probation officers and 67% of curators for children and youth disagreed. There was a high level of dissatisfaction with the range of facilities that cater for children under the age of 15 who are dependent on addictive substances. Only 12% of judges, 22% of public prosecutors and even less than 8% of probation officers and curators for children and youth agreed with their availability. The areas of availability of child psychiatric care where the court is considering this form of intervention were rated the lowest. Only 10% of judges, 4% of public prosecutors, 2% of curators for children and youth and not a single probation officer agreed that it was available. At the same time, a very substantial proportion of all professions surveyed here expressed fundamental disagreement. It was also interesting to note that a relatively large proportion of judges and public prosecutors said that they could not assess it, which is somewhat surprising for professions that propose or impose measures for children. Whether an adequate measure is imposed on a child is also related to the extent to which the court has up-to-date and complete information about the child's needs and situation. In terms of whether the court has the results of an educational-psychological examination within the meaning of Section 93(1) of the YJA available before deciding whether to impose a measure, more than half of the judges and public prosecutors stated that this was rarely the case, while in the case of curators for children and youth it was 44%. At the same time, 12% of judges and public prosecutors and even 38% of curators for children and youth stated that the court never has them available. A frequent reason given by most judges for not having such examination available was that the court already had sufficient information about the child from other sources. Where the reasons were that there were not enough experts to provide it or that it would lead to delays in proceedings, the proportion of judges for whom this was a frequent or very frequent reason and those for whom it was not was fairly even. The fact that such an examination might unduly burden the child played a less important role for judges. Again, the very low number of respondents must be noted here.

In terms of the enforcement of the measures imposed, the vast majority of probation officers (92%) and a significant majority of judges (76%) disagreed that when a child fails to properly comply with the measures imposed, the court has sufficient options to respond to the situation. Disagreement, although not as strong, was also expressed by 64% of public prosecutors and 62% of curators for children and youth. At the same time, a relatively large proportion of public prosecutors and curators for children and youth stated that they were unable to assess this. Probation officers also agreed in a vast majority that the court takes into account the probation officer's suggestion to cancel the measure when the purpose of the measure is fulfilled in the supervision (88%). Fewer probation officers (57%) already agreed that if the child does not comply with the conditions of the imposed measure, whether supervision or educational restrictions or obligations, the court responds adequately to the suggestion of the PMS.

In terms of protective education 60% of the judges agreed that the current serving of protective education is optimal. Disagreement was prevalent among the other professions, and more pronounced among probation officers (70%) and curators for children and youth (66%). It should be taken into account here that a very significant proportion of judges, public prosecutors and probation officers, and a not insignificant proportion of curators for children and youth, stated that they were unable to assess this. They often mentioned as problems in imposing and serving protective education the insufficient capacity or availability of facilities, the problem of joint enforcement of institutional and protective education in one facility, the frequent escapes of children from facilities and the lack of possibilities to prevent or respond adequately to them, the many rights and few obligations of children, or the fact that there are no adequate measures available for children's problematic behaviour. The curators for children and youth also mentioned that the courts do not want to impose such measures or impose them too late. Some respondents also pointed to the fact that it is not an effective measure, that the child's behaviour will get worse, to the accumulation of children with problems in one institution, and more rarely to the inappropriate setting of care, to the inconsistency of court decisions, to the lack of professional staff, or, for example, to the problem of the "criminalisation" of running away from facilities.

A significant majority of the respondents among the workers in protective education facilities perceive as a problem how the courts react to the conditional placement of a child with protective education outside the institution, although a relatively large part of them stated that they could not assess it, or to the proposal to cancel it. Similarly to the respondents from other professional groups, a very significant part of workers in these facilities (72%) consider the placement of children with protective and institutional education in the same facility, the absence of measures to respond to children's problematic behaviour (87%), the lack of specialised facilities or wards (97%), facilities with technical security against escapes (89%) and children's homes with a maximum capacity of 16 children (90%) to be a problem. However, in the latter two cases, a relatively large proportion of respondents said they were unable to assess this. In terms of problems in specific establishments, the majority of respondents from among the directors (57%) of these facilities perceived a problem with the unavailability of addiction treatment. In the case of psychiatric care, while the majority (79%) do not perceive a significant problem with availability, approximately one-fifth see it the other way around, with 14% of directors seeing it as a significant problem. On the other hand, they were very positive about cooperation with the police, OSPOD, availability of medical and continuing psychological care. Respondents also mentioned other problems that complicate the work in the facilities, such as dissatisfaction with the activities of various entities with which they cooperate or which control them, such as the Public Defender of Rights (ombudsman), school inspectorate, and rarely, for example, slow decision-making, problems with internal regulations, the capacity of professional staff in the facilities, or testing children for narcotic drugs and psychotropic substances.

The expert survey also focused on the impact of the covid-19 pandemic. We asked whether there were any specific problems related to the covid-19 pandemic in the proceedings in cases of children under 15 years of age (apart from restrictions on physical contact), and whether there were any specific problems related to the proceedings in cases of children under 15 years of age, and the situation in protective education facilities. Respondents

from the ranks of judges, public prosecutors, probation officers and curators for children and youth mentioned, for example, the impact on the length of proceedings, problems related to schooling, the increase in psychological problems related to the covid-19 pandemic, the inclination of children under 15 to engage in activities in cyberspace, and the increased incidence of otherwise criminal acts in the sexual sphere. Protective education facilities staff also reported challenging conditions related to restrictions on children's free movement and normal activities, adherence to strict hygiene regulations, and late vaccination of staff. Criticism was also voiced about the functioning of the whole system or the response of the responsible institutions. Some pointed to the increased frequency of children escaping from the facilities or the limitations of health care. Rather sporadically, comments were made about, for example, poor cooperation with the OSPOD, work with traumatised children in cases where a close person had died, and problems with children released to family quarantine.

Experts were also asked for their opinion on the minimum age of criminal responsibility. Here, a very strong majority of judges (83%), public prosecutors (70%) and probation officers (71%) were in favour of maintaining the current limit of criminal liability. Curators for children and youth were also mostly in favour of maintaining it, but almost 38% were in favour of lowering it. In contrast, the only professional group that was overwhelmingly in favour of lowering the threshold was the protective education facilities staff, with 67% in favour. At the same time, it should be stressed that those in favour of lowering the minimum age of criminal responsibility were overwhelmingly in favour of lowering it to 14 years. Among the specific reasons for the reduction, there was a particular reference to the fact that today's children are more mature in the sense of recognizing the illegality of an act or that the absence of a criminal response gives them a sense of impunity. They also pointed to the inadequacy of current measures or to negative trends in youth crime, and less frequently, for example, to the ineffectiveness of the existing system of treatment of these children. There were also views that this would lead to an improvement of their current situation, e.g., in terms of diversion possibilities.

Questions concerning the general public awareness of the current system of treatment of criminally irresponsible children and opinions on the minimum age of criminal responsibility were also addressed in the public opinion survey. The proportion of respondents who were in favour of maintaining or increasing it was fairly even with those in favour of reducing it. At the same time, it was possible to note that there was a decrease in the proportion of respondents who wanted to lower it compared to the situation at the end of the last century and the beginning of the 21st century. The results also suggest that there may be some influence here on the reduction in punitiveness from, among other things, the awareness that there is a response to child behaviour in the youth justice system in these cases. Respondents who were aware that the child faced some sanction in such a case were less likely to lower minimum age of criminal responsibility. At the same time, there appeared to be a slight increase in awareness of the existence of YJA within the public, compared to findings from the 2009 IKSP survey. Conversely, awareness of what the current minimum age of criminal responsibility is remained the same.

In summary, one of the significant problems with the current youth justice system is the quasi-criminal nature of these proceedings. This runs up against the principles arising from

important international documents and the requirements of major institutions dealing with the protection of children or the protection of human rights in general. At the same time, it is clear that some significant problems persist in the current youth justice system that complicate the fulfilment of the purpose of the YJA, and other principles contained therein and are also problematic from the perspective of criminological knowledge about the treatment of youth in conflict with the law. These include, for example, the net widening effect, the long time between the commission of an otherwise criminal act and the final decision in the case, the insufficient application of restorative practices, the reserves in the area of identifying sufficient information needed to select adequate measures, and very significantly, the actual availability of some forms of intervention.

Some improvements in this respect is brought by the amendment of the YJA with effect from 1 July 2024. However, even then, many of these problems will not disappear. This is because they are related both to the quasi-criminal nature of the procedure and to problems with the availability of sufficient information about the child at the time of the decision and, above all, with the availability of appropriate forms of intervention. It is therefore appropriate to open a discussion on whether to exclude children who were under 10 years of age at the time of the commission of an otherwise criminal act from the scope of the YJA. At the same time, it seems essential to support the development of services that primarily fall within the field of health care, particularly psychiatric, psychological and addiction care, as well as social policy, including a focus on intensive social work with the whole environment in which the child lives. This also entails closer cooperation between the bodies concerned in the enforcement of measures imposed under the YJA and the use of family law and instruments of social and legal protection of children. Otherwise, no significant improvement can be expected in this area. Emphasis should also be placed on developing cooperation between all relevant actors in this field at local level, including the long-term maintenance of good practices and institutes such as Youth Teams. This includes a focus on the development of primary and secondary prevention programmes.

Children under fifteen in the youth justice system

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