PRACTICES AND STANDARDS IN THE SYSTEM OF JUVENILE JUSTICE IN ROMANIA

Ministery of Justice

unicef

Practices and Standards in the System of Juvenile Justice in Romania

Motto: „The is no juvenile justice system,
there are two pages on juveniles in the Penal Code"
(social worker, Cluj Napoca)

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This study was done at the request of the Ministry of Justice and will be available to international experts of the program PHARE 2003 – Juvenile Justice, in view of setting up the new child and family courts. The study is intended for the use of both specialists, professionals in the area of law respectively, and social workers or psychologists from public institutions or non-governmental organizations active in the field of child's rights protection or juvenile delinquency.

We trust that this research, its conclusions and recommendations respectively, will become a useful tool to the Ministry of Justice, with regard to the strategy in the system of juvenile justice, but also to professionals involved in the administration of justice or in taking measures to protect juvenile offenders.

We wish to thank all the children and professionals who accepted to be interviewed for this project for their openness and patience, as well as the institutions that made available to us the necessary data for the quantitative analysis.

The autors

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Acronimes

NAPCA	National Authority for Child Protection and Adoption
CNA	Audiovisual National Comission
CPC	Comission for Child Protection
DPC	Child Protection Directorate
EPC	Emergency Placement Center
FDSC	Civil Society Development Foundation
IML	Forensic Institute
NAA	National Anti-Drug Agency
NGO	Non-governmental organization
NIS	National Institute of Statistics
SRSS	Social Reintegration and Survaillance Services
UNICEF	United Nations Childrens' Fund
USAID	United States Agency for International Development

CHAPTER I – INTRODUCTION

1.1 Goal of the study

The goal of this study is to improve the administration of justice in the area of social and legal protection of the minor, in view of setting up the new child and family courts, as they are provided by Law 304/2004 on judicial organization, and also of the legislative package on child protection, effective starting 1 January 2005. Only the criminal law system was taken into consideration, both from the standpoint of the minor with penal responsibility and the minor who does not have penal responsibility (under the age of 14).

At the same time, it should be mentioned that the sentiment animating all those involved in research activities in this project was that, in a not very far future, no child should be in prison in Romania.

The problem of juvenile justice is an open problem in Romania. At the present time, we have to deal with a system focusing more on sanctioning and less on reeducation, ignoring the reality that, in fact, minor perpetrators are more victims than offenders. The sanctioning system of minors who commit offenses is very harsh, the alternatives available to judicial bodies being extremely few. There are no educational or medical treatment options to be applied to juvenile delinquents in an individualized manner, as there are no sufficient human and logistic resources to impose the few alternative sentences to imprisonment which exist in the current or future Penal Code.

The research starts from the premise that without adequate knowledge of the current system of juvenile justice, of existing practices, of the needs and challenges facing those directly involved in the administration of justice or in social protection, coherent proposals for the improvement of this system cannot be advanced. Also, examples of existing best practices should be brought to the knowledge of professionals and government decision-makers.

1.2 Objectives and methods

The objectives of this research aim at three coordinates: one coordinate is the analysis of current policies and practices at the level of juvenile justice, the second relates to the capacity, from the point of view of logistics, infrastructure and human resources of institutions involved in the system of juvenile justice, and the third coordinate which contains the recommendations of the working group.

The methods applied consist in:

- analysis of documents pertaining to the current and future legislation in the area of juvenile justice, in comparison to the international one;
- statistic-judicial analysis of the dynamics of the types of offenses committed by minors, of specific categories of delinquent minors and of the types of educational measures and sentences imposed on them by specialized institutions, in the period October 2003 – March 2004;

- qualitative analysis of the system of juvenile justice, accomplished by interviews with key institutional actors involved in this area (police officers, prosecutors, judges, lawyers, probation counselors, social workers, psychologists, legal experts, educators from penitentiaries but also with minors in conflict with the criminal law);
- case studies of various categories of minors who were the object of juvenile justice, in order to observe the procedural journey they experienced, the terms, and respectively the measures imposed on these minors;
- case studies reflecting the efficiency of institutions in processing minors' cases in Iaşi and Braşov;
- media analysis concerning the phenomenon of juvenile delinquency, in the period October 2003 – October 2004.

The quantitative and qualitative analyses were performed mainly in eight Romanian cities, selected from all the provinces of the country to ensure the greatest variability of the gathered information. Not least, in each of these cities there is a court of appeal, holding the position of pilot courts in the PHARE project. These cities are: Alba Iulia, Braşov, Bucharest, Cluj-Napoca, Constanța, Craiova, Iaşi and Timişoara. Also included in the qualitative research was Gaieşti town, since here there is a reeducation center for minors.

The case studies regarding minors who were the object of criminal legal proceedings were conducted in Bucharest and Iaşi, aiming both at the minor under 14 years of age and the one over 14, at the time of the commission of the offense.

With respect to cases studies aiming at assessing the efficiency of institutions involved in processing cases of minors, Iaşi city was selected, city where the first juvenile court is in operation, and Braşov city, since the plan is to build the first child and family court in this city.

UNICEF organized site visits and meetings with experts in the area, so the working group was able to visit the institutions involved in the procedural route of the minor who commits a criminal act, in Iaşi, Braşov and Bucharest, to meet with children, judges, prosecutors, police workers, and staff of Social Reintegration and Supervision Services and of Departments of Child Protection.

CHAPTER II - LEGAL FRAMEWORK

This chapter proposes an analysis of the Romanian legislation in effect in the field of juvenile justice as well as of the legislation already passed through the Romanian Parliament and that will come into effect in 2005. The current and future legislative supports are taken into consideration both in the matter of the child under 14 and in the matter of the child who is of penal responsibility age.

And not lastly, consideration has been given to current international standards in the field of juvenile justice, as well as to what extent they are reflected in the internal legislation.

2.1 Internal legislation on the child with penal responsibility. Reference to international standards

A. Conditions for entailing penal responsibility

The Beijing Rules stipulate that the meaning of the penal capacity notion should be clearly defined and that the minimum age of penal responsibility should not be set too low, considering the degree of emotional, psychological and intellectual maturity of the child (Rule 4.1). The definition of the penal responsibility age should be developed in a judicial framework that takes into account the capacity, developmental abilities and the contextual experience of a child.

Article 40 par. 3 let. (a) of the Convention on the Rights of the Child stipulates that the States Parties shall establish a minimum age of penal responsibility, below which children shall be presumed not to have the capacity to commit an offense.

The Romanian penal law in effect is fully consistent with these provisions, thus the Penal Code[1] establishes the limits of penal responsibility and stipulates that the minor under the age of 14 has no penal responsibility, the minor aged 14 to 16 has penal responsibility only if it is proven that he/she had judgment committing the offense, while the minor over 16 years of age has penal responsibility.

For a minor aged 14-16 to be held liable for committing an offense coming under the penal Law, it must be determined if the said minor has judgment or not. Judgment is determined by forensic institutions, through expert's report based on clinical examinations and additional tests[2].

[1] Article 99 of the Penal Code

[2] Government Decision no. 774 of September 7, 2000, approving the Regulations for the enforcement of the provisions of Government Ordinance no. 1/2000 on the organization of activities and operation of forensic institutions stipulates that: „The expert's report and the forensic medicine findings regarding individuals consist of clinical examinations and additional tests (radiology, haematology, serology, bacteriology, anthropology, etc.) their object being :

a) to determine gender, virginity, sexual capacity, age, physical conformation or development, physical identity, as well as elements necessary to establish filiation ;

b) to determine illness status, traumatic injuries, infirmities and the ability to work in relation to these conditions ;

c) to determine obstetrical status (pregnancy, viduity, abortion, birth, post partum etc.) ;

d) other examinations as requested by rightful bodies.

Under the legal provisions in effect[3], persons held in custody or in detention shall be examined in the presence of security personnel of the same gender. Minors shall be examined in the presence of one of the parents or legal guardian, and if they are not available in the presence of an adult member of the family of the same gender as the minor. Hospitalized persons shall be examined in the presence of their attending physician.

B. Institutions involved in juvenile justice

Article 40 let. (b) point (iii) of the Convention on the Rights of the Child stipulates: "the matter shall be determined without delay by a competent, independent and impartial authority or judicial body, in a fair hearing according to law, in the presence of legal assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, in the presence of his or her parents or legal guardians".

Thus, article 3(1) of the same document stipulates that: "in all decisions concerning children, whether undertaken by public or private welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration". The Beijing Rules demand qualified and professional staff, with special initial training, the coordination of institutions and use of studies as a basis for development programs, evaluation policies and decision making.

The entire staff in juvenile justice shall receive special training and be responsible for all their strategies and actions (Beijing rule 12 and Rule 85 of the United Nations for the Protection of Children in Custody).

According to the Guidelines for Action on Children in the Criminal Justice System, the States shall set up minors courts and special procedures which take into account children's specific needs. As an alternative, ordinary courts could take over such procedures.

As emphasized in the Guidelines for Action on Children in the Criminal Justice System, priority shall be given to the development of institutions and programs that provide free legal and other assistance to children, if necessary (guideline no.16 for Action).

The principle encompasses a large range, from the Police to minors' lawyers, from minors courts to magistrates with special training. Police officers, prosecutors, judges and lawyers should attend special training courses. In big cities, special police units should be set up.

In the Romanian legislation in effect, it has been recently[4] regulated that cases involving minors shall be tried by special courts, where judges are designated

The object of the expert examination may be also to determine psychological status (normal or pathological) ".

[3] Article 40 of the Government Decision no. 774 of September 7, 2000

[4] Article 41 of Law no. 304 of June 28, 2004 on the judicial organization, published in the Romanian Official Gazette, Part I no. 576 of June 29, 2004, stipulates: Family and minors courts try as a first judicial body the following categories of cases:

1. in civil matters, cases relating to the lawful rights, obligations and interests regarding the person of minors, denial of parental rights, petitions regarding the nullity or dissolution of marriages, petitions for the approval, nullity or dissolution of adoptions, as well as cases involving family relations;

under the law by the chairmen of the judicial body, or, as the case may be, by the chairmen of sections who decide on the composition of the panel of judges, normally at the beginning of the judicial year, with the approval of the executive college of the judicial body, seeking to ensure the continuity of the panel of judges.

Although the current legislation regulates the designation of judges who rule in cases involving minors, there is no express requirement for these judges to have training in working on cases involving minor offenders and victims.

As regards the Public Ministry, while one of its duties is to defend the rights and interests of minors, duty specified in special dispositions provided in the Code of Civil Procedure, the Code of Criminal Procedure, as well as in other legislative supports, prosecutors are not designated to prosecute exclusively cases involving minors, without competence in the solution of other cases where minors are not involved, thus prosecutors are not specialized in this sense.

The duties of prosecutors in the defense of minors' rights and interests are exercised through judicial means or means complementary to judicial activities, such as civil actions addressed to judicial bodies under art. 45 of the Code of civil procedure, participation in penal and civil cases involving minors, supervision of carrying into execution of rulings referring to minors, etc.

Although until 1989 at the level of the public prosecutor's office there existed the institution of the minors prosecutor, after 1990 it has been abolished in spite of its many undeniable advantages: cases involving minors could be prosecuted and resolved by the same prosecutor ensuring in this way continuity of work; a true specialization in minors cases could be achieved; the same prosecutor normally participated in trials of cases involving minors in court, having thus an overview of the degree of social danger of acts perpetrated by minors, of the casuistry, the level of imposed sanctions, etc.

Other institutions involved in the juvenile justice system are: the Body of Guardians and the Social Assistance Services of the Municipality who, at the request of judicial bodies conduct social inquiries in cases involving minors, and Social Reintegration and Supervision Services (SRSS), operating under Tribunals, which prepare assessment reports for judicial bodies (Art. 11 par. 1 let. d of Government Ordinance no. 91/2000 and Law no. 129/2002), with the purpose to estimate the risk to public safety, and relevant for taking preventive measures as well as for an individualized punishment in view of sentencing that is adequate for the rehabilitation and social reintegration of the clients of these services.

Other duties of the Social Reintegration and Supervision Services include: supervision of the execution of non-custodial sanctions[5] in order to ensure enforcement of the measures and compliance with the obligations imposed by the judicial body in the case of non-custodial sanctions; provide psychological-social assistance for the duration of the supervision; provide post-penal assistance; assistance and counseling[6] seeking to achieve the following objectives:

2. in penal matters, offenses committed by minors or against minors.

[5] Articles 16-44 of the Enforcement Regulations of Government Ordinance no. 92/2000; Law no. 129/2002

[6] Articles 45-49 of the Enforcement Regulations of Government Ordinance 92/2000; Law no. 129/2002

- support persons supervised by SRSS Iasi in order to ensure compliance with measures/obligations imposed by the judicial body;
- reduce the risk to commit new offenses in the case of condemned persons maintained out of custody, while they acquire pro-social standards and values;
- create opportunities for adaptation in the family environment, continuation of studies, finding employment and keeping employment;
- reduce the negative effects of detention on persons who received a custodial sentence, and at the same time prepare them for release, and provide post-penal assistance.

An important role in the juvenile justice system is played by the defense of the minor in conflict with the penal law, for whom legal assistance is obligatory, but the legal dispositions regulating the organization and practice of the profession do not stipulate a specialization of lawyers in legal assistance to and representation of minors; lawyers are appointed by the court or chosen by the parents of the minor in conflict with the penal law, but the large number of cases that lawyers take on can affect the legal process of the minor.

Lawyers with very busy schedules have difficulties in meeting with clients, to listen to a client and find out details about the client's situation. The heavy caseload of lawyers is detrimental also to the quality of representation a child should benefit from. One of the most serious consequences of overloading lawyers is a growing distrust among children. They form a clear impression that lawyers do not care about them and do not represent them with full conviction. There should be established a certain number of cases and guidelines for lawyers specialized in the representation of minors, and to ensure mechanisms to set limits.

The lack of lawyers specialized in minors is evident by their small numbers and by the limited possibilities to choose available lawyers for children, especially in rural areas. That is why the specialization of lawyers is imperative.

C. Preventive measures

According to the provisions in Article 37 par. 1 let. (b) of the Convention on the Rights of the Child, children shall not be deprived of liberty unlawfully or arbitrarily. If they are in custody, children shall be separated from adults, unless it is considered in the child's best interest not to do so. Every child deprived of liberty shall be treated with humanity and respect and in a manner which takes into account their specific needs. Such a humane treatment includes the right to legal and other assistance, such as health care or psychological services.

The same article of the Convention, as well as the Tokyo Rules, known also as "The United Nations Standard Minimum Rules for Non-custodial Measures" stipulate as well the fact that depriving children of liberty shall be a measure of last resort and for the shortest appropriate period of time.

In accordance with the provisions of the Convention[7], every child has the right to challenge the legality of the measure to deprive him or her of liberty before a

[7] Article 37 par. 1 let. (d)

competent, relevant, independent and impartial authority, and to receive a prompt decision.

The United Nations documents recommend the exclusion of preventive detention of minors, except for particularly grievous offenses committed by older minors, and in this case, to limit the duration of pre-sentence detention, to separate minors from adults, and that this kind of decisions be ordered, in principle, after previous consultations with a social service, with a view to opting for an alternative measure.

These international regulations allow the deprivation of liberty for minors in certain cases, but do not specifically refer to the conditions for the enforcement of the preventive arrest, but refer to deprivation of liberty.

Regarding the preventive arrest, the European Convention of Human Rights states in Article 5 par. 1 that: every person has the right to liberty and safety and nobody can be deprived of their liberty, with the exception of cases specified by law[8] and in conformity with legal means; every person placed under arrest shall be advised, in the shortest time and in a language he or she can understand, of the grounds of his or her arrest and of any charges against him or her; every person who is arrested or detained shall be promptly brought before a judge or other magistrate vested by the law to exercise judicial powers, and has the right to stand trial, in due time, or to be released during the proceedings, and the release can be conditional on bail to ensure the presence of the interested party at trial. Art. 136 of the Code of Penal Procedure regulates the categories of preventive measures, indicating that in cases involving offenses punishable with imprisonment, one of the following preventive measures can be taken against the accused or the defendant: detention, interdiction to leave the town, interdiction to leave the country, and preventive arrest.

The Romanian Code of Penal Procedure, in the chapter headed *"Special Dispositions for Minors"*[9], sets forth a special policy regarding the hold and preventive arrest of accused minors or minor defendants, which ensures that held and arrested minors have, besides the rights provided by law for persons over 18 in preventive detention, their own rights and special regime of preventive detention, appropriate for their age, establishing additional requirements when preventive measures are taken in the case of minor defendants. Thus, in the case of minors with penal responsibility and who are aged 14-16, the measures of hold and preventive arrest are taken only if the minor committed an offense punishable by law with life imprisonment or with more than 10 years imprisonment.

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[8] a) if the person is lawfully detained following a conviction by a competent court;

b) if he/she was arrested or lawfully detained for non-compliance with a decision ruled, in conformity with the law, by a court of law, or in order to secure the execution of an obligation stipulated by law ;

c) if he/she was arrested and detained in order to be brought before the competent judicial authority, if there is probable cause to suspect the person to have committed an offense or when there is justified cause to believe in the need to involve the person in committing an offense or to flee after committing it;

d) if it is about the lawful detention of a minor, so decided in view of supervised education or about lawful detention of a person, in view of bringing him/her before the competent authority;

e) if it is about the lawful detention of a person liable to transmit a contagious disease, of a mentally alienated, of an alcoholic, of a drug addict or of a vagrant;

f) if it is about the arrest or lawful detention of a person in order to prevent that person from illegally entering a territory or against whom expulsion or extradition proceedings are under way;

[9] Dispositions introduced by Law no. 281/2003

For minors in this age group, the hold cannot exceed 10 hours and an extension of this measure can be imposed by the prosecutor for a period of time that cannot exceed 10 hours. Preventive arrest can be imposed during criminal prosecution or during trial at first court only for a period that cannot exceed 15 days, and only as an exception.

The total duration of preventive arrest, during criminal prosecution, cannot exceed 60 days for minors who have attained the age of 16 years.

For the second category of minors with penal responsibility, respectively those between 16-18 years of age, the provision is that the duration of preventive arrest during criminal prosecution and the trial at first court shall not exceed 20 days, and it can be extended, on good grounds every time, only during this period of time. For minors between 16-18 years of age, preventive arrest during criminal prosecution cannot exceed 90 days, in exceptional cases, when they have committed offenses punishable with over 10 years imprisonment or life imprisonment, the extension of preventive arrest, during the same phase of the penal process, can reach up to one year. For accused minors preventive arrest cannot exceed 3 days.

Besides these dispositions which limit the duration of custodial measures with regard to minors, narrowing at the same time the category of offenses for which the preventive measure can be imposed, the Code of Penal Procedure stipulates the obligation to provide legal assistance and possibilities of communication between the counsel for the defense and the minor[10], immediate notification - in case of detention, and notification within 24 hours in case of arrest, of parents, legal guardian, or any other person designated by the minor, as well as of services for social reintegration and supervision of the execution of non-custodial sentences under the judicial authority which would have jurisdiction to try the case as a first trial court.

Against the order issued by the criminal prosecution body to take the preventive measure of detention a complaint can be filed, before the lapse of the 24 hours since the measure was taken, with the prosecutor who supervises the criminal prosecution, and against the order of the prosecutor based on which the preventive measure was taken a complaint can be filed, before the lapse of 24 hours, with the chief-prosecutor of the public prosecutor's office or, as the case may be, with the senior supervising prosecutor.

The decision of the court by which preventive arrest was imposed is subject to appeal before a superior court. Under the law in force[11], during detention or preventive arrest, minors are separated from adults, in areas specifically designed for minors in preventive arrest. Respect of the rights and observance of the special conditions stipulated by law for minors in preventive detention and arrest are ensured by the control of a judge specially designated by the chairman of the court, by visits to preventive detention facilities by the prosecutor, as well as other bodies authorized by the law to visit preventive detainees.

[10] Article 160 ^{f} par. 2 of the Code of Penal Procedure stipulates that "minors accused or minor defendants, detained or in preventive arrest, are provided, in all cases, obligatory legal assistance, judicial bodies having the obligation to take steps to appoint a counsel for the defense, if the minor does not have one, and to make possible for the counsel to contact directly and communicate with the arrested minor".

[11] Article 160 ^{f} par. 4 and 5 of the Code of Penal Procedure

D. Legal Procedures

The main international instruments stating that the adoption of laws and procedures specially designed for children in conflict with the penal law and exclusively applicable to them is desirable are the Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).

Art. 40 of the Convention emphasizes that the States Parties recognize the right of every child alleged as, accused of, or recognized as having violated the penal law to be treated in a manner consistent with the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration in society and the child's assuming a constructive role in society.

The Article also proclaims[12] minimum guarantees of appropriate legal procedures, including the presumption of innocence, the provision referring to direct and prompt information of the charges against him or her, access to legal and other assistance, proceedings without delay, the right to remain silent, the right to examine adverse witnesses, equal treatment of witnesses for the defense, the right to appeal, and the child's right to have his or her privacy respected at all stages of the legal proceedings.

The United Nations Documents emphasize that it is desirable that minors be not subjected to standard legal proceedings and institutionalization, but rather to make available a variety of dispositions, such as care, guidance and supervision, counseling, probation, foster care, education and vocational training programs, and other alternative solutions to institutional care, to ensure that children are treated in a

[12] Article 40 par. 2 of the Convention of the Rights of the Child: to this end and in regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that: a) no child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed; b) every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) to be presumed innocent until proven guilty according to law;

(ii) to be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians and to have legal or other appropriate assistance in the preparation and presentation of his/her defense;

(iii) to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his/her age or situation, in the presence of his/her parents or legal guardians;

(iv) not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) if considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) to have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) the right to have his or her privacy fully respected at all stages of the proceedings.

manner appropriate to their well-being and proportionate both to their circumstances and the offense committed.

According to the Guidelines for Action on Children in the Criminal Justice System, the current procedures should be reviewed and, whenever possible, to opt for diversion (guideline for penal action no. 15). The necessary steps shall be taken to make available a range of alternative measures at the stages before the arrest, before the trial, during the trial and after the penal trial. Whenever possible, mechanisms shall be used for an informal solution of conflicts. The family should be involved in the various measures to be taken as long as it is considered to be in the best interest of the child (guideline for action no.15). The State shall ensure that the alternative measures respect the rights of the child.

Diversion methods are designed to remove children from standard penal legal proceedings and to refer them to the community for formal and informal assistance. This practice, as stated in the comments to the Beijing Rules, delays the negative effects of subsequent proceedings.

In the Romanian legislation in force, the procedure in matters involving minor delinquents is regulated by special dispositions included in the Code of Penal Procedure stipulating that the proceedings and the trial of matters involving offenses committed by minors, as well as the execution of the rulings regarding them are conducted following the ordinary procedure, with some additions and derogations, but applicable only in matters where the accused or the defendant is a minor, and not in matters involving minor victims.

Derogations from ordinary dispositions refer to: obligatory legal assistance in the case of minor offenders; trying a case concerning an offense committed by a minor only in the presence thereof, unless the minor eludes justice; summoning to hearings in the case, besides the parties, the Board of Guardians and the minor's parents, and, if applicable, the legal guardian, the tutor, or the person under whose care and supervision is the minor, the services of social reintegration of offenders and supervision of the execution of non-custodial sanctions, as well as other persons whose presence is deemed necessary by the court[13]; separate hearing in matters involving minor defendants from other hearings; non-public hearings.

In matters involving minor offenders penal procedure rules impose the obligation for a social inquiry to be conducted, the criminal prosecution body or the court have the obligation to order that a social inquiry be conducted, the lack thereof being sanctioned by absolute nullity.

According to legal dispositions[14], the social inquiry consists in gathering data about the every day conduct of the minor, his or her physical and mental state, his or her history, the conditions he/she was raised and lived in, the way in which the parents, the legal guardian or the person who cares for the minor are fulfilling their obligations toward the minor, and, generally, about any elements which could help in imposing a measure or a sanction on the minor.

[13] Under article 482 of the Code of Penal Procedure, these persons have the right and the duty to provide clarifications, to express requests and to forward proposals with regard to the measures to be imposed on a minor. Failure to appear of legally summoned persons does not impede trial of the case.

[14] Article 482 of the Code of Penal Procedure.

The social inquiry shall be conducted by persons designated by the Board of Guardians of the Local Council with jurisdiction over the minor's place of residence. During criminal prosecution, when the accused or defendant is a minor who has not attained 16 years of age, at any hearing or confrontation of the minor, if the criminal prosecution body deems necessary, it will summon the delegate of the Board of Guardians, as well as the parents, and, when applicable, the legal guardian, the tutor or the person who has the minor under care or supervision[15]. Summoning these persons, still without the obligation to appear before the criminal prosecution body, is left to the discretion of the judicial body, but to summon them becomes imperative for the presentation of the criminal prosecution material. These legally summoned persons' failure to appear at the mentioned procedural actions does not impede the actions.

E. Sanctioning Treatment Applicable to Minors

Article 40 of the Convention on the Rights of the Child states that it is desirable not to subject minors to standard judicial proceedings and to institutionalization, and provides a variety of dispositions, such as care, guidance and supervision, counseling, probation, foster care, education and vocational training programs, and other alternative solutions to institutional care, to ensure that children are treated in a manner appropriate to their well-being and proportionate to their circumstances and the offense committed.

Diversion from imprisonment is an important method to reduce recidivism, since studies show that detained minors have a significant rate of relapse. By diverting children from the punishment with imprisonment and allowing them to benefit from community services, they will be able to maintain positive ties with their family, with the school and the community. These beneficial ties increase the child's chances of social reintegration. Diversion from the sentence with imprisonment materializes in measures that need supervision and control (probation and suspended sentence or supervised parole; community service; contracts drawn with minors; group homes; instruction in a new environment; half-way houses; placing minors and young adults with community bodies) and in measures not requiring such supervision (conditional suspended sentence, conditional acquittal, postponed execution of the sentence).

Penal warnings, including the reprimand, unconditional acquittal and conditional acquittal are used for petty offenses, and other measures of diversion from the sentence with imprisonment are: pecuniary sanctions (fines), compensatory payments (which can be imposed as one of the terms for conditional suspended sentence), personal compensations (used frequently in common law systems), confiscation.

In our current legislation there are no provisions for such measures or non-custodial sanctions, forcefully recommended in all international documents.

The type of sanctioning of minors, as set forth in the Penal Code, is a special, composite one, including educational measures, listed at art. 101 of the Penal Code (reprimand, release under supervision, remand in a re-education center, remand in a medical-educational institute), which have priority when sanctioning minors, and

[15] Article 481 of the Code of Penal Procedure

punishments (fine or imprisonment) reduced to half the minimum, and which are applied only if the court considers that an educational measure is not sufficient to reform the minor.

When minors are sanctioned, at the first stage, based on the criteria listed at art. 100 of the Penal Code, that is physical state, the degree of mental development, behavior, the conditions they were raised and lived in, the type of sanction is chosen, educational measure or punishment, and then the option is made for a certain educational measure or the type and amount of the sentence, including manner of execution, either in detention, or in conditional suspended execution of sentence or under supervision.

2.2 Current legislation in the matter of the child who is under the age of penal responsibility age

Law no.18/1990, republished, for the ratification of the Convention on the Rights of the child. Article 40 of the Convention recognizes the right of every child alleged as, accused of or recognized as having infringed the penal law to be treated in a manner that promotes the child's sense of dignity and worth, and institutes the obligation for States Parties to provide special dispositions regarding the care, guidance and supervision of these children.

Government Emergency Ordinance (GEO) no. 26/1997 on the protection of the child in difficulty, such as republished under Law no. 108/1998, which regulates protective measures for children who commit offenses under the penal law and do not have penal responsibility.

Constitutional Court Decision no. 47/1999.

Government Decision no.117/1997 regulating the establishment of services designed for children who commit offenses under the penal law and who do not have penal responsibility.

Chapter III of the GEO no. 26/1997 (art.23-30) was designed for the protection of children who commit penal offenses but do not have penal responsibility, respectively children who commit penal offenses and who have not attained 14 years of age, or, children aged 14 to 16 if it is not recognized that they had judgment in committing the offense.

The measures that could be imposed by the Child Protection Commission on this category of children were:

- Reprimand
- Supervised release and imposition of certain obligations on the child (to not frequent certain specified places, to not contact certain persons, to attend school regularly or to attend a vocational training course)
- Remand to a re-education center
- Remand to a medical-educational institution

By the decision no. 47/1999 of the Constitutional Court, the provisions in art. 23-30 of GEO no. 26/1997 were declared unconstitutional and thus became inapplicable.

It was considered that the legal dispositions regulating the measures that could be imposed by the Child Protection Commission are not consistent with the spirit of the Emergency Ordinance that is to protect children in difficulty, by reason of the fact that these measures replicated entirely the provisions of art. 102-106 of the Penal Code on educational measures applicable to minors with penal responsibility, these educational measures being still sanctions in the penal justice, same as the punishments, which together make up a special sanctioning system for minors, that operates in parallel with the sanctioning system for adults.

In motivating its Decision, the Constitutional Court also indicated that at the current stage of the legislation, for the child without penal responsibility only the "Measures on the protection of the child in difficulty" can be imposed, as they are stipulated in Chapter II of GEO no. 26/1997, republished.

As a consequence, following the declaration of the above mentioned articles unconstitutional, at this time, the Child Protection Commission can impose on a child who commits penal offenses and has no penal responsibility only the measures indicated in GEO no.26/1997, republished, provided for the child in difficulty (the child who commits penal offenses and has no penal responsibility is assimilated to the child in difficulty), and they are:

- to entrust the child to a family, person or private body;
- to entrust the child temporarily to the specialized public service;
- to place the child with a family or a person;
- to place the child in the specialized public service or an authorized private body;
- to place the child in emergency conditions;
- to place the child with an assisted family.

But in practice, the most frequently imposed measure on a child who commits penal offenses and has no penal responsibility is **emergency placement of the child in a shelter.**

The disposition regarding emergency placement is stipulated in art. 15 of the GEO no.26/1997, this measure being designed for children found without supervision or abandoned by their parents, as well for children whose safety, development or integrity are endangered by their parents by abusive exercise of their parental rights or by grave neglect in fulfilling their parental obligations.

Resorting to the imposition of this type of measure, which is not specifically designed for the child who commits penal offenses, has a practical justification by the fact that it is determined by the Director of the Child Protection Department by Disposition (so there is no requirement for a meeting of the Child Protection Commission which would imply a longer period of time before a decision is made), and also by the fact that most often than not this category of children is caught by the police while committing the offenses and needs to be provided with temporary protection until the situation of the children is settled.

Government Decision no. 117/1997 stipulates in Art. 35, Annex no.1 and Art. No. 4 Annex no. 2 the possibility for authorized private bodies or local public administration authorities to establish the following types of specialized services for the child who commits penal offenses and does not have penal responsibility:

- Assistance and support centers for psychological rehabilitation of the child with psychological-social problems;
- Guidance, supervision and support services for social reintegration of the delinquent child;
- Reeducation centers for the delinquent child;
- Medical-educational institutions for the delinquent child.

With regards to the enforcement of the legislation in force by authorized institutions, it has been found that in practice it is rather uneven, as a consequence both to a legislative void in the methodology of processing matters involving children who commit penal offenses and do not have penal responsibility, and to a lack of coordination among those involved in solving these matters.

Thus, although according to the provisions of GEO no. 26/1997, republished, in case an emergency placement is imposed, it is obligatory to present the matter to the Child Protection Commission so it can render a decision within 15 days maximum, most Child Protection Departments which have had such matters do not present the matter before the commission.

Not submitting the matter to the attention of the Commission triggers a number of deficiencies in processing and even violations of the child's rights – the parents are not summoned and heard, the child is not heard, social inquiries are not conducted, psychological evaluations of the child are not done, etc.

In such cases, most children caught by the police in the act of committing penal offenses and who do not have penal responsibility, after spending a few days in a shelter, go back to their family – when the police report that investigations are completed – without being referred to the attention of the administrative body with decision power in matters of child protection, the only authority which can determine if the return of the child to the family is a measure taken in the best interest of the child.

At the same time it has been found that criminal prosecution bodies refer to Child Protection Departments a large number of cases of children who have attained the age of penal responsibility, either by remanding them to an emergency shelter belonging to the structure of the Department (generally when they are caught in the act by the police), or by requesting social inquiries to be conducted.

This practice is also deficient since on the one hand, the emergency shelter is not a service addressing this category of children and does not have trained personnel in these issues, and on the other hand, by the Decision for emergency placement, based on which the child is remanded, both the liberty of the child and the exercise of parental rights are restricted by an administrative action.

From this point of view, the disposition of emergency placement is criticizable even when it is imposed on a child without penal responsibility since, for the duration of this measure, under the law, the exercise of parental rights is also suspended (art. 15, par. 5 of the Government Emergency Ordinance no. 26/1997, republished), which makes it impossible for the parents to represent and assist their child and to maintain personal relations with the child.

Regarding the social inquiries in the case of children with penal responsibility, it has been noted that criminal prosecution bodies submit requests either to Child Protection Departments, or to the Board of Guardians; thus, there is no single competent body to prepare these important documents for the court to make the most appropriate decision concerning the minor.

An uneven practice has been noted in regards to the cooperation between the Child Protection Department and the Social Reintegration and Supervision Service under the tribunal; some departments carry out a number of joint actions with this service, some have no cooperation.

A deficient cooperation, particularly in what regards a minimum exchange of information, exists in the activity of the police force, since in some situations they offer no data relating to the conclusions following specific verifications or about the circumstances of the minor's representation during his/her interview to the Department for Child Protection.

2.3 Legislative Outlook in Juvenile Justice

In order to align the Romanian legislation to international standards, in juvenile justice, the legislator has enacted numerous amendments included mainly in Law no.301/2004 – the New Penal Code, Law no.272/204 – on the protection and promotion of the rights of the child, and Law no. 294/2004 on the execution of sentences and of measures imposed by judicial bodies in the course of the penal trial.

The New Penal Code[16] - Law no. 301/2004, brings important amendments, as follows:

A. Outlook of the New Penal Code

Introduction of new penal law sanctions

Art. 115 of the penal Code amended stipulates:

"Educational measures that can be imposed on a minor are:

a) reprimand;

b) release under supervision;

c) release under strict supervision;

d) remand to a reeducation center;

e) remand to a medical-educational institution".

The absolute novelty is the introduction of a new educational measure, and that is, release under strict supervision.

Thus, under art. 118 of the penal Code are instituted the rules governing the execution of this educational measure:

[16] Comes into force on 29.06.2005

"Release under strict supervision

(1) The educational measure of release under strict supervision consists in letting the minor in liberty for a period from one year and 3 years, under the supervision of an institution legally commissioned to supervise minors or of social reintegration and supervision services.

(2) *Supervision may consist in including the minor in social reintegration programs, as well as in providing assistance and counseling. During the strict supervision, the court may impose on the minor to comply with one or more obligations stipulated in art. 117 par. (3).*

(3) *Dispositions under art. 117 par. (2), (4)-(6) and (8) shall be applied as appropriate.*

(4) *If the minor has attained the age of majority on the date of the trial, instead of the educational measure of release under strict supervision, a fine shall be disposed under the form of days-fines from 15 to 30 days, each day accounting for 50,000 to 300,000 ROL, or community service for a period between 100 to 200 hours".*

Also, art, 120 of the penal Code takes over the legislation of the educational measure previously stipulated in art. 106 of the penal Code – remand to a medical-educational institution, educational measure which, due to the lack of infrastructure, could not be enforced under the old penal Code.

The new enactment stipulates:

"art. 120 – Remand to a medical-educational institution

(1) The measure to remand to a medical-educational institution is imposed on the minor who, due to his/her physical or mental state needs medical treatment and special educational conditions.

(2) The measure is imposed for an indefinite time, but cannot be maintained after the minor attains 18 years of age.

(3) The measure can be lifted even before attaining the age of 18, if the cause leading to the imposition of the measure has disappeared. Upon lifting this measure, the court may impose on the minor the measure to be remanded to a reeducation center.

(4) Dispositions under art. 119 par. (3) shall be applied as appropriate.

(5) If the minor has attained the age of majority on the date of the trial, it can be disposed the remand to a medical-educational institution until the age of 20, or, instead of the educational measure of remand to a medical-educational institution, the obligation to undergo medical treatment can be disposed and a fine under the form of days-fine between 10 to 20 days, each day accounting for 50,000 to 200,000 ROL, or community service for a period between 50 to 150 hours".

After this legislation comes into effect, the executive should intervene for the effective establishment of specialized centers where this educational measure can be executed and to identify the human and material resources necessary for a practical solution to this problem.

The new law institutes a united sanctioning regime, sentences being no longer established by way of legal individualization (by reducing them to half in conformity with the dispositions in art. 109 of the penal Code[17]), that is:

"Art. 123: Sentences of minors

(1) The sentences that can be imposed on a minor are the following:

a) strict imprisonment for 5 to 15 years, when the Law provides a sentence to life detention for the offense committed;

b) strict imprisonment for 3 to 12 years, when the Law provides a sentence to hard detention for the offense committed;

c) strict imprisonment within the time limits reduced to half of the sentence provided by law for the offense committed, when for it the law provides the sentence to strict imprisonment, the minimum time in strict imprisonment applicable to the minor not exceeding 3 years;

d) imprisonment within the time limits reduced to half the sentence provided by law for the offense committed, when for it the law provides a sentence to imprisonment;

e) fine under the form of days-fine, from 5 to 180 days, each day accounting for 50,000 to 500,000 ROL;

f) community service, from 50 to 250 hours.

(2) Sentences imposed on the minor are executed under the conditions stipulated in the Law on the execution of sentences.

(3) Complementary sentences are not applicable to minors.

(4) Convictions pronounced for acts committed during minority do not entail incapacities or deprivations."

There have been instituted a range of measures as alternatives to sentences and there is variety of ways to individualize the sentence applicable to minors, by creating alternatives for the re-socialization of minors and for making them more responsible, providing for more opportunities for rehabilitation and recuperation. They are listed in the following articles:

„*Art. 126: Renouncing the sentence applicable to the minor*

In case of offenses punishable with a sentence to imprisonment or a sentence to strict imprisonment for 2 years at most, the court may impose no sentence on the minor who has no criminal record, has covered the damage caused and has credibly proved that he/she can reform even without the sentence being enforced.

Art. 127: Postponement of the enforcement of the sentence of the minor

(1) In case of offenses punishable by law with a sentence to imprisonment or strict imprisonment for up to 5 years, the court, after deciding on the sentence, may postpone the enforcement thereof, if the minor has no criminal record, has covered the damage caused or proves he/she is able to cover it, and if after committing the act he/she has credibly proved that he/she can reform even without the sentence being enforced.

[17] In force

(2) In case it postpones the enforcement of the sentence, the court sets as part of the ruling the date when it will pronounce on the sentence, which cannot exceed 2 years from the date of the ruling.

(3) The period of time between the moment the sentence is pronounced and the date set by the court is, in accordance to par. (2), probation time for the minor.

(4) During probation, but up to the age of 18, the court may dispose the minor to be entrusted to one of the persons listed in art. 117 or to a legally commissioned institution to supervise the minor or to social reintegration and supervision services, and dispose at the same time some of the obligations stipulated in art. 117 par. (3).

(5) If the minor had an appropriate conduct while on probation, the court may not enforce a sentence, and if the minor did not have an appropriate conduct , the court may either postpone once more for the same term the enforcement of the sentence or enforce the sentence within the limits stipulated by law".

B. The new law on the execution of sentences

In the matter of the execution of sentences and educational measures, the new piece of legislation, respectively Law no. 294 of June 28, 2004[18] on the execution of sentences and measures imposed by judicial bodies during trial, institutes a number of specifications relating to institutions of substantial and penal-procedural law such as community service.

Thus, art. 13 specifies the duration of community service:

"(1) Community service is executed for a period of 180 day at most, in the case of adult condemned persons, and 120 days at most, in the case of condemned minors.

(2) The daily work schedules, on working days, cannot exceed 3 hours a day, in the case of condemned adults who have a paying job or attend school or vocational training courses, and 2 hours a day, in the case of condemned minor who have a paying job or attend school or vocational training courses.

(4) The daily work schedule, on non-working days or in the case of persons who do not have a paying job or do not attend school or vocational training courses, cannot exceed 8 hours, in the case of condemned adults, and 6 hours, in the case of condemned minors."

Art. 15 specifies the conditions in which community service is executed:

"(2) Community service cannot be executed during the night or in harmful, dangerous places or which present a high risk for the health or integrity of sentenced persons or for the development of sentenced minors."

The supervision measures and the obligations disposed for the minor are established in art. 24:

"*Art. 24.*

The dispositions of art. 21 - 23[19] are applied appropriately in case the case of supervision measures and obligations disposed for the minor in case of conditional

[18] Comes into effect on 29.06.2005, at the same time as the New Penal Code
[19] Art. 21.

suspended execution of sentence, suspended execution of sentence under supervision, and postponed enforcement of the sentence."

Regarding the conditions of the execution of the sentence to imprisonment, art. 26 stipulates the establishment of special penitentiaries, as follows:

(1) For certain categories of persons sentenced to deprivation of liberty, special penitentiaries can be established, under art. 25 par. (2).

(2) Special penitentiaries are:

a) penitentiaries for minors;

b) penitentiaries for women;

c) hospital-penitentiaries.

The regime for the execution of custodial sentences has been personalized in the case of minors, in accordance with art. 40:

(1) Minors executing a custodial sentence are included, for the duration of the execution of their sentence, in special assistance, counseling and supervision programs, appropriate for the age and personality of each of them.

(2) The special programs mentioned in par. (1) are developed by the socio-educational departments of penitentiaries, with the participation of social reintegration and supervision counselors, volunteers, associations and foundations, as well as other representatives of the civil society.

Control over the execution of imposed supervision measures and obligations in conformity with The Penal Code

(1) The control over the execution of supervision measures and obligations stipulated by the Penal Code, which can be imposed in case of suspended execution of sentence under supervision, suspended execution of sentence under supervision with the obligation of the condemned person to do community service, postponed enforcement of the sentence and conditional release, is provided as a rule, by the judge delegated for the execution of sentences from the law court in the condemned person's district of residence and by the counselors for social reintegration and supervision.

(2) For the duration of the suspended execution of the sentence under supervision, the suspended execution of the sentence with the obligation of the condemned person to do community service, of postponed enforcement of the sentence or conditional release, the condemned person or, as the case may be, the defendant can ask for assistance and counseling, which are provided, in accordance with the law, by the counselors for social reintegration and supervision.

Art. 22

Notification of the court in case of non-compliance with the supervision measures and obligations imposed by the court.

In case of non-compliance with the supervision measures and obligations stipulated in the Penal Code, imposed in the case of suspended execution of sentence under supervision or suspended execution of sentence with the obligation of the condemned person to do community service, the judge delegated for execution of sentences, ex officio or upon request from social reintegration and supervision counselors, notifies the court with a view to revoking the suspension or to extending the probation term by 3 years at most.

Art. 23

Report of the judge delegated for execution of sentences on compliance with supervision measures and obligations imposed in case of postponed enforcement of sentence.

In case of postponed enforcement of the sentence, on the date set by the court, the judge delegated for the execution of sentences and the counselors for social reintegration and supervision submit a joint report on the manner in which the defendant complied with the supervision measures and the obligations stipulated in the Penal Code, imposed in case of postponed enforcement of sentences.

(3) The dispositions of art. 39[20] apply in an appropriate manner to the condemned persons stipulated in par. (1).

Detention conditions for minors are stipulated in art. 43:

Art. 43, point (3)

"Reception of condemned persons takes place in specially designed areas, women separated from men, and minors separated from adults",

while art. 44 point (2) stipulates the manner of execution of custodial sentences:

"Minors condemned to custodial sentences execute their sentence separately from adult condemned persons or in special detention areas"

Art. 69 establishes the conditions for minors to be able to do work during the execution of the sentence:

"Women condemned to custodial sentences who are pregnant, those who give birth during detention and care for babies under 12 months old, as well as minors condemned to custodial sentences cannot do work during the night or in places which are harmful, dangerous or hazardous to the health or integrity of the condemned persons or to the development of condemned minors."

Art. 78 stipulates the conditions for education and vocational training of minors:

(1) Minors condemned to custodial sentences are provided conditions for education and for vocational training, in terms of their options and abilities.

(2) Expenses relating to education and vocational training of persons stipulated in par. (1) are paid by the Ministry of Education and Research, Ministry of Labor, Social Solidarity and Family, and the National Administration of Penitentiaries.

[20] Art. 39
Personalization of the regime of execution of custodial sentences.
(1) Personalization of the regime of execution of custodial sentences is determined by the commission for the personalization of custodial sentences, in terms of the offense committed, the length of the sentence imposed, repeat offender status, conduct, personality, age, state of health, and possibilities for social reintegration of the condemned person.
(2) The condemned person is included, taking into account the criteria stipulated in par.(1), in programs aiming mainly at:
a) socio-educational activities, providing assistance and counseling, guidance and assistance in finding employment or a vocational activity after release;
b) education;
c) vocational training.
(3) The programs stipulated in par. (2) are developed by the socio-educational departments of penitentiaries, with the participation of social reintegration and supervision counselors, volunteers, associations and foundations, as well as other representatives of civil society.
(4) For each condemned person an assessment and socio-educational intervention plan is developed by the responsible department of the penitentiary.

C. Protection of the child who committed a criminal act and does not have penal responsibility

1. Law no. 272/2004 on the protection and promotion of the rights of the child is published in the Official Gazette no. 557/23.06.2004 and will come into effect on January 1, 2005. It provides, in chapter V, art.80-84, for the protection of children who commit offenses stipulated by the penal law and who do not have penal responsibility.
2. Government Decision no.1439/2004 on specialized services designed for children who commit penal offenses and do not have penal responsibility. It was published in the Official Gazette no.872/24.09.2004 and will come into effect on January 1, 2005. It regulates the organization and functioning of these services.

Law no. 272/2004 on the protection and promotion of the rights of the child provides for this category of children the possibility to take the following measures:

- Placement;
- Specialized supervision.

These measures are imposed by the court, in case the agreement of the child's parents or legal representative cannot be obtained, or by the Commission for Child protection, in case this agreement exists.

In deciding on the measures the following elements are taken into account:

- the circumstances conducive to the offense;
- the degree of social danger of the offense;
- the environment the child was brought up and lived in;
- the risk of the child's relapsing into criminal offense;
- any other elements of a nature to characterize the child's situation.

The measure of specialized supervision consists in keeping the child in his/her family, on condition of his/her compliance with certain obligations, such as:

- attend school;
- use day-care services;
- undergo medical treatment, counseling or psychotherapy;
- prohibition from frequenting certain places or having contact with certain persons.

In case keeping the child in his/her family is not possible or when the child does not comply with the obligations imposed by the measure of specialized supervision, the Commission, or, as the case may be, the court, can decide that the child be placed with his/her extended family or a substitute family, as well as compliance with the obligations mentioned above.

In the situation where the criminal offense, committed by a child with no penal responsibility, presents an elevated degree of social risk, as well as in case the child on whom the previous measures were imposed continues to commit criminal offenses, the Commission or, as the case may be, the court dispose, for a definite period, the placement of the child in a specialized residential service.

Art. 83 prohibits publication of any data relating to criminal offenses committed by a child without penal responsibility, including data about his/her person.

By Law 272/2004 on child protection new acts are incriminated as offenses, acts where the child is the passive subject, instituting a special protection thereof, diversifying the general framework of penal protection established by the penal code. These acts are:

Art. 132

(1) Instigating or facilitating for a child to practice begging or deriving profit from the practice of begging by a minor is punished with imprisonment for 1 to 3 years.

(2) Recruitment or coercion of a minor to beg is punished with imprisonment for 1 to 5 years.

(3) If the act stipulated in par. (1) or (2) is committed by a child's parent or legal representative, the sentence is imprisonment for 2 to 5 years for the act stipulated in par. (1), and 2 to 7 years and interdiction of certain rights, for the act stipulated in par. (2).

Art. 133

The act of a child's parent or legal representative to use the child to repeatedly appeal to public charity, asking for financial or material assistance, is punished with imprisonment for 1 to 5 years and interdiction of certain rights.

Art. 134

(1) Non-compliance with the obligations stipulated in art. 36 par. (2), art. 48 par. (4) and art. 91 constitutes a grave disciplinary infraction and is sanctioned in conformity with the law.

(2) Non-compliance with the obligation stipulated in art. 36 par. (2), art. 87 par. (3) first thesis constitutes disciplinary infraction.

Government Decision no.1439/2004 on specialized services for children who commit criminal offenses and do not have penal responsibility regulates the types of services designed for this category of children as well as the possibility of these services to be provided both by the General Directorate of Social Assistance and Child Protection and by accredited private bodies.

At the same time, it institutes the obligation for the investigation activity of children who commit criminal offenses and do no have penal responsibility to be conducted in collaboration with specially designated specialists from the General Directorate of Social Assistance and Child Protection.

According to the above-mentioned decision, the following types of services can be organized:

- Specialized residential-type services; to be organized as centers for guidance, supervision and support in social reintegration of the child.
- Specialized day care services, to be organized as day centers for guidance, supervision and support in social reintegration of the child.

- Family-type services; special training requirements for persons or families who provide, under the law, special protection to the child who committed a criminal offense and does not have penal responsibility.

The new regulations in the field of child protection thus cover the current legislative void with respect to protective measures designed for the child who commits criminal offenses and has no penal responsibility, achieving at the same time the alignment of the national legislation to the international one as regards the fundamental principles that should govern the protection of the child's rights.

Therefore, besides the special provisions designed for the protection of the child who commits criminal offenses and has no penal responsibility, Law no. 272/2004 stipulates at the same time a number of guarantees for the child's rights to be respected throughout the prosecution and trial of all matters involving children by:

- ensuring the child's right to be shown regard for his/her personality and individuality, by not allowing that the child be subjected to corporal punishment or other humiliating or degrading treatment, and the right of the child to protection of his/her public image and his/her intimate, private and family life. It is forbidden and sanctioned any action of a nature to affect the child's public image or his/her right to intimate, private and family life, as well as to publicize any information about the penal offenses committed by a child with no penal responsibility.
- paying particular attention to the right of the child competent of judging right from wrong to freely express his/her opinion on any issue of his/her concern, the child having the right to be heard in any judicial or administrative procedure he/she is involved in, given the instituted obligation to hear the child who has attained 10 years of age. At the same time, there are provisions for the child who has not attained 10 years of age to be heard if the relevant authority estimates that the hearing is necessary to try the matter. Although a number of provisions referring to the hearing of the child were included in the old legislation, the new one raises this element to a level of principle, detailing at the same time the manner in which this right can be realized. In this respect, it specifies not only the obligation to hear the child, but also to take into account the opinions he/she formulates during the hearing and the need to attach due importance to them, proportional to his/her age and maturity. At the same time, regardless of his/her age, the child may request to be heard, and the relevant authority trying the matter has the obligation to pronounce only its motivated decision in case it refuses the request.
- expressly stipulating the child's right to maintain personal relations both with his/her parents and relatives and with other persons the child has become attached to. By regulating the methods to realize this right, it eliminates the existent ambiguities in practice with respect to the exercise of this right, which is a particularly important aspect in the first place to the practice of judicial bodies, in that they will have the possibility, when the best interest of the child demands it, to decide the restriction of one or several methods by which this right is exercised and not only the total prohibition of its exercise.
- eliminating the possibility to separate the child from his/her parents without their agreement through the intervention of an administrative body – a long-criticized procedure internationally – the decision in these situations resting entirely with the court in circumstances specifically provided by the law. Moreover, the

intervention of the court is required not only when the separation of the child from his/her parents is imposed but also in any other situation affecting the child and where the agreement of the parents cannot be obtained or the parents disagree with each other.

- regulating the return to the country of children found without supervision on the territory of other states, a frequent occurrence lately, this category of children requiring special protection as well the involvement of several institutions, given the fact that in most cases these children have a cumulative capacity as author and victim of infractions.

CHAPTER III – STATISTIC ANALYSIS

In order to have an accurate review of the current juvenile justice system we need to carry out a judicial-statistic analysis regarding the dynamics of the types of offenses committed, the specific categories of delinquent minors, the educational measures and the sentences imposed during the period October 2003 – March 2004, concerning minors with penal responsibility.

With regard to minors who are not of penal responsibility age we have analyzed the casuistry kept on record by Child Protection Departments in the same period of time.

3.1 Judicial-statistic analysis of minors with penal responsibility

3.1.1 Methodology

A. Analysis of definitive decisions where sanctions were imposed (educational measures or sentences), during October 2003 – March 2004 at tribunals and courts in the following counties: Alba, Bucharest, Braşov, Constanța, Cluj, Dolj, Iaşi, Timiş, analysis of the social inquiries conducted by the Board of Guardians and the evaluation reports drafted by Social Reintegration and Supervision Services.

In order to obtain a comprehensive view, we sought the most adequate territorial distribution. We selected judicial bodies from the 7 historic provinces to get national representation. The selection of these sites was made keeping also in mind the distribution of specialized child and family courts, in conformity with Phare Project 2003 – Juvenile Justice[21].

Therefore, the above-mentioned judicial bodies were requested to make available copies of definitive decisions, social inquiries and evaluation reports.

We then studied **a number of 522 decisions**, concerning **701 defendants.**

B. Development of research tools (criminological templates), including the following indicators:

a) Identification data

b) Data about the offense:

- Area
- Concurrent offenses
- Motives to commit the offense
- Mode of operation
- Actions in preparation

[21] The goal of Phare Project 2003 – Juvenile Justice is to set up specialized child and family courts in Romania.

- Extenuating or aggravating circumstances
- Place of the offense

c) Data about the offender:

- Age group
- Area of residence
- Gender
- Ethnic origin
- Education
- Family situation (violent/ non-violent domestic environment, physical/ sexual/ mental abuse, single-parent family, orphan or raised by extended family, parents' occupation)
- Milieu he/she frequents
- Relations with parents or schoolmates
- Housing conditions
- Leisure activities
- Criminal record

d) Data about the criminal prosecution

e) Data about the trial

f) Data about sanctions

The content of the criminological template seeks to cover all the objectives of the project.

C. Building the data base

D. Centralizing data

E. Data analysis and interpretation

The objectives of the analysis were to:

- Assess the current situation in the judicial treatment applied to the minor;
- Develop an effective juvenile justice system, one which takes into account the best interest of the minor;
- Set in place a sanctioning system based on educational measures, with a view to social reintegration of minors;

The expected results of the analysis:

- Highlight the types of offenses committed by minors;
- Highlight the specific categories of delinquent minors;
- Evolution of educational measures and punishments and the balance between them.

It is necessary to investigate the causes and conditions leading to juvenile delinquency in order to define the ways and means to prevent it and control it. Full knowledge of the issue allows for an evaluation of the possibilities to take action, in order to choose the optimal solutions for intervention, in the best interest of the child.

A breakdown of decisions by tribunals and courts, by counties, as well as a breakdown of defendants by counties are shown.

3.1.2 Indicators Analysis

A. Data about the offense

Breakdown by types of offenses:

Juvenile delinquency is a phenomenon of a polymorphous character. It manifests itself by the various types of offenses committed (thefts, robberies, homicides, batteries, insult to morals, prostitution, vagrancy).

The highest rate among offenses committed by minors in the study is registered by **offenses against property**: aggravated theft (Penal Code, article 209) – 403 offenses (57,4%), followed by robbery (Penal Code, article 211) – 104 offenses (14,8%). There were also registered 19 cases of theft (article 208 Penal Code), 53 cases of complicity in aggravated theft, 6 cases of complicity in robbery, 1 case of attempted robbery, 1 case of attempted theft, 15 offenses of aggravated theft in concurrence with breaking and entering (article 192 Penal Code), 5 offenses of aggravated theft concurrent with driving without a license on public roads, 3 offenses of aggravated theft concurrent with destruction, and one offense of aggravated theft in concurrence with rape, 2 cases of fraud (article 215 Penal Code), 2 cases of concealment (article 221 Penal Code), 1 case of destruction (article 217 Penal Code).

Among the **offenses against life and bodily integrity**, we can highlight the perpetration of a murder (article 174 related to article 175 letter I Penal Code) in concurrence with breaking and entering (article 192 paragraph 2 Penal Code), robbery (article 211 letter a, e, g, i Penal Code) and violation of graves (article 319 Penal Code), one murder (article 174 related to article 175 letter i of the Penal Code) and an attempted murder, 10 offenses of bodily harm (article 181 Penal Code), one offense of bodily harm in concurrence with robbery, 13 offenses of battery or other types of violence (article 180 Penal Code), 2 offenses of battery or other violence in concurrence with threat.

Regarding **sexual offenses**, there were 5 offenses of rape (article 197 paragraph 1 of the Penal Code) with robbery, one offense of sexual perversion (article 201 Penal Code), and sex with a minor – 2 cases.

Offenses bringing harm to social life relations were also committed: one offense of insult to morals in concurrence with battery, one offense of insult in concurrence with association with the purpose to commit offenses, 4 offenses of brawling (article 322 Penal Code), 2 offenses of prostitution (article 328), one offense of procuring (article 329 Penal Code) in concurrence with trafficking of human beings (article 12 of Law 678/2001 on trafficking of human beings).

Other offenses provided by the Penal Code: one offense of perjury (Art. 260), 4 offenses of counterfeiting money and other securities (Art. 282), 3 offenses of theft or destruction of official documents (Art. 242).

Offenses provided by special laws: driving without a license on public roads – article 36 of Decree 328/1966 (1 case) article 78 of GEO no. 195/2002 on traffic on public roads – 17 offenses, article 35 of Law 103/1996 on the cynegetic stock and game protection, poaching – 3 offenses, Law 192/2000 on fishing during close season – one offense, article 32 of G.O. 96/1998 on the regulation of forestry and the administration of the national forest stock in concurrence with article 98 of the Forest Code (offenses), drug use and dealing, Law 143/2002 – 4 offenses.

Offenses against property

Name of the offense	Number of offenses
Theft	19
Aggravated theft	403
Complicity to aggravated theft	53
Aggravated theft in concurrence with breaking and entering	15
Aggravated theft in concurrence with driving without a license on public roads	5
Aggravated theft in concurrence with destruction	3
Aggravated theft in concurrence with rape	1
Robbery	104
Complicity to robbery	6
Attempted robbery	1
Fraud	2
Concealment	2
Destruction	1

Offenses against life, bodily integrity and health

Murder	1
Attempted murder	1
Murder in concurrence with breaking and entering	1
Battery or other violent acts	13
Battery or other violent acts in concurrence with threat	2
Bodily harm	10
Bodily harm in concurrence with robbery	1

Sexual offenses

Rape	5
Sexual intercourse with a minor	2
Sexual perversion	1

Offences that bring harm to social life relations

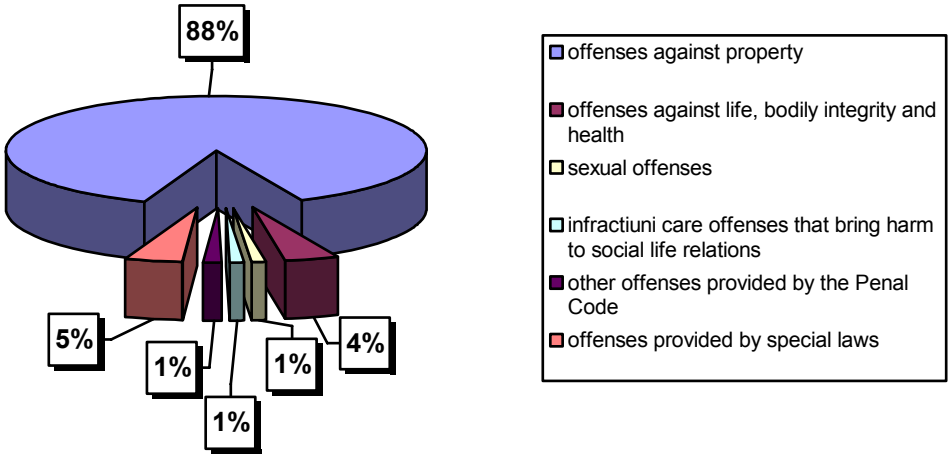
Insult to morals in concurrence with battery	1
Insult in concurrence with association to commit offenses	1
Brawling	4
Prostitution	2
Procuring in concurrence with trafficking of human beings	1

Other offenses provided by the Penal Code

Perjury	1
Counterfeiting currency and other securities	4
Theft or destruction of official documents	3

Offenses provided by special laws

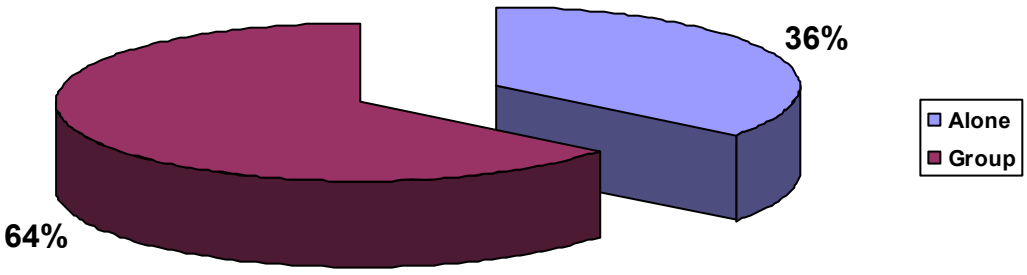
Driving without a license on public roads	18
Poaching	3
Fishing during close season	1
Theft of wood	6
Drug use and dealing	4



Mode of operation

Most minors committed the offense in criminal partnership, (451, meaning 64%), compared to those who acted alone (250, meaning 36%). We note therefore the inclination of minors to commit offenses in criminal partnership [22] (together with other persons), thus getting up their audacity to act.

Alone	250
In partnership	451



We note that, with respect to the total number of defendants, minors associated less with other minors (193 cases) than with adults (258 cases) to commit offenses. This proves the fact that it is easier to copy an already existent behavior than initiate one. The minor is a very easily to influence person, willing to copy a defiant behavior which would show his/her "toughness", their importance in the eyes of the others, and would even lead to being "adopted" by a group of adults.

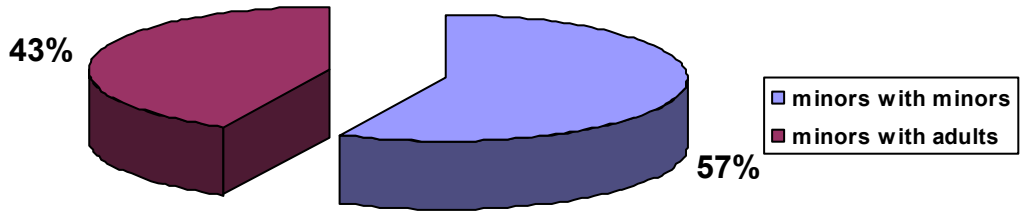
The modes of operation used by minors, although not radically different from those used by adults, have nevertheless some particular characteristics, among which we could mention the following:

- they show a certain inventiveness when they commit thefts, in that they choose means to break in through places inaccessible to an adult offender;
- particular courage in using dangerous methods of climbing;
- they often draw their inspiration from modes of operation seen in movies;
- as a rule, they do not use tools or devices which are specific to professional burglars, but improvise the break in using other means found by chance;
- they become violent in very few situations; if they are caught, most often than not they flee;
- since they are not aware of what criminology can accomplish, minor offenders are not very careful to cover their tracks, which leads to their quick apprehension;

[22] Constantin Mitrache, Criminal Law, general part: Criminal partnership is defined as the situation where in the commission of an offense provided by the criminal law more persons participated than required by the nature of that act.

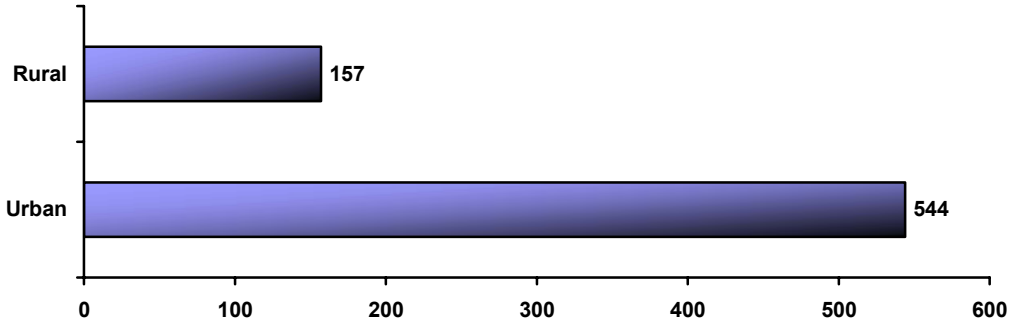
- minor offenders are, as a rule, very hasty to get rid of the stolen goods, so that shortly after committing the act they can be found selling the appropriated goods at ridiculously low prices.

Minors with adults	258
Minors with minors	193



Area where the offense was committed

Most offenses were committed in urban areas (544, meaning 77.6%); the rest of the offenses (157, meaning 22.3%) were committed in rural areas.



The big difference between the number of offenses committed in urban areas and the number of offenses committed in rural areas underlines the higher criminogenic potential of the city compared to the country. Partly, the explanation resides in the traditionalism of the rural community as compared to the ever changing urban community, with different sets of values and with stronger temptations.

From the analysis of social inquiries and evaluation reports, the following aspects, particular to the commission of offenses in **urban areas**, stand out:

- minor offenders are more adept in the commission of the acts;
- they specialize in certain offenses: pickpocketing, car theft, shoplifting;
- they gather in big groups, drink alcohol and inhale hallucinogenic substances;
- they act with the approval or upon request of adults;
- they frequent discotheques, bars, cinemas, gyms, where they organize and prepare the groups and approach the victims.

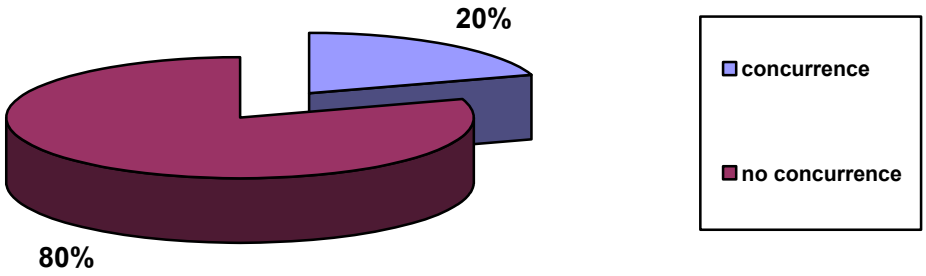
With regard to **rural areas**, the characteristics of juvenile delinquency are the following:

- they select potential victims who live in isolated houses and are known to have the possibility to sell alcoholic drinks;
- the prevalent offense is stealing from the field and from houses (especially from elderly persons, who live alone);
- in rural areas, minor delinquents form small groups of 2, maximum 3, persons, compared to urban areas where groups may reach up to 10 persons even;
- the money obtained from the offenses is spent in nearby cities on entertainment;

Concurrent offenses

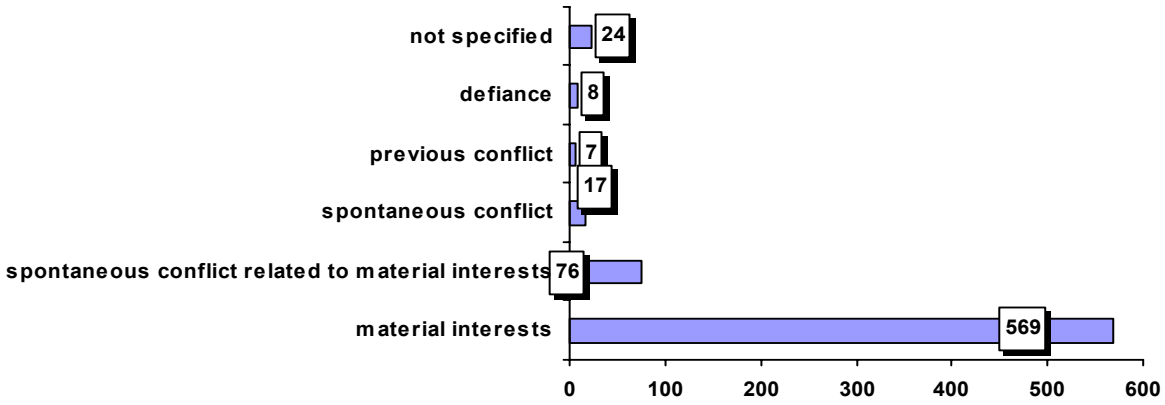
In the overwhelming majority of cases (560, meaning 80%) there were no concurrent offenses, the minors committed only one offense.

concurrent offenses	141
no concurrent offenses	560



Out of the 701 minor defendants, in 141 cases they committed concurrent offenses. Among them we can separate two distinct situations: in the first situation we find offenses committed in homogenous concurrence (same type offenses), while in the second, we find offenses committed in heterogenous concurrence (offenses of different types, such as theft in concurrence with breaking and entering, robbery, destruction, bodily harm).

Motive to commit the offense



The most frequent motive to commit the offense was material interest – 81%.

Due to the fact that the majority of the offenses committed were offenses against property (aggravated theft and robbery), the most frequent motive is material interests (569 cases).

The more and more conspicuous disparity in material status between individuals has resulted in the proliferation of a feeling of frustration, feeling which, not being fully kept under control, has inevitably led to the perpetration of criminal acts.

It is one of the ways the so-called anomia phenomenon appears, in the sense given to this term by R. K. Merton[23], which is the discrepancy, the conflict between the objectives (goals) deriving from the living models a society proposes to its members, on the one hand, and the legitimate means made available to them to achive these objectives, on the other hand.

The next motive is spontaneous conflict related to material interests (76), in the case of offenses of battery and bodily harm, brawling. There are cases where the motivation is given by the spontaneous conflict (17), by a previous conflict (7) or by defiance (8). In 24 situations there is no reason specified for commission of the offense.

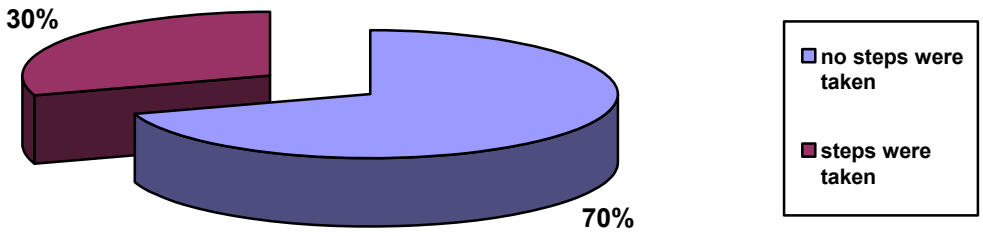
Other motives were found: pre-existent conflict, protection of another defendant (in the case of an offense of perjury).

[23] Robert K. Merton, American sociologist, formulates a theory based on the concept of anomia, in a paper first published in 1949 and republished in 1957, *Social Theory and Social Structure*

Actions in preparation of the offense

The analysis revealed the fact that in most cases minors did not go into actions in preparation of the commission of the offense, which shows its spontaneous character – 70%.

no steps taken	490
previous agreement	189
following the victim	11
intimidating the victim	4
procuring tools for the perpetration of the offense	5
taking advantage of the victim's inattention	2



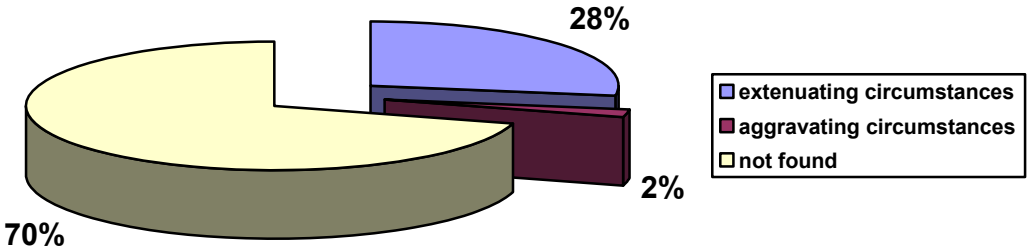
In most cases (490) no steps were taken in preparation of the offense, which proves the spontaneous character of the offense, with a lesser degree of risk.

There were also cases where such steps were taken: previous agreement (189), following the victim (11), intimidating the victim (4), procuring tools for the perpetration of the offense (5), taking advantage of the victim's inattention (2).

Extenuating and aggravating circumstances

In most cases, the courts did not find circumstances – 70%.

extenuating circumstances	193
aggravating circumstances	13
not found	495



In most situations the courts did not find circumstances (495 cases). For the rest of the defendants (206) the court found extenuating circumstances (article 74 Penal Code) in 193 cases, and aggravating circumstances (article 75 Penal Code) in 13 cases. To find extenuating circumstances the courts took mainly into account the good conduct of the offender previous to committing the offense, the efforts made by the offender to make amends for the result of the offense, and his/her attitude

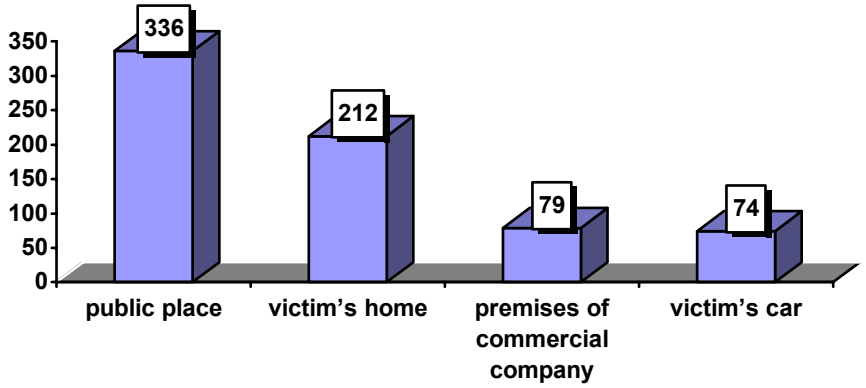
following the offense, displayed in coming before the authorities and by a sincere behavior during the trial.

As for aggravating circumstances, it was found for the offense committed by 3 or more persons together (article 75 letter a Penal Code).

The place where the offense was committed

Most offenses were committed in public places (48%).

public place	336
victim's home	212
premises of commercial company	79
victim's car	74



Most offenses (336/48%) were committed in public places (street, public road, field, forest, shops, parking lots, public transportation, discotheques, bars, etc.), the rest in the home of the victim (212/30%), in the premises of commercial companies (79/11.2%) or in victims' cars (74/10.5%; especially thefts of radio-stereo, but also utilization of the car).

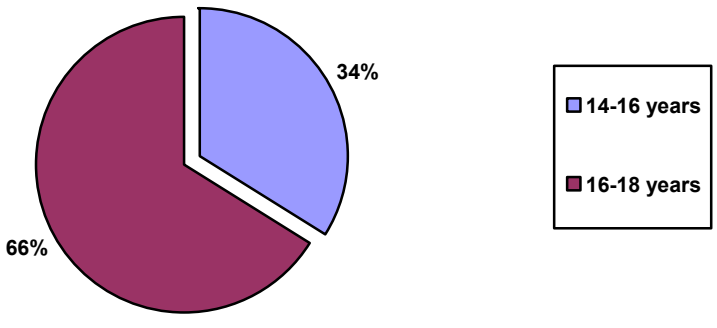
B. Data about the offender

Breakdown by age groups

The highest number of juvenile delinquents are those aged 16 to 18 (464), followed by those aged 14 to 16 (237).

Age groups

14-16 years	237
16-18 years	464

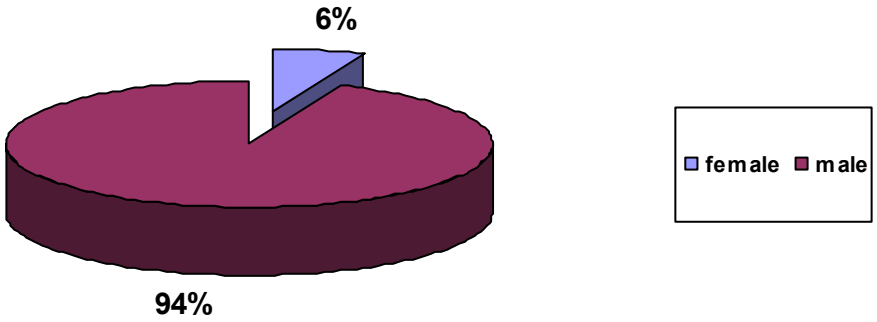


The high number of defendants aged 16 to 18 reveals how strong the specific temptations of this age are for minors with a more defined personality and at a more advanced stage of maturity, when they have a clear picture of the profit obtained by committing the offence.

Breakdown by gender

Regarding the breakdown of defendants by gender, 94% were boys.

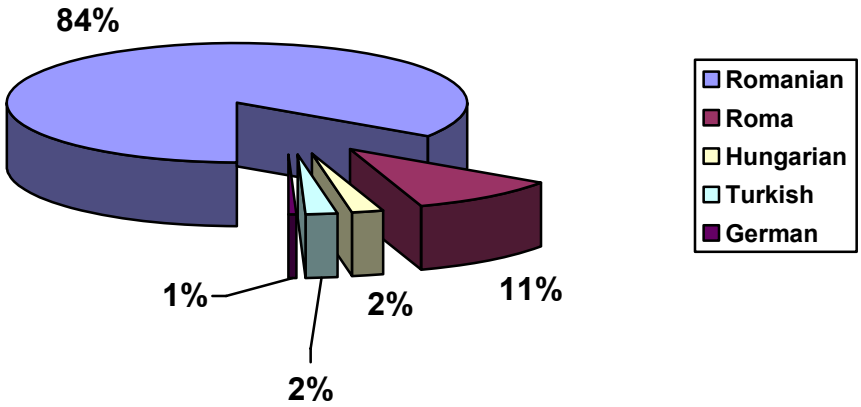
Female	43
Male	658



This indicator clearly shows that among juvenile delinquents males are highly prevalent. Out of the 701 defendants, 658 are males, and only 43 are females. The tendency to infringe the law and the inclination for aggressiveness are much more pronounced in male adolescents than in young girls.

Ethnic origin

romanian	591
roma	75
hungarian	15
turkish	16
german	4

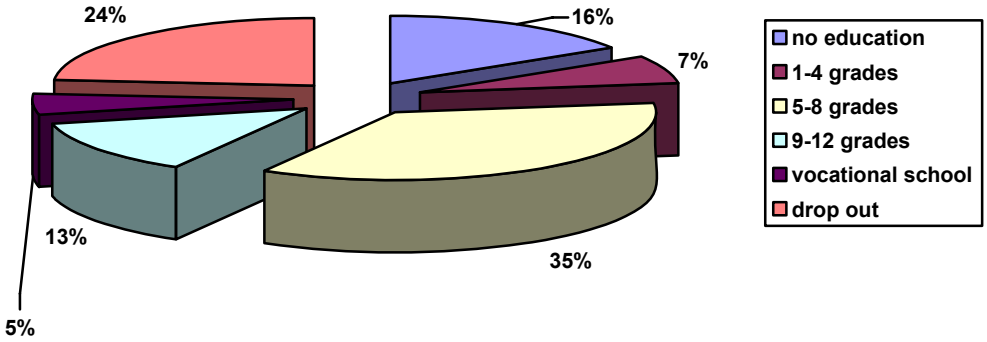


Out of 701 minor defendants, 591 are of Romanian ethnic origin, 75 are Roma, 15 Hungarian, 16 Turkish, and 4 German.

Education

Most juvenile delinquents were enrolled in secondary school.

no education	113
1-4 grades	46
5-8 grades	249
9-12 grades	92
vocational school	36
drop out	165



The distribution by level of education shows that in most cases (249) the minor offenders were students in 5th – 8th grade, followed by drop-outs (165) and those with no education (113). 92 minors were high school students and 36 minors were vocational school students.

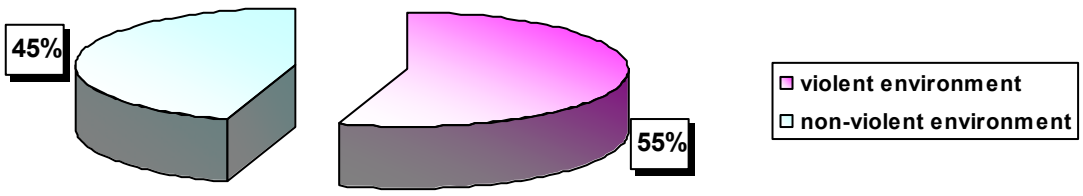
From social inquiries and evaluation reports it appears that in most cases the minors take no interest in school, have poor performance and poor attendance.

School failure and drop-out in a relatively high number of juvenile delinquents are the results of reduced social control, at family and school level. Most minors replicate the low level of education of their own parents. They often come from families where education is not a prerequisite of social success. Moreover, they lack the natural support and encouragement that most students receive from their parents to strive for good performance at school and further their education.

Family environment

In most cases, the domestic environment is violent (386) and in only 315 cases is non-violent.

Violent environment	386
Non-violent environment	315



Violent environment

Physical abuse	130
Mental abuse	57
Physical and mental abuse	10
Sexual abuse	2
Not specified	187

Out of the 386 cases of violent environment, in 187 cases there are no data about abuse, with special reference to sexual abuse which, as a rule, is not declared. There were cases of physical abuse – 130, physical and mental – 10, mental – 57, sexual – 2.

We note the very large number of normal families, legally formed (572), followed by single-parent families (107), minors raised by other members of the extended family (14), and abandoned only one case.

A significant percentage (55%) of minors come from families where there are conflicts between the parents or between children and parents, manifest by repeated arguments and beatings, where the father often has an aggressive behavior in the family and in society. There are families where parents lead a parasitical life, abuse alcoholic drinks, constantly display their brutality, greed and egotism.

Although the family should be a controlled environment for the child, this is where various forms of abuse are frequently encountered.

From social inquiries and evaluation reports, we have found that there are some factors leading to abuse:

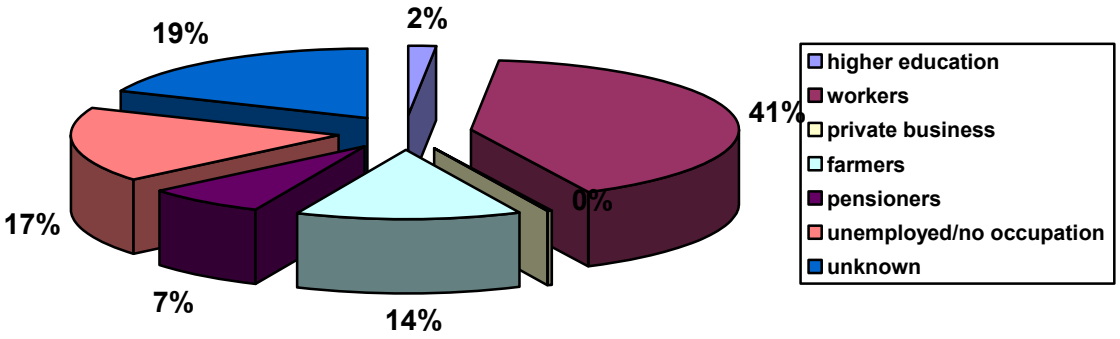
- promiscuity in some family environments
- abusive parental model
- single-parent families
- low level of education
- ignoring abuse
- abuse of alcohol
- drug use
- mental illnesses
- inadequate housing
- precarious socio-economic conditions
- large number of children

The highest number of juvenile delinquents comes from organized and apparently organized families. This fact contradicts the statement that disorganized families are the prevailing major source of juvenile delinquency.

Parents' occupation

Most minors come from families of workers (41%).

higher education	15
workers	360
private business	2
farmers	120
pensioners	65
unemployed/no occupation	152
unknown	164



The majority of parents are workers (360), followed by unemployed or without occupation (152), pensioners (65), farmers (120). Only 15 have higher education and 2 have a private business. In 164 cases we have no data.

In 41% of the cases, the juvenile delinquents' parents are workers, which explain the lack of studying conditions for the children, due either to the exhausting schedules of both parents, or to their low level of education.

Parents' unemployment (17% unemployed or without occupation) makes it impossible to satisfy the child's basic needs, determining the minor to find means of subsistence by him/herself, through crime.

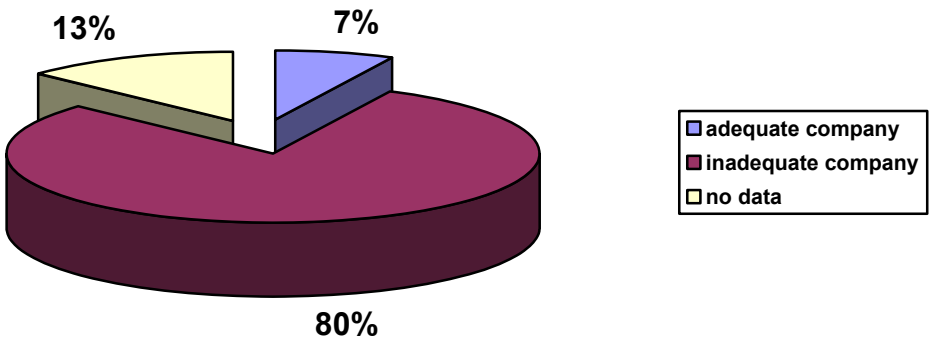
Another source of permanent tension is the parents' incertitude about their professional future, the fact that they do not have definite vocational training to allow them to practice a trade, in case they are dismissed.

It should also be mentioned that only 2% of the parents have higher education. This demonstrates that a high level of culture and education have an influence on the child's social behavior.

Milieu frequented by minors

We note that the majority of the minors kept inadequate company (559), 51 minors kept adequate company, while in 91 cases we were not able to find information about their group of friends.

Adequate company	51
Inadequate company	559
No data	91

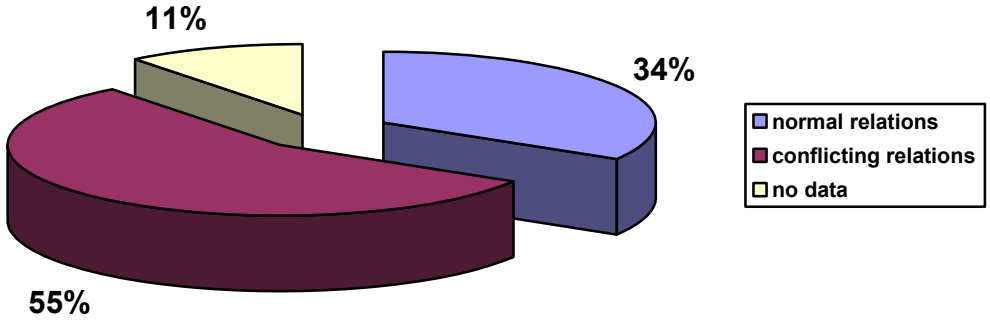


By inadequate company we mean: a circle of companions with aberrant behavior, who commit antisocial acts or have a propensity for crime, persons with criminal records, generally adults, with specific preoccupations, „neighborhood gangs" with a tendency towards adventure and defiance, where alcohol and drugs are frequently used.

Relations with parents

From the analysis of criminological templates we notice that the majority of minors had conflicting relations with their parents (392, meaning 55%).

Normal relations	235
Conflicting relations	392
No data	74



Conflicting relations are characterized by the disinterest of the parents in the upbringing and education of their children, an aggressive behavior of the parents towards their children or of the children towards their parents, the impossibility to assert parental authority over the child, the lack of communication or bad communication between parents and children, father's refusal to assume his role as a parent. A number of 235 minors (34%) stated that their relations with their parents are characterized by feelings of affection, moral and emotional support.

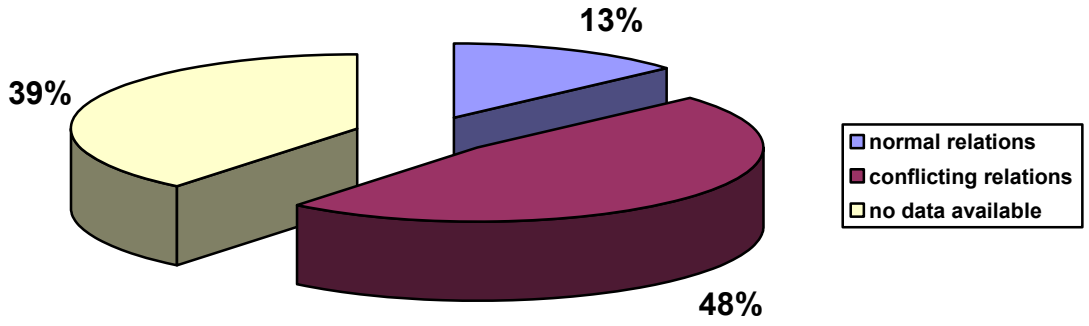
In 74 cases, social inquiries and evaluation reports reveal no information about the parents – children relationship.

From the studied casuistry, the following aspects hold our attention: diminished social-educational role of the parental couple, strained relations between family members and neglect of parental duties, manifest emotional disorders.

The negative consequences on the development of the child's personality derive greatly from the relations with his/her parents, characterized by indifference, abuse of authority and permanent tension.

Relations with schoolmates

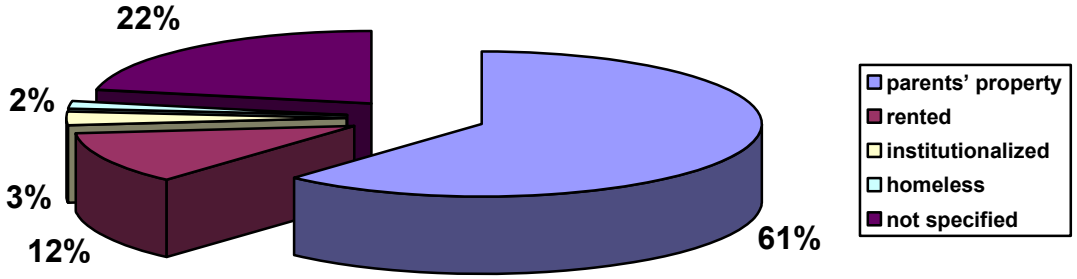
Normal relations	93
Conflicting relations	334
No data available	274



Out of the 701 minor defendants, 93 had normal relations with their schoolmates, and 334 had conflicting relations with their schoolmates, generated by the fact that they were not integrated in this community and by the impossibility to communicate. In 27 cases it is not specified.

Housing

Parents' property	432
Rented	82
Institutionalized	22
Homeless	11
Not specified	154



The majority have a home which is owned by their parents (432 cases), followed by those whose parents rent a home (88 cases); 22 minors were institutionalized, temporarily without a home, and 11 were homeless. In 154 cases there is no mention of their housing in social inquiries and evaluation reports. Regarding the situations where the home is owned by the parents, in 285 cases there were normal living conditions, while 94 and 53 cases respectively, living conditions were modest or precarious.

Leisure

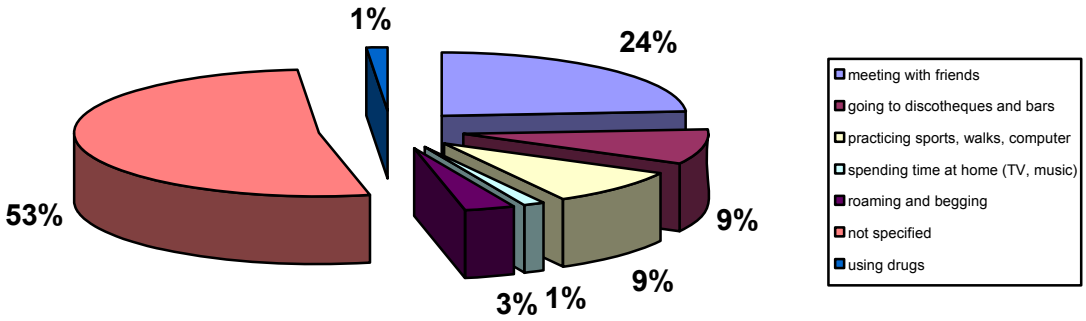
As for how they spend their spare time, according to social inquiries and evaluation reports, the minors appear to be interested in: meeting with adult friends (168 minors), going to discotheques and bars, associated with drinking alcoholic

drinks (62), practicing sports, taking walks, going to Internet halls (64). Very few spend their spare time at home – only 10 minors.

A number of 23 minors roam the streets and beg, and 10 minors stated that they were drug addicts.

For 364 minors, there is no mention of leisure activities in social inquiries and evaluation reports.

Meet with friends	168
Go to discotheques and bars	62
Practice sports, walks, computer	64
Spend time at home (TV, music)	10
Roaming and begging	23
Use drugs	10
Not specified	364

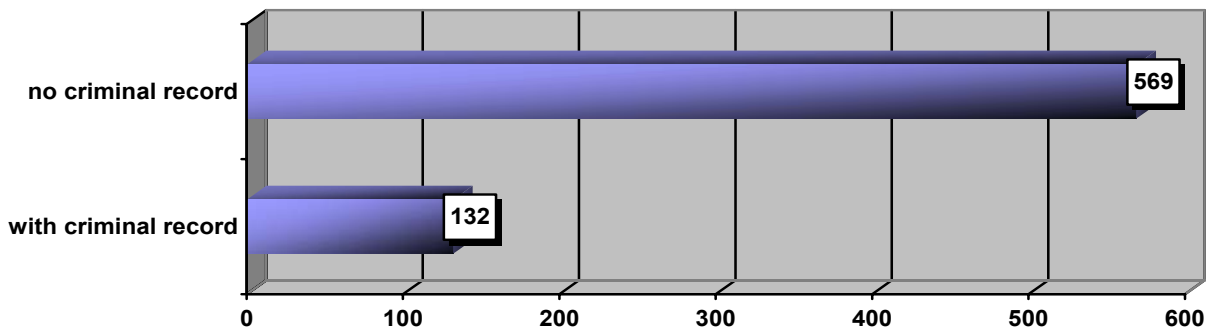


We notice that very few minors spend their spare time in the family and only one minor stated that reading is among his interests. The insufficient concern of the parents about the way their children spend their spare time and the lack of incentives towards organized, educational activities make minors associate and form the nucleus of groups with aberrant behavior.

Criminal record

Out of the total of 701 minors, the majority (569) were first offenders, which emphasizes the fact that a rather small number of minors relapse into committing an act provided by the criminal law.

With criminal record	132
No criminal record	569



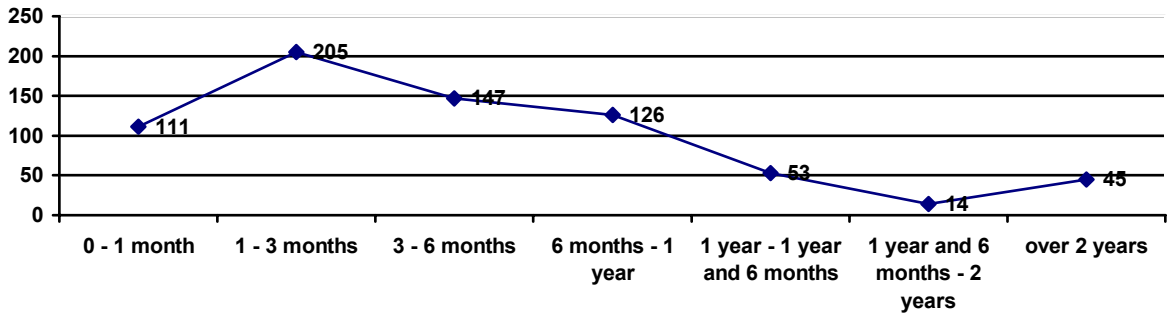
The fact that a very high percentage of minors (79.8%) were at their first offense shows that they are a low social risk, but also that by an effective intervention their definitive engagement on the path of crime can be avoided.

C. Data about the trial of the case and the sanction imposed

Duration of criminal prosecution:

The efficiency of criminal prosecution bodies in processing cases was rather high.

0-1 months	111
1-3 months	205
3-6 months	147
6 months-1 year	126
1 year -1 year and 6 months	53
1 year and 6 months - 2 years	14
Over 2 years	45

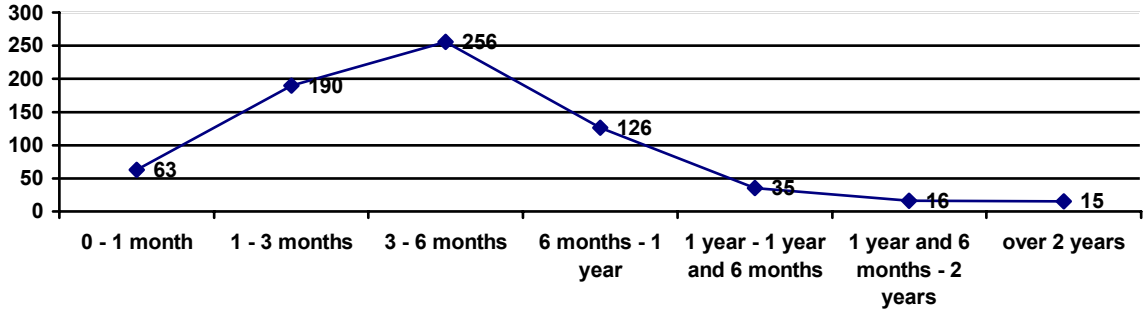


The duration of the criminal prosecution starts with the date of the commission of the offense and ends with the date the bill of indictment is brought in. The data obtained in this way reveal a rather high efficiency in processing cases: thus, in 111 cases, the duration of the criminal prosecution was up to one month. In 205 cases, it took up to 3 months, while in 147 cases up to 6 months. There were 126 cases where the duration of the criminal prosecution took up to 1 year, 53 cases up to 1 year and 6 months, and only 14 cases, 45 respectively, where the criminal prosecution took up to 2 years or over 2 years.

Duration of the trial at first court

The duration of the trial at first court was rather short.

0-1 months	63
1-3 months	190
3-6 months	256
6 months – 1 year	126
1 years – 1 year and 6 months	35
1 year and 6 months – 2 years	16
Over 2 years	15



This duration was calculated for the period starting with the date the indictment was brought in and ending with the date the decision was pronounced at first court. To note the celerity of trials, thus: 256 cases were tried in up to 6 months, 190 up to 3 months, 126 up to one year, 63 up to one month, 16 up to 2 years, 15 in over 2 years, 35 cases up to 1 year and 6 months.

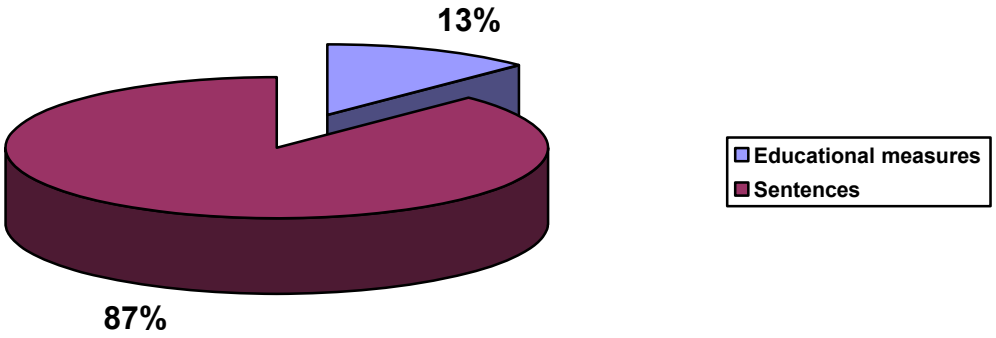
Educational measures and sentences

With regard to sanctions we note the prevalence of the sentence to imprisonment – in 613 cases, compared to educational measures imposed in 88 cases.

The educational measures are distributed as follows:

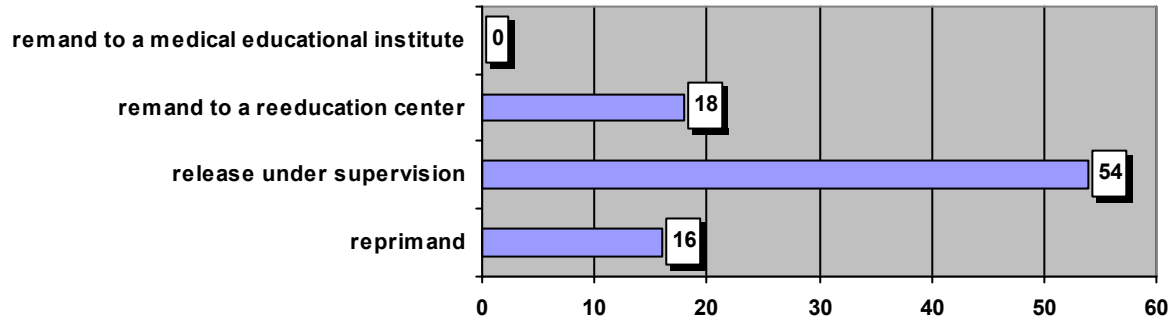
- reprimand: 16 minors;
- release under supervision: 54 minors (41 of the minors were released into the custody of their parents, 11 minors were given in charge of Social Reintegration and Supervision Services, and one minor was released into the custody both of the mother and of Social Reintegration and Supervision Services);
- remand to a reeducation center: 18 minors;

Educational measures	88
Sentences	613

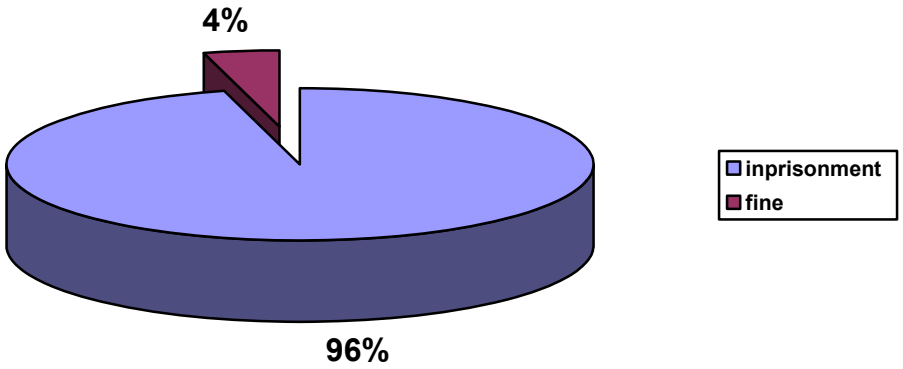


Educational measures

Reprimand	16
Release under supervision	54
Remand to a reeducation center	18
Remand to a medical-educational institute	0



Imprisonment	0-6 months	129
	6 months-1 year	98
	1 year-5 years	352
	5-10 years	4
	Over 10 years	1
Fine		29



With regard to the terms of the sentence to imprisonment, the courts decided in most cases the sentence to imprisonment for 1 to 5 years (in 352 cases, out of which 120 with conditional suspended sentence and in 16 cases suspended sentence under supervision, the minors being released into the custody of parents and Social Reintegration and Supervision Services). In 19 cases, the minors were granted a reprieve of sentence.

As to the sentence to imprisonment for a term of 6 months or less, out of the 129 cases, the courts decided for a conditional suspended sentence in 95 cases, suspended sentence under supervision in one case only, while in 12 cases, a reprieve was granted.

A sentence to imprisonment for a term of 6 months to 1 year was pronounced for 98 minors, out of which 46 received conditional suspended sentences and 4 suspended sentences under supervision, being given in charge of Social Reintegration and Supervision Services, while 6 were granted a reprieve.

Only in 4 cases the courts decided sentences to imprisonment for 5 to 10 years, while the sentence to imprisonment for a term longer than 10 years was passed in one case only.

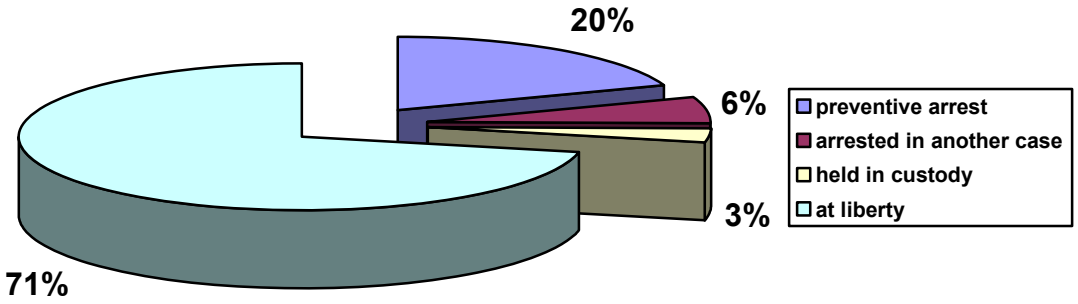
From the analysis of these data it can be noticed that the courts often resort to judicial individualization means of execution of sentences, to the detriment of educational measures.

There were also decisions for 29 fines, out of which 10 were pardoned, and 5 received conditional suspended execution.

Preventive arrest

In most cases, the minors were criminally prosecuted and tried at liberty.

Preventive arrest	137
Arrested in another case	40
Held in custody	22
At liberty	502



137 minors were placed under preventive arrest out of the total 701 minor defendants; 40 minors were arrested in another matter and 22 minors were held in custody as a preventive measure. The rest of 502 minors were under criminal investigation and tried at liberty.

3.1.3 Conclusions

1. Regarding the types of offenses committed, offenses against property have the highest percentage : 87.7% of the total number of offenses in the survey;
2. As to the mode of operation, most offenses were committed in criminal partnership – 64% of the offenses in the survey;
3. Most offenses were committed in urban areas – 77.6% of the offenses in the survey;
4. In 20% of the cases, the minors committed concurrent offenses;
5. The most frequent motive to commit the offense was material interest – 81%;
6. In the majority of cases, minors did not take steps in preparation of the offense, which shows the spontaneous character – 70%;
7. In the majority of cases, circumstances were not found – 70%;
8. Most offenses were committed in public places – 48%;
9. Most delinquents were aged 16 to 18 years – 66%;
10. In the breakdown of minor offenders by gender, 94% were males;
11. Most juvenile delinquents were secondary school students – 35%;
12. Most minors came from families of workers – 41%;
13. In most cases, the minors kept inadequate company – 80%;
14. The majority of the minors were first offenders – 79.8%;
15. The efficiency of criminal prosecution bodies in processing cases was high;
16. The duration of the trial at first court was rather short;
17. The sanctioning treatment was mostly oriented towards sentences to imprisonment – 87%.

3.2 Statistic analysis in the case of the minor who is below the age of criminal responsability

3.2.1 Methodology

To compile these statistics, a questionnaire was developed and distributed to these specialized services[24]; similar to the statistic analysis of children with penal responsibility, we sought an adequate territorial distribution, and we selected counties in the 7 historic provinces for national representation. In selecting the sites consideration was given to the distribution of specialized child and family courts, existing or to be set up, as well as the pilot areas suggested in the Phare Project 2003 – Juvenile Justice.

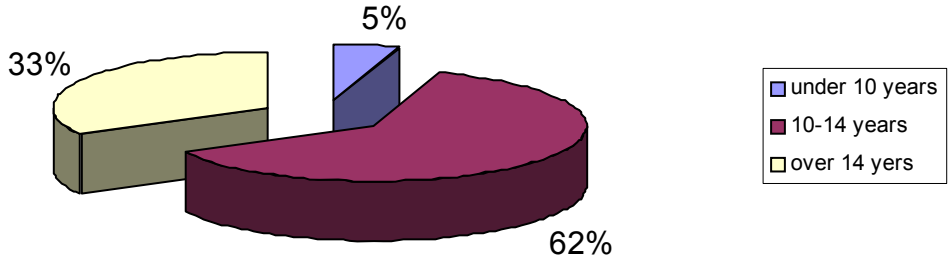
The questionnaire was structured in 9 items[25], relating to : data about the child, summary of the child's family situation, the situation of the child at the time of the commission of the offense, prior criminal offenses, data about the criminal offense committed by the child, data about the processing of the case by Child Protection Departments, current programs at county/district level designed for this category, current services at county/district level designed for this category of children, other elements that you deem relevant in this issue.

3.2.2 Data analysis and interpretation

The completed questionnaires for every case that had come to the attention of Child Protection Departments (DPC) in the studied period, from all 6 districts (sector) of Bucharest and 7 counties mentioned above.

Thus, child protection specialized services were notified in a total number of 313 cases, concerning though not only children under 14 who have no penal responsibility but also children over this age (see graph no.1). Even if the great majority are children under 14 (67% of the cases), there is still a significant percentage of children over the age of 14 years (33%) on record with these services.

Graph no.1 – Breakdown by age groups



[24] The questionnaires were sent to all Child Protection Departments but in order to keep the unity of the material this study only presents the results of the analysis of data received from: Bucharest – sector 1, sector 2, sector 3, sector 4, sector 5 and sector 6 and from the counties Alba, Brasov, Constanta, Cluj, Dolj, Iasi and Timis.

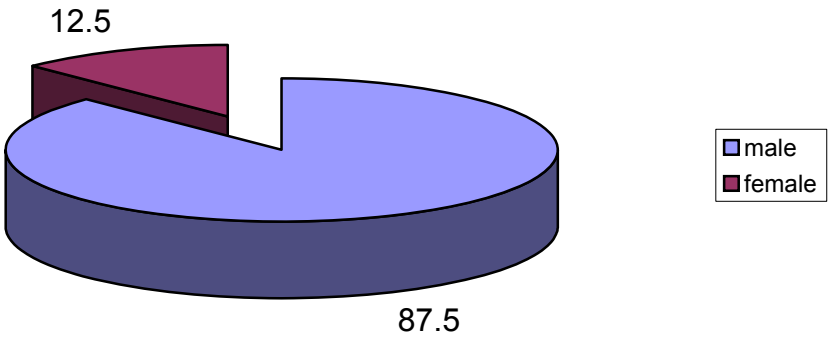
[25] The structure of the questionnaire was designed so as to contain elements which ensure, as much as possible, the continuity of the data collected on both categories of children, those without penal responsibility and those with penal responsibility respectively.

To note also the fact that there is a big difference between the number of cases processed by each DPC; the distribution of cases in the reported period appears as follows: Sector 1 – 20, Sector 2 – 8, Sector 3 – 19, Sector 4 - 5, Sector 5 – 6, Sector 6 – 0, Alba – 10, Brasov – 30, Cluj – 40, Constanta – 17, Dolj – 38, Iasi – 112 and Timis – 8. It obviously follows that out of the total number of 313 cases from the reported period, 35%[26] represent the casuistry of one county alone.

At the same time, such a discrepancy may suggest the fact that, at the level of various institutions, there is a variety of practices in the referral of juvenile delinquency cases. This assumption is confirmed by the fact that there counties in the country which reported that they had no record of a child – under 14 or over 14 – to have committed a criminal act.

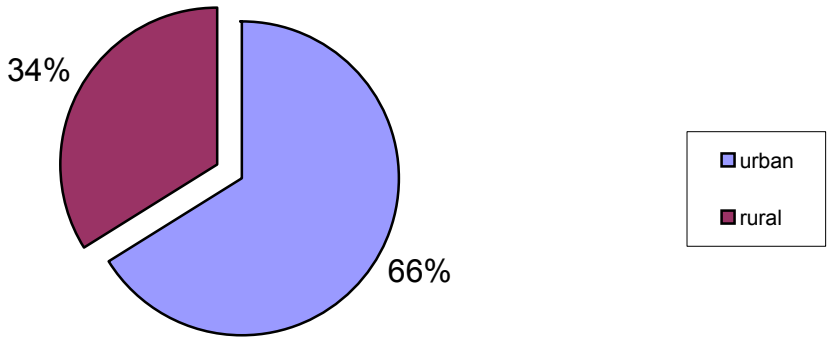
In the breakdown by sex, boys are clearly predominant, 274 cases reported (87.5%) where the offender was male, compared to 39 cases (12.5%) where the offenders were girls.

Graph no. 2 – Breakdown by sex



In most cases on record, the offenders' place of residence is in urban areas (206 cases – 66%, rural areas provide for only 34% of the total casuistry.

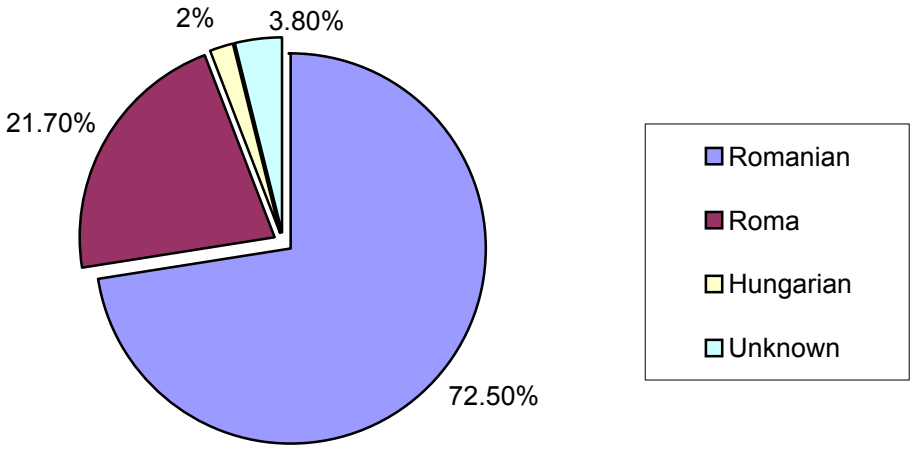
Graph no. 3 – Area of residence



[26] This proportion reaches 28% if we analyze the casuistry during the period March 2003 – March 2004 (in absolute numbers, Iasi county accounts for 182 cases out of the 635 cases on record in the 6 districts and 7 counties of the study). The disproportion in the distribution of cases is maintained if we analyze the 1 year period (Iasi- 182 cases while sector 6 – 4 cases).

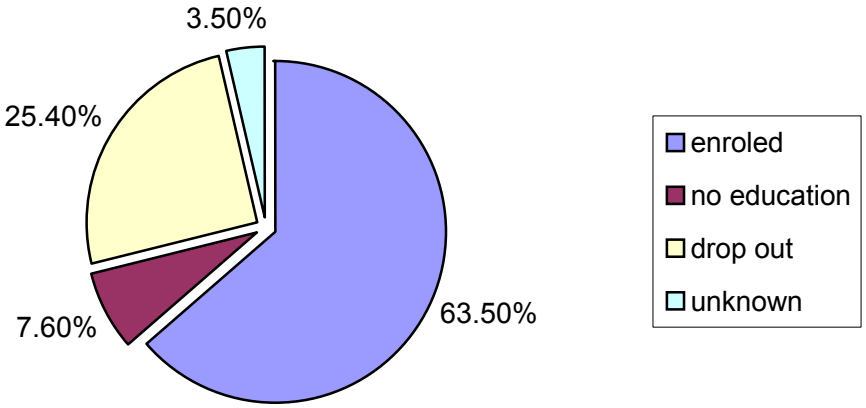
Regarding the children's **ethnic origin**, in 227 cases the children are of Romanian origin (72.5%), in 68 cases they are Roma (21.7%); there were 6 cases of Hungarian origin (2%) and 12 cases of unknown ethnic origin (3.8%).

Graph no. 4 – Ethnic origin of the children



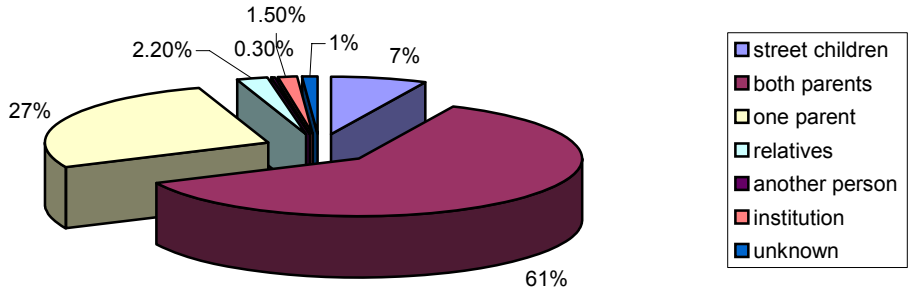
The data referring to **education** did not follow a very detailed analysis of the level of education but rather in what proportion the children who committed a penal offense and were referred to DPC attended or did not attend school. The results show that 199 children were enroled (63.5%), while 103 were out of school, either because they never attended school (7.6%), or they dropped out (25.4%). For 11 cases (3.5%) there are no data about their education.

Graph no. 5 – Education



Another item analyzed in relation to the child who committed a criminal offense and was referred to DPC is the child's **situation at the time of the commission of the act**. The analysis of the data show that the highest percentage (88%) is represented by children living in their own family, under the protection of both parents (61%) or only one parent (27%). The following category is that of street children (22 cases – 7%), followed by children under the supervision of a relative (7 cases – 2.2%). There were 5 cases of children who were institutionalized at the time of the commission of the offense (1.5%), 1 case of a child in the care of another person than parents/relatives (0.3%), and 3 cases where the situation of the children was not known or not entered on the record (1%).

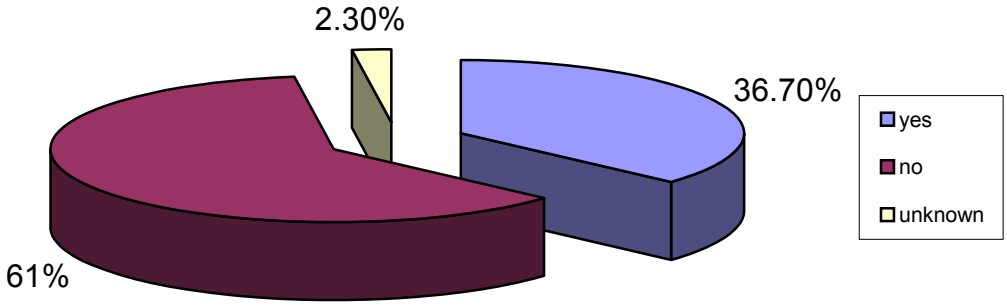
Graph no. 6 – Situation of the child at the time of the offense



This finding is particularly relevant in view of the preconceptions that still exist in our society that, as a rule, criminal acts are committed by street children or institutionalized children. It is obvious that our efforts should be directed towards a totally different area and that is towards building the capacity of the family to adequately exercise parental rights and obligations, so as to ensure better upbringing and development of their children.

The analysis referring to the existence of **prior** criminal acts reveals that in 191 cases (61%) there are none, the children being at the first act of this type. In 115 cases (36.7%) there were other acts committed prior to or after their referral to DPC, while in 7 cases (2.3%) the existence or non-existence of prior acts could not be established.

Graph no. 7 – Prior commission of acts provided by the criminal law



Intermediate conclusion no.1: the children who committed criminal acts and who are on record with DPCs are boys of Romanian ethnic origin, in the age group 10-14 years, enroled in school, without prior criminal acts, living with and in the care of by their parents, with residence in urban areas.

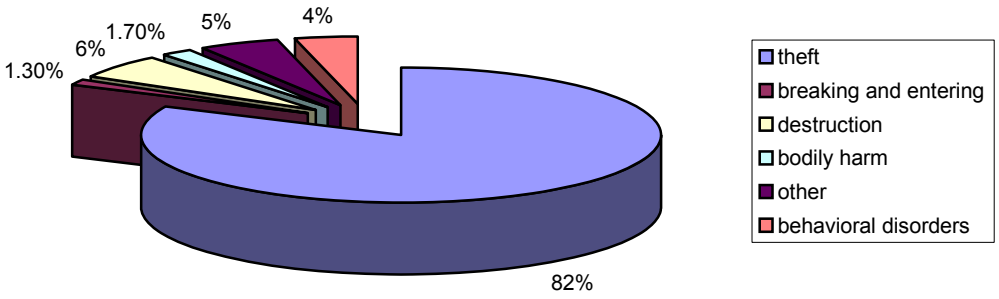
With respect to the **acts provided by the criminal law** committed by the child, in order to emphasize trends and not necessarily details, they were centralized by the following categories:

- Theft – including theft, aggravated theft, attempted theft, complicity to theft and robbery
- Breaking and entering
- Bodily harm – including grievous bodily harm
- Destruction
- Others – including possession and selling of explosive products (petards), unlawful felling of trees, use of forgeries, theft of a tractor and driving without a licence, forged signature, prostitution, etc.

A special category is that of behavioral disorders reported by DPC, included in the analysis under this category because they are the reason why the respective children were referred to specialized services, the cases being processed in a similar manner, by the same sections as the children who commited a criminal act. In this category were included behaviors such as repeated running away from home, cruelty to animals, dropping out of school, etc.

The breakdown by these categories is as follows: theft appears in 82% of the cases, followed by destruction in 6% of the cases and then, in relatively similar proportions breaking and entering (1.3%) and bodily harm (1.6%). The other offenses cumulate a total of 4.8%, while behavioral disorders go up to 4.5% of the total casuistry.

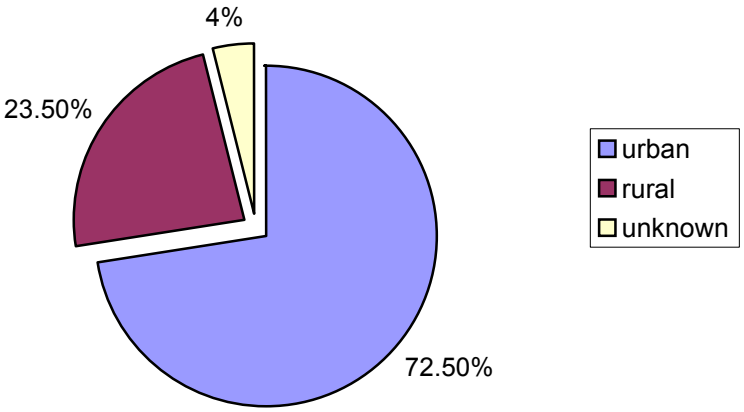
Graph no. 8 – Breakdown of cases by the offense committed



The areas where the criminal offense was committed were in 72.5% of cases urban areas, rural areas cumulating 23.5% of the total number of cases; there was also a percentage of 4% of the cases when the areas where the acts were committed are not known or not specified in the answers.

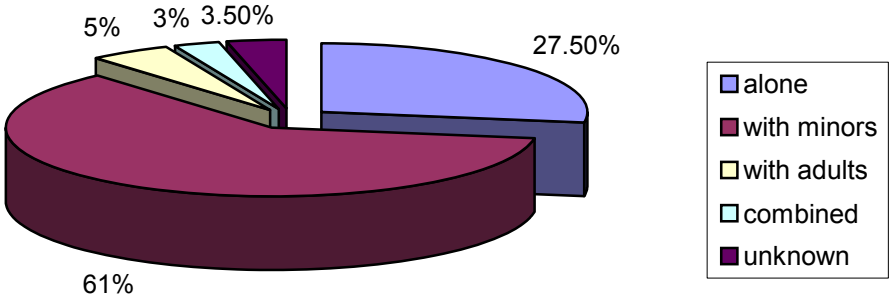
To note at this item that the percentage of 72.5% of offenses in urban areas is considerably higher that the 66% reported previously for the same urban areas as place of residence of the children.

Graph no. 9 – Area where criminal offenses were committed



Among the **modes of operation**, prevailing are criminal offenses committed together with other children (61%), followed by such acts committed individually (27.5%). In 5% of the cases the children committed criminal acts together with adults, while in 3% of the cases there are more than one mode of operation; the mode of operation is not known or it was not specified in 3.5% of the cases.

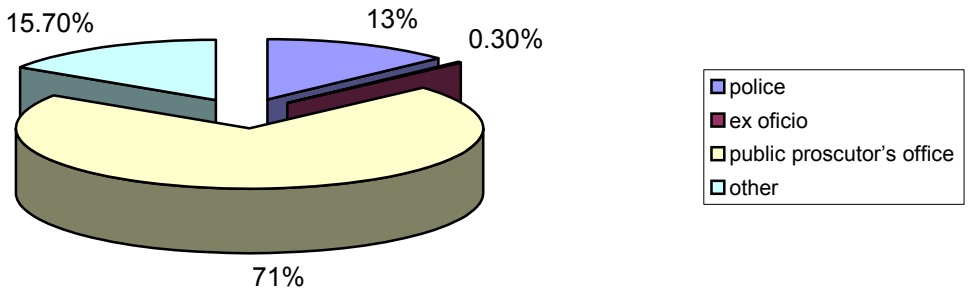
Graph no. 10 – Mode of operation in committing criminal acts



Intermediate conclusion no. 2 – the offenses committed by the children on record with DPC belong generally to the category of thefts, are committed in urban areas, together with other children.

The cases of children who committed criminal offenses are referred to DPC by the public prosecutor's office – 71% of the cases, in 13% of the cases the referral comes from the police, while in 15.7% of the cases from other natural persons or corporate bodies; there is only one case ex officio.

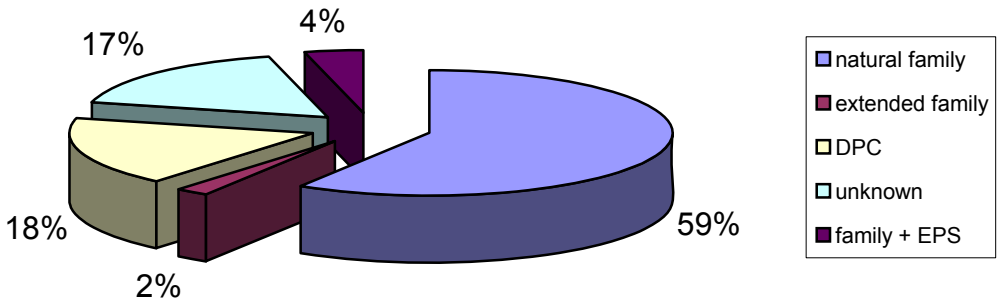
Graph no. 11 – Breakdown of referrals to DPC



The corroboration of this percentage of 84% of referrals coming from the public prosecutor's office and the police with the absence of referrals at the level of some DPCs suggests that the first intervention in regulating the mechanism of taking charge of these cases should include a united protocole for identification and referral of cases at national level, the cooperation between police - public prosecutor's office - DPC.

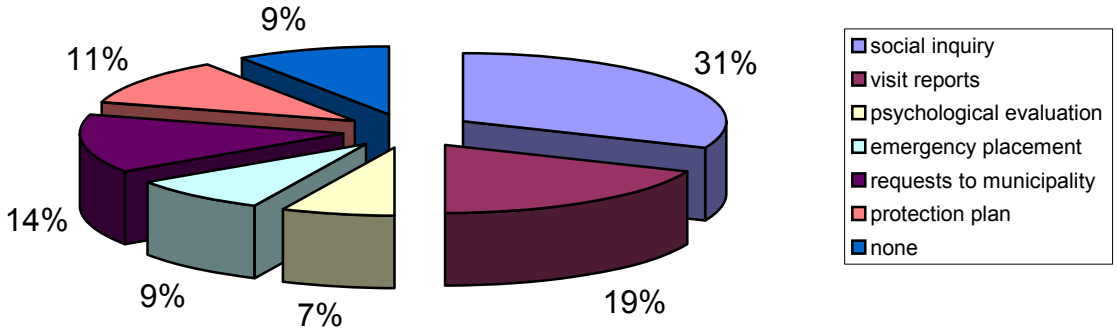
We were interested to investigate where the children were taken after the referral, during the processing of the case by DPC. We found that in 59% of the cases the children stayed with their own family, in 18% of the cases they were in custody of DPC, and in 6% of the cases with the extended family. There is another percentage, 17%, for which it is not known/it could not be determined where the children stayed, an for 4% there was a combination of natural family and then emergency placement shelter (EPS).

Graph no. 12 – Placement of children during processing of the case



Among the **documents drafted by DPC** during case processing the questionnaires show that social inquiries/ psycho-social evaluation reports were drafted in 50% of the total number of cases but also requests to municipalities in the place of residence to conduct these inquiries in 22% of the cases. Visit/interview reports are present in 30% of the cases, psychological evaluations in 11% of the cases, and protection plans in 18% of the cases. In 14% of the cases emergency placement dispositions are on file, while in 15% of the cases there are no documents whatsoever on file for the case processing period.

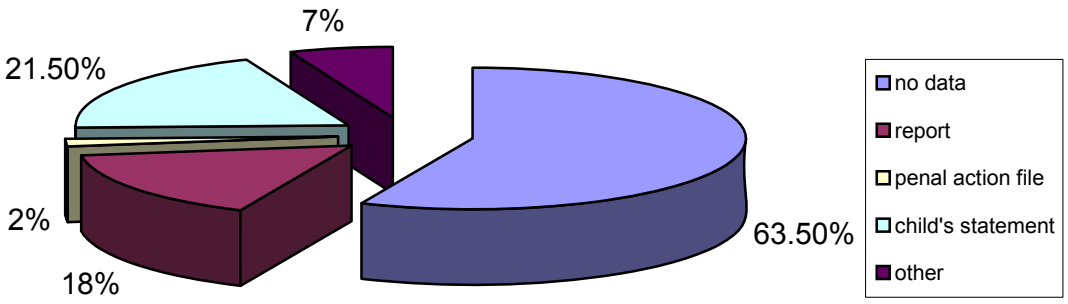
Graph no. 13 – Documents drafted by DPC



These results appear to indicate that only in half the cases a social inquiry is conducted by DPC specialists, while in 28% of the cases there is no indication that this essential working tool is taken into consideration either by county authorities (DPC) or local authorities (municipalities). At the same time, visit/interview reports seem to be drafted only partially in those cases where the existence of a social inquiry is confirmed, although normally they should be present in the same proportion at least. A matter of concern is also the low percentage of psychological evaluations reports and protection plans drafted for this category of cases.

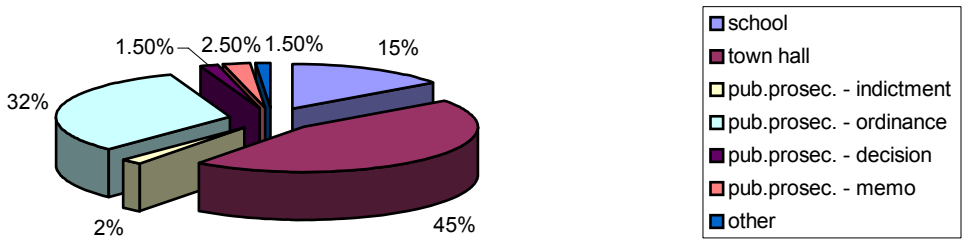
Among the **documents drafted by the police** during case processing, it is noted that the highest percentage represents the statement of the child (21.5%), followed by the investigation report and/or referral for emergency placement of the child (18%). In 2% of the cases there is a notice of further penal action, and 7% are other documents, in most cases memos requesting information. The highest percentage (63.5%) refers to the absence in DPC's records of some documents drafted by the police.

Graph no. 14 – Documents drafted by the police and shared with DPC



Among the **other institutions involved in the processing of such matters**, most documents appear to be drafted by the municipality – 45% (mostly social inquiries or registry certificates), followed by the public prosecutor's office – 37% (bills of indictment, ordinances or decisions) and by the school – 15% (mostly references or school transcripts).

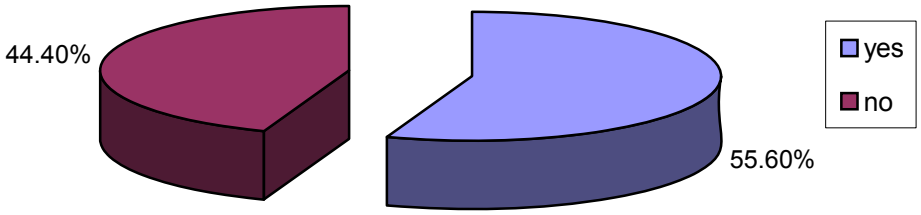
Graph no. 15 – Documents drafted by other institutions



Regarding the **presentation of the cases,** referred to DPCs, **at the meetings of the commission for child protection** (CPC) we find that 55.6% were brought to the attention of this commission while 44.4% were not. The completed questionnaires indicate that, in the large majority of referred cases, CPC is only briefed on the case and makes no decision, the cases where a decision is issued are much fewer.

It is important to mention the fact that, out of the total number of cases brought to the attention of CPC, 86% come from two counties only (Iasi and Cluj), the policy of the other counties being generally not to present these cases to CPC.

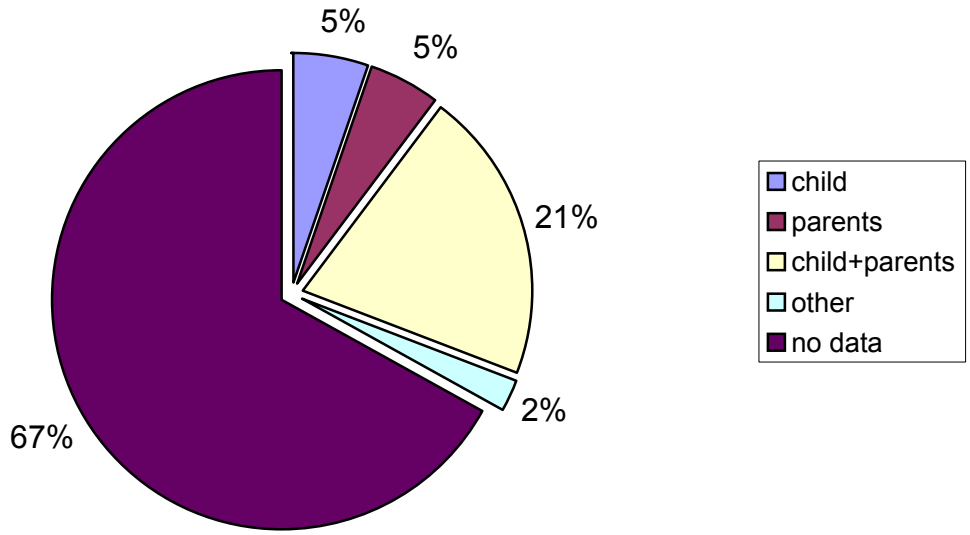
Graph no. 16 – Proportion of presentation of cases before CPC



The analysis of the **hearing of persons provided by law at CPC meetings** reveals the fact that in 65% of the cases these persons are not heard, despite the legal obligations in this respect.

The child was heard in 5% of the cases, same as the parents, the child and the parent/parents in 20% of the cases; in 2% other relevant persons for the resolution of cases were heard (in the large majority by the representative of the DPC service that processed the case).

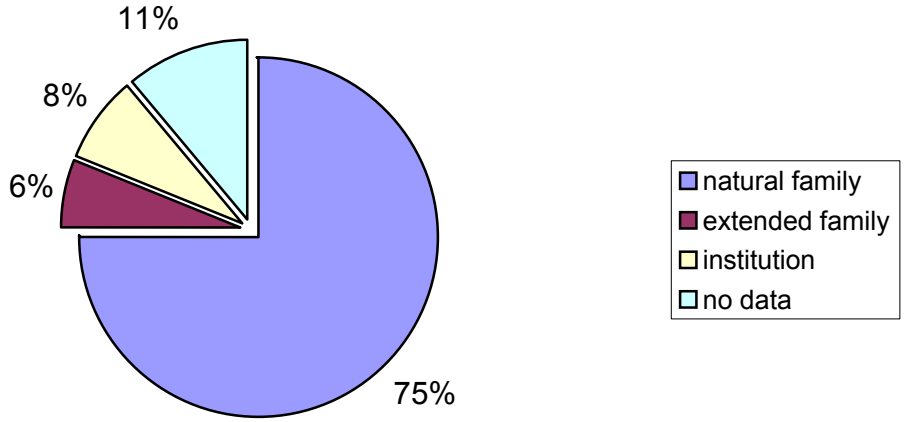
Graph no. 17 – hearings at CPC



CPC made a decision on the person of the child in 35% of the cases, while in 65% no decision was passed.

Out of the total number of cases where a CPC decision was passed, 75% consist in reintegration or keeping the child in the natural family, 6% placement/custody to extended family, 8% placement/custody to institutions; in 11% of the cases there are no data about the imposed measure.

Graph no. 18 – CPC decisions

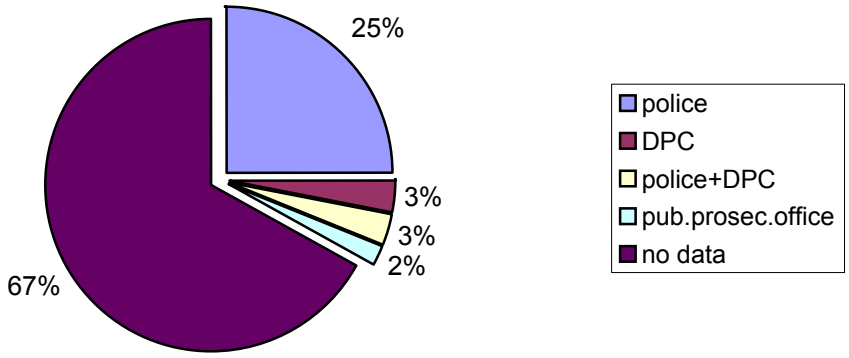


Out of the total number of cases where no decision was passed, 97% are cases belonging to Iasi county where the policy is only to inform CPC of the cases of children who committed a criminal offense and are processed by DPC.

Regarding the **child's statements**, the analysis of the answers show that in the large majority of cases (67%) they do not exist. When they do exist, it is the police which request these statements most frequently (25%), followed by DPC but in much lower proportion (3%), and the public prosecutor's office (2%). There is also

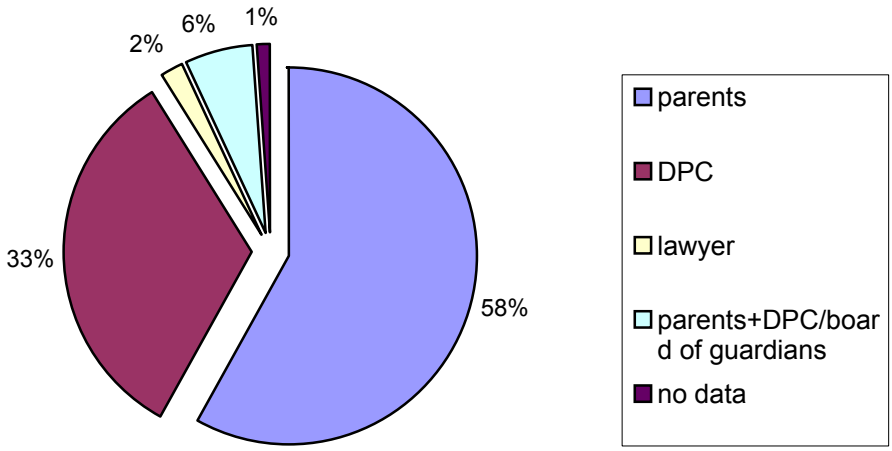
a percentage of 3% of the cases where these statements are requested both by the police and DPC. The place where these statements were given coincides with the institution requesting them.

Graph no. 19 – Requested statements from the child on the offense committed



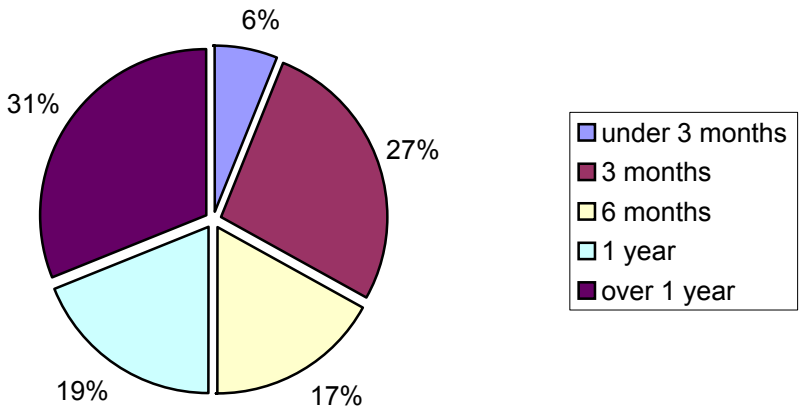
Out of the total number of cases where the child was requested to give statements, the child's **representation** was provided in 58% of the cases by his/her parent/parents, 33% by DPC representatives, 2% by a lawyer, and in other 6% of the cases both by the parents and representatives of DPC or of the board of guardians; in 1% of the cases there are no data about the representation.

Graph no. 20 – Representation of the child during statement taking



With respect to the monitoring of the cases referred to DPC, this activity is either not carried out, or it was not marked down in the questionnaire in 31% of the cases. The highest rate, in those cases that were monitored, is for a period of 3 months (27%), followed by a monitoring period of 1 years (19%), 6 months (17%), and under 3 months (6%).

Graph no. 21 – State of case monitoring



The drafting of documents during the monitoring period (visit report, social inquiry, interview report, etc.) is confirmed in 73% of the cases, in 27% there is no mention of such documents being drafted.

For monitored cases, the collaboration of DPC with the school is checked in 90% of the cases, with the public prosecutor's office in 60% of the cases, with the police in 33% of the cases, and with the townhall of residence in 84% of the cases.

Intermediate conclusion no. 3 – case processing at DPC/CPC level has the following characteristics:

- working procedures are inconsistent both at DPC and CPC level;
- referral to DPC is most frequently made by the public prosecutor's office and the police;
- 60% of the children stay with their family during processing of the case;
- the absence of clear legal regulations on processing procedures in these cases results in sporadic drafting of documents both by DPC and other involved institutions;
- the large majority of cases are not brought before CPC, the deciding body in the matter of child protection;
- the large majority of referred cases are monitored by DPC for at least 3 months.

The analysis of DPC structures and services mentioned in the answers to the questionnaires as being involved in the processing of this issue reveal the following aspects:

- 4 specialized public services for child protection (sector 4, sector 6, Alba and Dolj) did not mention any service, within their own structure or separate;
- 7 specialized public services for child protection use in case processing the following sections organized within their own structure:

- Iasi – delinquent child protection section;
- Brasov – service for counseling and assistance of the child with aberrant behavior and integration of roma children, within which there is a section for guidance, supervision and social reintegration support of the delinquent child;
- Sector 1 – delinquent child protection bureau;
- Sector 2 – delinquent child protection and outreach social assistance service;
- Sector 3 – emergency placement service, which includes a juvenile delinquency section;
- Sector 5 – service for sheltering the child in difficulty;
- Sector 6 – juvenile delinquency and homeless child protection service, and child's rights and free expression of opinion service.

- 4 specialized public services for child protection have established for this category of children the following subordinate alternative services:
  - Timis – delinquent child guidance, supervision and social reintegration support center;
  - Iasi – behavioral rehabilitation module within the « Sf. Spiridon » placement center in Tirgul Frumos ;
  - Constanta – coordination and information center for street children;
  - Cluj – coordination and information center for street children protection and delinquency; assistance and support service for the readjustment of the child with psycho-social problems;
  - Cluj – in partnership with the authorized private organization « Prison Fellowship » a day-care and social reintegration center.

3.2.3. Conclusions

1. The infringements of the criminal law by children referred to DPC are mostly thefts, are committed with other children and are committed in urban areas.

2. The children are mostly male and of Romanian ethnic origin, the majority belong to the age group 10-14, enroled in school, without a criminal record and who, at the time of the offense, were in custody of their own family, with residence in urban areas.

3. Case processing at DPC/CPC level has the following characteristics:

- working policies are inconsistent both at DPC and CPC level;
- referral to DPC is made mostly by the public prosecutor's office and the police;
- 60% of the children stay with their family during case processing;
- sporadic drafting of documents both by DPC and by other involved institutions, as well as a great variety of these documents when they are drafted, determined by the absence of clear legal regulations on case processing policies;
- most cases referred to DPC are not brought before the CPC (the deciding body in the matter of child protection).

4. Regarding the child who committed a criminal offense and does not have penal responsibility, it is obvious that there is a lack of regulation of a specific measure that could be imposed on this category of children, as well as of services adequate for the needs of these children, both in the prevention and the intervention segment.

CHAPTER IV - QUALITATIVE ANALYSIS

4.1. Qualitative research - objectives and methodology

Next we will present the situation in the field of juvenile justice in Romania, such as it is perceived by the main actors of this sphere of social life: police officers, prosecutors, judges, lawyers, social reintegration and supervision counselors (probation counselors), social workers, psychologists, legal experts, educators from penitentiaries and not lastly the minors in conflict with the criminal law. It should be emphasized from the very beginning that by this study we have not proposed to make a direct analysis of certain objective facts and data from the sphere of justice, but an analysis from a sociological perspective of **perceptions, opinions and attitudes** expressed by persons involved in this field. It is a qualitative assessment of the situation in juvenile justice from the standpoint of institutional actors and of minor offenders, in the sense that we have sought to identify the types of opinions and attitudes, current practices and mechanisms composing the administration of justice in juvenile delinquent cases, the challanges this sphere is facing, as well as the solutions and the expectations of the professionals in the field.

The central objectives of this qualitative research consisted in:

a) Defining the current situation of juvenile justice with respect to the legislation, human resources and knowledge needs, as well as infrastructure needs;

b) Identifying the mechanisms implied by the administration of justice, the way legal procedures are put into practice, the challanges the institutional actors are confronted with during the procedural route followed by a minor delinquent;

c) Identifying solutions and best practices which could help to improve the situation in juvenile justice.

The methodology of research was specific to qualitative sociological studies. As data collection method we used the in depth, semi-structured interview.

The study was mainly conducted in 8 cities of Romania, selected from all the regions of the country to ensure the highest variability of information. The eight cities were: Alba Iulia, Braşov, Bucharest, Cluj-Napoca, Constanța, Craiova, Iaşi and Timişoara. In addition, the research was also conducted in the town of Găieşti due to the existence of a juvenile reeducation center. The instutions included in the study were: judicial bodies (courts of law, tribunals and appeal courts), public prosecutor's offices (with the three types of judicial bodies), inspectorates, police directorates and stations, bar associations, social reintegration and supervision services, child protection departments, penitentiaries and reeducation centers and non-governmental organizations active in the field of juvenile justice.

In all, 168 interviews were conducted with the followlwing categories of persons: police workers, prosecutors, judges, lawyers, probation counselors, psychologists and educators from penitentiaries, workers in the protection of child's rights, representatives of a few non-governmental organizations active in juvenile justice, as well as minors either in pre-trial or pre-sentence detention, or during the execution of

a sentence or of an educational measure. The basic principle in selecting the representatives of institutions was their experience in working with juvenile delinquents.

The interviews were conducted at the work place of the interviewed in the case of institutional actors, and respectively at the location of the institution which had custody of the minors who participated in this research. Most interviews were tape recorded upon agreement of the respondent under the assurance of interviewed persons' anonimity. The interviews were conducted in the period 15 September - 20 October 2004. Data collection, processing and analysis were conducted by the Gallup Organization Romania.

At the stage of data collection in the field, interview operators were confronted with various problems of a practical type: respondents' unavailability; the reaction of these persons to the idea of being interviewed and tape recorded (especially at the police and public prosecutor's offices where in many instances clearance from supervisors was required); the physical conditions the interviews were conducted in – in some instances other persons were present in the room, there was noise, etc. All in all we would like to thank all the participants in their capacity as respondents in this research for their cooperation with interview operators.

Besides the perspective of institutional actors on current practices and problems in juvenile justice, we considered it useful to also learn of the way minors relate to their experience with the legal system.

Within this survey, 40 interviews were conducted with minors in pre-trial or pre-sentence detention or serving their time in the penitentiary, in a reeducation center or under the supervision of SRSS. Also interviewed were a few minors who had committed various offenses and were in the custody of DPC. The interviews with the minors focused on their experience with the institutions involved in the administration of justice, on the manner legal proceedings were applied to them, but also on the social context in which they had committed the offense and on their expectations of reintegration.

We should mention the fact that there were difficulties at the interviewing stage, determined in most cases by the very low level of education and communication skills of these minors. At most interviews many additional questions were necessary to clarify what the minors meant and still many of the stories told by interviewed minors lack coherence and it is possible that some of them distorted some facts.

The presentation of the results of this study starts from the attitudes and perceptions of institutional actors about the overall situation in juvenile justice. The presentation continues with current procedures, practices and problems for each stage of the route followed by a minor criminal offender: criminal prosecution, trial, execution of sentence or educational measure. A separate chapter will focus on the reintegration of juvenile delinquents. The report also presents and analyzes the information obtained during the interviews with the minors.

4.2. Perception of institutional actors of the situation of juvenile justice

Starting from the description of the role of the actors in juvenile justice, as they define it themselves, in this chapter we will focus on how the general situation, the resources and the needs in juvenile justice, as well as the cooperation between the institutional actors in the field are perceived.

A. The way institutional actors define their role in juvenile justice

The description of the perceived role in juvenile justice will consider the standpoint of each instituitonal actor involved in the filed: judicial body, public prosecutor's office, police, bar association, social reintegration and supervision service (SRSS), child protection department (DPC), non-governmental organizations (NGOs).

Judicial body. The ways judges define their role in juvenile justice may be grouped in two large categories.

A first category includes synthetic definitions that emphasize the role of decision in criminal cases in general, among which there are those involving minor offenders. Practically, cases involving minors are just part of the judges' activity at criminal sections.

> "We decide in criminal cases and among them also cases with minor defendants, that is cases when minor defendants are sued following a petition, or cases where minor defendants are brought to justice following an indictment, minors with penal responsibility, that is they have attained 14 years of age and have competency" (judge, Timişoara)

> "To decide in criminal cases where minors are involved. So I'm a judge specialized in trying criminal cases. Perforce I judge cases with minors too, both as plaintiffs and as defendants." (judge, Alba Iulia).

The second category includes analytical definitions where the role of the judge is described by listing the activities carried out in juvenile justice.

> "[…] as activities we study the brief, we ensure the legal measures required for due process, we preside the session and make a ruling on the case followed by the sentencing." (judge, Bucharest)

At the level of some cities included in the study, within certain structures, special panels of judges have been set up who try all cases involving delinquent minors. Such panels operate in Bucharest, Braşov, Iaşi and Timişoara. Nevertheless, in most instances, their operation is rather formal since during the same session both juvenile delinquent cases and cases with adult defendants are tried. In other words, matters involving minors are not tried separately from those with adult defendants, but generally in the case of minors the closed character of the session is ensured. The only exception is Iasi county, where court sessions are both separate and closed. Juvenile courts have been set up since 2001 at Iasi city level

by a project initiated by the "Alternative Sociale" organization and the Iasi Magistrates Association, called „Minors Court".

In towns where special panels have not been established, all judges have the competence to judge matters involving minors, and courts sessions with minors are not separate from those with adult defendants.

> "As a judge specialized in criminal law I am assigned cases both with adult defendants and minor defendants, without particular focus on these cases, that is we try them following the common regime. [...] all of the penalists in the section, we all go in and try cases with minors, following the same regime, not in separate days or in particular rooms but same regime …" (judge, Cluj –Napoca).

Public prosecutor's office. The main activities related to juvenile justice of the public prosecutor's office consist in: supervision of cases processed by police (in this respect each prosecutor supervises certain police stations) and participation in court sessions.

As supervisory activities, the role of the prosecutor is to investigate at the stage of criminal prosecution, to interrogate witnesses, the accused, possibly parents, to impose the measure to hold the accused in custody, to propose to the court the measure of pre-trial detention, to bring to trial by a bill of indictment in case an offense was committed, to prepare the indictment which is sent to the court, to propose the measure of not bringing to trial for those without penal responsibility, to impose administrative sanctions, to verify how the rights of the minors and of the persons under interdiction are respected.

> "Well as any prosecutor, in our country there are no specialized prosecutors in juvenile cases, but every one of us has had at least one case like this, so what can you do in juvenile cases? The criminal prosecution, that is the investigation, you interrogate witnesses, the accused, parents, in the end you prepare an indictment and send it to the court or you pass a resolution to not bring to trial. That's about it as activity of a prosecutor." (prosecutor, Bucharest)

The role of the prosecutor who participates in the trial of cases in court sessions is: to see that procedural rights are respected, to check how the evidence obtained during criminal prosecution is kept, to propose measures.

> „In my capacity as chief of the judiciary section I participate both in criminal trials and civil trials. Concretely, I participate in criminal trials where the defendants are minors accused of various offenses. Generally, since this is a county level structure [...] I participate in cases with minors who commit more serious offenses [...] We also participate in the criminal trial, and we propose the measures that could be imposed [...] (prosecutor, Tribunal, Alba Iulia).

Prosecutors work both on cases with minors and with adults and their activity does not differ from the cases with adults.

> "[…] as to offenses, we don't have a different role from the one we have in the case of offenses by adult delinquents." (prosecutor, Tribunal, Iaşi).

> „[…] there is no distinction, this is what I want to clarify from the beggining, we are not specialized in minors. We pass resolutions as they are assigned or send them for resolution or if they are assigned to us we pass resolutions in these cases, so we are not properly specialized [...]" (prosecutor, Alba Iulia).

Generally, there are no prosecutors specially designated for juvenile cases, the only exception being Iasi city, where at the level of various public prosecutor's offices there are persons who are in charge with all matters involving minor offenders or victims, and who, in addition, have attended training courses in this field.

Police. At County Police Inspectorates as well as at police stations in the cities included in the study there are designated persons who work on cases involving minors, but they are not in charge exclusively with juvenile issues. At county level there is a coordinator of all officers who work with minors at police stations. The coordinators are the liaison persons with other institutions involved in juvenile justice (especially SRSS and DPC), and some of them are members of the Commission for Child Protection (CPC) of the County Council (it is the case of coordinators in Craiova şi Alba Iulia).

> „I am in charge with minors issues. I coordinate every worker who deals with minors in every sub-unit in Alba county. I don't work in minors only." (police officer, Alba Iulia)

> "I work within the criminal investigations service in the line of minors and I can say that I coordinate the activity of the other officers who are in this line of work at the five police stations in the city and in the other cities of the county, I am also a member of the Commission for Child Protection of the Dolj County Council and I am the liaison person with both the Restaurative Justice Center and the Social Reintegration and Supervision Service..." (police officer, Craiova)

The main activities performed by Police in the framework of juvenile justice consist in identifying minors who commit antisocial acts, processing cases of offenses after the initiation of criminal prosecution, prepare penal briefs, prevention through anti-crime educational programs in schools, monitoring street children, enforcing measures of emergency placement in shelters of children who commit offenses but do not have penal responsibility.

> "Personally I am a criminal investigation officer, I also conduct the inquest on minor perpetrators about the offense committed, and as a criminal investigation officer I take over the inquest at the stage of preliminary actions, where there are solid data and indications relating to the initiation of criminal prosecution, I continue the activity and based on the evidence I propose the legal solution to the competent public prosecutor's office…" (police officer, Iaşi).

Bar. The majority of interviewed lawyers define their role in juvenile justice in extremely broad lines, as consisting in providing legal assistance, upon request or by appointment, to the minor who committed criminal offenses, representing the minor either during criminal prosecution or in court.

> "[…] legal assistance, which is mandatory for minors..." (lawyer, Braşov)

> "As lawyers we provide legal assistance, upon request or by appointment, to minors who committed various criminal acts." (lawyer, Cluj Napoca)

SRSS. The role of SRSS consists in preparing psycho-social evaluation reports at the request of courts or criminal prosecution bodies, supervision of the way the measures and obligations imposed by the court are complied with by persons on probation or parole, assistance and counseling upon request of persons under supervision or in penitentiaries reeducation centers, and sometimes prevention programs in schools and high schools (Constanța).

DPC. The role of DPC is defined mostly in relation to the minor without penal responsibility. DPC intervenes mainly in the case of children without penal responsibility by taking protection measures (emergency placement in shelters, foster care, custody), counseling of children coming through emergency placement shelters, monitoring cases of juvenile delinquents referred by the Police and the Public prosecutor's office, conducting social inquiries. DPC also legally represents the rights of children who are in the child protection system or of children who are not accompanied by legal representatives during interrogations at Police, Public prosecutor's office or in court.

> „The Department of Child Protection, at this time, in terms of the current legislation, has no other activity than the protection of the child who committed a criminal offense, but who has no penal responsibility, excluding from the start the child with penal responsibility, that is the category of children aged 14 to 16 who were competent and those over 16 years of age. Practically, for children without penal responsibility protection measures have been taken [...] that is placement in foster care, placement with a specialized service, with a foundation or, emergency placement ..." (DPC, Bucharest).

DPC also plays a role in juvenile delinquency prevention through programs developed in schools.

NGO. The role of non-governmental organizations in juvenile justice consists in providing counseling and activities in preparation of the release of minors from reeducation centers or penitentiaries, social reintegration activities after the release of minors and youth, direct or indirect mediation between the injured party and the perpetrator, social assistance services for the injured party and the perpetrator (e.g. school reintegration, referral to and facilitation of relations with other institutions, services and support groups, educational guidance), crime prevention activities in schools and high schools. NGOs also play a supportive role for the actors involved in juvenile justice by research services, initiating pilot projects, facilitating meetings

between various actors in the field, activities advocating criminal justice reform towards expanded alternative measures to detention.

Taking into account the way institutional actors define their role in juvenile justice, a few conclusions can be drawn:

1. The majority of the interviewed persons from the judiciary field (police, public prosecutor's office, courts) define their role in a formal manner, strictly based on the legal responsibilities incumbent to each institution involved in juvenile justice, being less willing to discuss beyond the provisions of the legislation. This is indicative of the fact that justice workers focus on enforcing the law regardless of the social and personal characteristics of those who are investigated or tried.

2. Minor offenders are for most of the actors in the judiciary just „a line of work", among other tasks, sometimes considered more important. The role institutional actors define for themselves is not particular to cases with minors, but they adapt to these cases the general duties incumbent to their position.

3. Some of the justice workers that were interviewed consider that their role is of little importance in juvenile delinquent cases, as indicate the following quotes:

> "I think that my role is not very, very important, because I go on stage, to put it this way, after the minors have done a criminal act, have committed a criminal act, so in principle, my role is to make sure they understand the gravity of the act they have committed, I don't know... , to scare them a little that in the future it will be worse for them.[…] I impose penalties, and I think this is a rather bad role, as such, and of little importance I should say. My role starts afther the minor has already taken the wrong path." (prosecutor, Bucharest)

> "Concretely the role is rather limited, it's what I am allowed by the penal code and the penal procedure code... so as to juvenile justice... we try matters with minors in accordance with the laws we have, which will probably be modified shortly, the new penal code will come into force. At the present time we are ... we can get involved in a rather small extent in juvenile justice, considering the fact that our contact is limited to the court room, hence before they are brought to trial and afterwards we don't have much contact with the minors". (judge, Cluj-Napoca)

B. Definition of the current situation in juvenile delinquent justice

The institutional actors' assessments, be they positive or negative, can be classified in two general categories focusing on the stucture of this sphere (material infrastructure, human resources, legislation, existing institutions) on the one hand, and its mode of operation, on the ther hand.

In terms of the material infrastructure the situation in the sphere of juvenile justice is similar to the general situation of the system of justice characterized by most by an acute lack of facilities determined by chronic under-funding. There are situations where the lack of certain facilities leads to violations of legal provisions, as for instance the fact that minors are not always kept separate from adults in police arrest houses.

> „It's about a lack of material resources too, there are special provisions in the law on the execution of sentences about the location, minors are held separately and are applied a different treatment from adults but here at the public prosecutor's office both minor delinquents and other delinquents get the same treatment..." (prosecutor, Constanța)

> „We are very poorly organized and furnished" (judge, Timişoara)

The assessment of juvenile delinquent justice in terms of human resources is focused mainly on the size and the training of the staff working in this field. The large number of cases and the small size of the staff lead to overloading those involved in the administration of justice, making it more difficult and affecting its quality.

> „heavy enough, beyond the normal power of a human being called a judge - to resolve." (judge, Iaşi)

> „[…] it's a degrading atmosphere, an extraordinary volume. In the first place there are no standards to protect minor defendants and... well, we would have an article in the code of penal procedure that is applied, matters with minors are tried separately, but given the high volume in courts and the activity of these courts they are included, these cases are included in the other sessions, but are not tried separately." (judge, Bucharest)

A weak point of juvenile justice is considered to be the lack of special training of the staff.

> "The situation is disastruous. In the first place there should exist persons with special training to deal with such cases". (judge, Bucharest)

Training courses organized in some cities included in the study are appreciated as having resulted in the improvement of the situation. In addition to better professional training, another positive consequence of these courses, as mentioned by those interviewed, is that judges are more open to alternative sanctions to imprisonment and there is increased trust in the usefulness of social reintegration specialized services for minors.

> "The setting up of courts in the entire county, the specialization of judges, the participation of a psychologist in hearings and the other amendments in the code of penal procedure, are an improvement". (judge, Bucharest)

> "Having worked for few good years in this field, I have noticed that there is already more openness to alternative punishments to imprisonment and already judges believe that specialized services are useful and that they can help minor criminal offenders … of course again proportional to the gravity of the offense and the other criteria they take into account". (SRSS, Cluj-Napoca)

The main aspects of the legislation institutional actors refer to when they describe the situation in this field are related to the sentencing system, the

procedural rights of the minor, the legislative modifications, the stability, the coherence and the clarity of the legislation.

The current sanctioning system receives mostly negative appreciations, and they refer particularly to its the coercive orientation which is expressed by the absence of more alternatives to custodial sentences that could be applied to minors. Although there are opinions that the alternatives to imprisonment ”have become more diversified”, the predominant opinion is that the number of such alternative sanctions is insufficient.

> ”[...] there aren’t too many alternatives to custodial sentences and, as in everything else, we have to be in line with the idea that the minor should not receive such a punishment for every offense committed...”(police officer, Bucharest)

> ”The legislation is deficient, the measures concerning minors are rather few and difficult to apply...” (prosecutor, Craiova)

> ”The current framework is deficient, since there aren’t sufficient measures that could be applied...” (judge, Alba Iulia)

At the same time, there is the idea that the educational measure of reeducation in a specialized center is at the present time similar to imprisonment.

> “[…] Our, let’s say, sentencing regime is pretty strict, there are indeed in the Penal Code educational measures that apply to minors. But, as far as I know, the execution regime is... how shall I put it... it’s pretty close to jail. It would be necesssary, well, a better differentiation of sanctions”. (prosecutor, Bucharest)

The current sanctioning system applied to minors is characterized by some institutional representatives as being very harsh and inappropriate for this category of offenders.

> ”Very harsh. Custodial sentences are not the most appropriate. Detention terms are very long”. (judge, Bucharest)

> ”The system is rigid, inappropriate for their age. The sanctioning system does not adapt to them, I mean the custodial system is rather harsh. Those who commit an offense and are jailed... this does nothing for their reintegration, you keep them there for a while, you then let them go and practically you don’t reintegrate them in any way, you do nothing for them to have a normal life”. (prosecutor, Timişoara)

Among the positive assessments of the legislative framework, the most frequently encountered opinion is that a number of procedural guarantees designed to protect the minor are ensured and that this category of delinquents benefits from terms and sentences reduced to half compared to adults. Moreover, workers from the judiciary system especially state that custodial sentences are passed only in very serious cases.

> ”We seek to not affect the physical, mental, moral developement of the minor, that is, custodial sentences, in the case of minors, are totally exceptional, only for grievous offenses”. (prosecutor, Bucharest)

> ”In my opinion, the current legislative framework offers procedural guarantees to minors…” (prosecutor, Cluj-Napoca)

When asked to assess the current legislative framework, a number of institutional actors focused on the amendments passed during recent years, and appreciated that in this respect the evolution was positive. The particularly well received amendments by the respondents, were reduced terms for holding in custody and arrest, the conditions for arresting a minor, as well as the establishment of the social reintegration and supervision services and the introduction of alternative sanctions to imprisonment.

> ”The amendments that have appeared in the new code of penal procedure, we would say that they respond to our expectations with reference to minors. [...] So we say that a reduced term „to hold” is beneficial. [...] there still remain those really serious acts ... violent acts especially ... I’m telling you, from what I know about arrested minors it was for grave offense, robberies. […] It’s more difficult to hold and this is the watchword. It’s more difficult to hold because of the narrowing... and reduced term, so I cannot go with a minor and hold in custody if I don’t have enough evidence or if I don’t have an offense to match and for which more than 10 years is given”. (Police officer, Bucharest)

> ”It’s a positive change. The amendments passed in 2003 resulted in a decrease of arrests and this is good for minors, if we also take into account that a large number of minors are evaluated here”. (probation counselor, SRSS, Constanța)

The instability, the lack of clarity and coherence of the legislative framework in general, and in particular with regard to minors, are other criticisms expressed by institutional actors about the current situation of the justice system. Despite the good intentions, despite the efforts made to keep us in line with European standards, the progress in the legislative field is overshadowed by a number of problems, among them being the lack of resources for its implementation.

> ”Chaotic. You can see, you can clearly see that they are trying to do something. I told you, under the pressure of time they still fail to find the way... what they want to make it also work. So everybody wants us to be in line with European standards, it’s only that, how shall I put it, we agree with their requirements but we don’t have the financial resources. So, concretely: amendments to the law exist. There is again an improvement in the working methodology... again a disaster, I do jump from one thing to another, because it’s changing so frequently... you simply don’t get to put into practice and understand what they wanted to put into practice”. (lawyer, Bucharest)

> "Well… what can I say… it's not a very clear legislative framework; I understand that starting with January 1st, 2005 it will be better...". (DPC, Bucharest)

> "The special procedure to try minors should be more extensively described, now there are only a few articles". (judge, Alba – Iulia)

The institutional capacity to provide juvenile delinquents with services designed to help in their social reintegration is another aspect institutional actors raise in their assessment of the situation in juvenile justice. On the one hand, there are negative appreciations such as the fact that there are no appropriate institutions to effectively enforce the educational measures provided by the penal code. The services provided by existing institutions are rather limited, and practically for minors without penal responsibility, in most cases, nothing concrete is being done. On the other hand, the respondents refer to the way institutions cooperate in juvenile justice and in reducing juvenile delinquency, expressing both positive and negative appreciations.

> "Very poor. [...] Because there are measures you can impose but there is no appropriate institution to enforce them. For instance, the Penal Code provides that you can decide to remand to a medical-educational institute for minors but they don't exist as institutions". (judge, Bucharest)

> "Among the deficiencies in this field, in the first place one would be the rather limited services available to minors and to be provided by public or private institutions in the community" (SRSS, Bucharest)

> "[…] in the legal system, there should be a possibility to provide services to this category of children under 14 years without penal responsibility... so, I don't think of police measures necessarily, but they should somehow be registered with some social services and be provided social services and counselors so that they don't commit offenses any more" (police officer, Iaşi)

> "…now things are going well here, in Iasi, because we are a team, we work really well both with Police and the Public prosecutor's office. I judge minors. We have only one prosecutor who prosecutes all cases with minors and we go into the session together. We know all the juvenile delinquents. Police, too, it is going very well now" (judge, Iaşi)

> "[…] we don't cooperate with the institutions that could ensure protection or supervision of the minor, practically not many of those exist... or they exist only formally" (judge, Craiova)

The second general category of institutional actors' appreciations about juvenile delinquents justice relates to the manner justice operates.

An important element in the operation of juvenile justice is the application of sentences. A significant number of answers in this issue reveal the fact that the emphasis in the administration of justice is placed on the offense and on punishing it

and less on the person who committed the offense. Thus, it follows that minors are too frequently condemned to imprisonment, and sometimes even for petty offenses. On the other hand, there is the opinion that the educational measures that can be applied at the present time, since the provisions exist in the legislative framework, are used to a very little extent.

> ”I think too many sentences to imprisonment are passed for offenses, I wouldn’t say petty, but average as social risk”. (prosecutor, Bucharest)

> ”...for objective reasons, not that someone is necessarily to blame, the procedure is strictly followed. Yes... and they don’t have the outcome the legislator had in mind. [...] Minors get to... it is not much taken into account... well, the minor’s mental development stage. Many times they go to jail – let’s say it – when it’s not called for” (prosecutor, Bucharest)

> ”the legislative framework appears to be quite adequate, and still... who is there to enforce it... The fine and the educational measures are used to a very little extent – I know a lot of children brought to justice for theft when the prejudice was, if not insignificant, very small, and against whom a custodial measure was imposed, without consideration of the provisions of the penal code saying clearly: against the minor an educational measure shall be imposed with preponderance, and only if this is not sufficient, a custodial measure can be imposed”. (lawyer, Constanța)

> ”Very many things ought to be changed, first the legislative framework is too strict, we have punishments and educational measures, but as a rule punishments are imposed quite a lot not educational measures and when educational measures are imposed they are difficult to control”. (judge, Craiova)

The current situation of juvenile justice has been assessed by instituitonal actors in view of current practices. Thus, the general practice in the treatment of minors gets generally negative appreciations, the idea being that the treatment of juvenile offenders does not differ from that of adults. The differences between the treatment of juvenile and adult offenders are rather formal and appear in the procedural rights ensured by the Code of Penal Procedure and in the milder sentencing system that apply to minors.

> “I have noticed that most prosecutors treat minors and adults almost in the same way, so they don’t differentiate between ages”. (prosecutor, Bucharest)

> ”Unfortunately, there isn’t much difference between the treatment applied to minors and that applied to adults. Thus, with the exception that the session is not public, that mandatory legal assistance is provided... well, appointed by court if they don’t retain a defender, with the exception that we summon the parents... although their presence is not obligatory, we summon the board of guardians who does not appear, we summon the service and possibly we draft and evaluation report... Their situation is not

much different. And of course we also have at our disposal educational measures instead of punishments". (judge, Alba Iulia)

A set of negative appreciations of the system underline the manner the administration of justice is realized in practice, including the non-observance of certain procedural rights at various stages of the administarion of justice. In their characterization of the situation in juvenile justice, those who bring up the procedural rights mention a number of violations of the procedure with negative effects on the quality of the administration of justice. Among them, the most frequently mentioned is the fact that sometimes minors' statements are taken in outside the presence of his/her lawyer and legal representatives and that court sessions are in common and do not always have a closed character. Besides being a violation of procedural rights, they also affect the minor mentally.

"It is not the best situation due to the fact that juvenile cases are resolved / tried together with the other briefs. In the same day, you may have on the docket the case of a minor after you have tried several cases of adults who committed extremely grave offenses or cases of big criminals; under these circumstances it may happen that you are highly strung or you don't have enough patience when you get to the case of the minor. In addition, minors should have counseling, assistance" (judge, Bucharest)

„[…] first, their rights should be respected what's the use that they exist on paper but are not really respected. Starting with the session that should not be public, that is only the minor and his/her parents, the Board of guardians, recently also the Reintegration Service, starting with that but even before when he/she is held, when he/she is invited to the police to give a statement, there are many who come to us when they are already standing trial and tell us "when the police came they took me alone, I was alone at home, and I gave a statement..." statement given outside the presence of parents, wihtout a lawyer, without a legal representative by their side" (SRSS, Bucharest)

"I don't think that the current situation confers, from my point of view, effectiveness to all protection measures provided by laws, and I am referring both to the Penal Code and to the special laws for minor protection. For instance, I could say that in accordance with the provisions of the Code of Penal Procedure, the court sessions with minors on trial should be closed, but this is not observed although it would be beneficial for finding the truth and for creating the propicious environment […] for the interrogation of the minor who might be possibly intimidated by the presence of so many persons in the court room" (lawyer, Craiova)

Not lastly, some of the institutional actors remark on the fact that in juvenile delinquents justice we cannot speak of a coherent system, bringing several arguments in favor of their position. First, workers in this field are not specilized, be they police officers, prosecutors or judges. Second, with the exception of a few procedural rights and the existence of educational measures, the treatment of minors

is not significantly different from the treatmnet of adults. Third, the administration of justice itself that is seeking to sanction the criminal offense committed by a minor does not achieve the expected outcome, meaning the rehabilitation, the reintegration of the minor into society. Beside the lack of a system in the full sense of the word, there are respondents who claim that this area is not given due attention.

> ”There is no juvenile justice system, there are two pages in the Penal Code on minority, hence there is no juvenile justice system, there is no such thing” (social worker, DPC, Cluj-Napoca)

> “Practically there is no juvenile justice, hence there is no special regime for minors, I am talking now about the prosecution and the trial stage... except for strict procedural rules that must be observed, in the sense that providing a lawyer is mandatory or the hearing in the court room, in closed session, or detention in special places, for the rest there is no training of judges or prosecutors especially, and they are not observed, there is no literature, the legislation on minors is not known, either as victims or as offenders”. (judge, Cluj-Napoca)

> “There is nothing except that references are requested from the Board of Guardians in all cases involving minors and that the quantum of sentences is reduced by half, I don’t think there is anything special, no attention is given to this area”. (lawyer, Constanța)

> ”we don’t have a juvenile justice system, as yet. We have a pilot program, developed in Iasi... I understand that the Ministry of Justice plans to do something similar in Braşov and Timişoara” (prosecutor, Iaşi)

C. Resources and needs

As regards the resources available to institutions involved in juvenile justice, the research focused particularly on staff who had training in working with minors. Beside this issue that was discussed in all the interviews with actors in the legal system, during the interviews sufficient information surfaced to be able to present a picture of the infrastructure available to these institutions.

Concerning the human resources, two problems can be distinguished. On the one hand, most institutions have a shortage of staff in terms of the workload. This is not particular for the area of juvenile justice, but it is a general characteristic for the entire legal system. Both at the level of courts, public prosecutor’s offices, police stations, and at the level of social reintegration and supervision services the staff is insufficient in terms of the number of cases they have to process. On the other hand, strictly speaking about juvenile delinquent justice, specialized staff is insufficient, specialized in the sense that they have attended training courses in this field.

Although most respondents admit to not having had special training, those working in juvenile justice show interest in specialization. In the large majority of cities included in the research, the staff involved in the legal field received some training, by attending courses on topics related to juvenile delinquent justice organized by various associations/non-governmental organizations, the Ministry of Justice, the Ministry of Administration and Internal Affairs, the National Institute of

Magistrature, various workshops or exchanges of experience. The exceptions are Alba Iulia, where except the police officer in charge with juvenile cases at County Police Inspectorate, no other respondent participated in training activities and had no knowledge of the example of other colleagues who had done so, and Constanta, where only the judges of the Court of Appeal attended training courses in juvenile cases. Among lawyers there was no one to have participated in training courses in juvenile delinquents justice, their only specialization deriving from experience and from the higher education system.

Many respondents believe that a number of areas need more study. Among these areas we mention: measures to reduce the risk of relapse, methods to approach and investigate minors, the rights of minor defendants, alternative sanctions to custodial sentences, alternative measures to pre-trial / pre-sentence detention, the civil side of criminal trials, international legislation and casuistry, child psychology, legal psychology, legal psychology of the juvenile delinquent.

As to material resources available to institutions in the legal system, following the discussions but also the observations in the field, the main problems identified, and which tend to be generalized at system level, are:

a) Lack of information equipment. Many of the offices of police officers, prosecutors or judges where interviews are conducted do not even have a computer, and we are talking about institutions located in the largest cities of Romania. Where there are computers, in many cases they were brought from home by those who use them. Also, it is very likely that part of the computers that exist in the offices of the mentioned institutions are old or out of order, since the interviewers noted many times that the computers were not connected (the cable was not plugged in and it was wrapped around the monitor in several cases).

b) Lack of space. Many times the offices of police workers, prosecutors and judges are overcrowded and the ambience is not exactly pleasant (used furniture, metal cabinets, inadequate lighting, etc.), and this is a serious issue if we take into account that hearings/interviews are conducted in these offices, including of juvenile delinquents.

c) Lack of transportation means in the case of SRSS and DPC workers. This is very important since the activity of these institutions imply frequent field trips. Generally, SRSS use the motor vehicles belonging to tribunals, but it is obvious that they do not have an adequate car pool either.

The assessment of the juvenile justice system was undertaken in the context of the implementation of the new legislation on minor protection. As to this new legislation, some of the respondents admitted that they were not familiar with it because they had not had the time to study it. Those who had knowledge about this legislation listed as main changes brought by it: setting up child and family tribunals and extension of the range of alternative sanctions: release under strict supervision, reprieve.

In view of the implementation of the new legislation, the needs of the legal system as perceived by institutional actors are the follwoing:

1. need of human resources – insufficient specialized staff and support staff (court clerks, archivists, secretaries, drivers), lack of certain categories of

experts who could be called upon when necessary (psychologists, social workers, sociologists), lack of training of those involved in juvenile justice.

2. need of material supplies: computers and peripherals, separate building for the child and family court, transportation means, specially designed separate court rooms for minors – to create a more homelike, friendly environment, video-recording equipment for hearings, exclusive archives for child courts, a special interviewing room at police stations, locations designed for setting up new day-centers for juvenile delinquents, special equipment (e.g. test kits necessary for psychological examinations), special rooms at police stations for the reconstruction of the act, logistic resources (copier, fax, telephone).
3. need of information and professional training: access to Internet for research, exchanges of experience, computer networking for better communication between institutional actors, meetings, seminars, access to databases of juvenile delinquents.
4. needs related to system organization and operation – development of inter-institutional working teams to solve juvenile cases, cooperation with institutions outside the system that could supervise minors, creation of services for juvenile delinquents, setting up centers, departments/bureaus to take charge of juvenile delinquents within DPC, promotion of inter-institutional partnerships.

D. Inter-institutional cooperation

In the administration of justice in the case of juvenile offenders several institutions are involved, each having its role – more or less clearly defined - , each with its organizational structure, its own resources and problems. From this point of view, it is important to assess the way these institutions manage to work together. We will review the inter-institutional cooperation in the field of juvenile delinquent justice taking into consideration the following: 1) dimensions of cooperation and types of cooperation relations established between institutions; 2) quality of cooperation relations and 3) factors affecting cooperation.

1) Dimensions of cooperation and types of relations

From the discussions with the institutional actors involved in juvenile delinquent justice three main directions of inter-institutional cooperation can be distinguished.

Firstly, there is cooperation around the legal procedure that is relating to the set of expectations that each institution has from the other institutions it comes into contact with based on the legal framework. This cooperation affects the activity and the results of each separate institution. Although apparently this cooperation has a formal character, the interviews revealed the great importance of informal, inter-personal relations between the representatives of these institutions.

Secondly, there is what we may call institutional cooperation within working groups with variable stability in time and in degree of formality. Such a working group is for instance the Commission of Child Protection which consists of representatives of several public institutions: child protection department, police, school inspectorate, etc.

Thirdly, there is cooperation in joint projects, generally initiated and developed by non-governmental organizations. Such a project is the Child Court in Iasi, initiated by Alternative Sociale and which generated a working group consisting of judges, prosecutors, police workers. In general, the projects focus on the training of workers from the legal system through courses, seminars, workshops, or information-education campaigns, aimed in general at primary juvenile delinquency prevention.

2) Quality of cooperation relations

The quality of institutional cooperation fluctuates with the type of institution and the city. We can nevertheless identify, based on the interviews conducted, the strong links and the weak links of the cooperation in the field of juvenile delinquent justice.

The strong links, encountered in all the cities included in the research, consist in the following two inter-institutional relations: cooperation between the police and the public prosecutor's office, due to the fact that the investigation activity of a police officer is supervised by the prosecutor in each particular case; cooperation between judicial bodies and SRSS, due to the promptness and quality of the psycho-social evaluation reports prepared by SRSS, on the one hand, and to their proximity in space, in the sense that SRSS operates on the premises of tribunals and thus informal relations have developed between probation counselors and judges.

The weak links encountered in all surveyed cities consist of the relations between the Board of Guardians and the other institutions involved in juvenile justice. This state of things is generated unilaterally by the quality of the social inquiries reports prepared by the Board, as well as by the fact that in general they do not get invoved in these cases, that is they do not appear in court when they are summoned.

The other inter-institutional relations stand, as regards quality, between the two already mentioned types of relations and vary from city to city in intensity (frequency) and efficiency. For instance there are cities where the police cooperate very well with the department of child protection, based on protocoles but also on informal relations, but there are other cities where DPC is not satisfied with the communication it has with the police, in the sense that they do not inform DPC of the cases involving minors that they are investigating. In some cities, SRSS has started to provide evaluation reports upon request from the public prosecutor's office and even the police, while in other cities SRSS complain that they have no relation whatsoever with investigative bodies.

3) Factors affecting inter-institutional cooperation

The main factors that affect the cooperation between the institutions involved in juvenile justice can be divided into structural or institutional factors, on the one hand, and human factors on the other hand. Included in the first category are: the workload as compared to the size of the staff, the bureaucracy and the rigidity of the hierarchy within the institutions, the legislative framework regulating the activity of each institution and the existence of a structure specialized in juvenile matters within the institutions. Among human factors we can mention: the degree of development of informal relations between the workers of various institutions and mentalities.

The heavy workload incumbent on the workers of these institutions consisting in the large number of cases a police officer or a prosecutor has to investigate or a

judge has to try affects their capacity to cooperate in intersecting concrete activities, as well as their availability to engage in joint projects.

> [cooperation] ”is fragmented. In the sense that, many times institutions, well, again, given their heavy workload, every institution has become a fief, like that, in its own yard, and neither is going out of its yard to make contact, to see, to form these... let’s say, discussion groups, working groups”. (SRSS, Bucharest)

> ”… so we fail to have that informal cooperation, to say so, or that cooperation to extract simple papers, memos (...) The reasons are, again, quite logical: the burdening of the judge with a very heavy workload, the heavy workload that we have, and, well in this context, our schedules don’t quite match”. (SRSS, Bucharest)

Another negative factor affecting the cooperation comes from the way institutions are organized and operate. Excessive bureaucracy, as well as the fact that ordinary workers do not have much independence in making decisions, in some institutions the hierarchical subordination being very strict, are a barrier against a more intense and effective cooperation.

> ”State institutions are all characterizesd by bureaucracy, and even if the people you work with have the best intentions and understand you very well, bureaucracy is the first barrier against doing things quickly... the fact that many of them, and especially the Police and the Prosecutor’s office are still subordinated to... are still... they don’t have the freedom to move at local level, you see, and this again is because of the bureaucracy and their specific legislation...” (NGO, Cluj-Napoca)

> ”the Public Prosecutor’s Office has remained, in our country, the same Stalinist-type institution. Although they are not militarized, they behave like they were. The prosecutor can do nothing else but what his boss tells him to do. Even if the investigating prosecutor or the court prosecutor has another opinion, he/she does not have the guts to express it and put it on paper, in the documents he/she issues or in the closing arguments to the court...” (lawyer, Bucharest)

The ambiguity of the legislative framework, or even the absence of certain regulations are significant obstacles in the way of cooperation particularly between child protection departments and the other institutions.

> ”…the system is also a little bit broken, for instance to go to court with those with penal responsibility. We don’t conduct a social inquiry, it’s the Board of Guardians and the police. To have a complete file, with social inquiry and all that, it’s the Board of Guardians, that’s where they go, they don’t even go through us. Or, it’s somehow a rupture, that the Board conducts an inquiry, invites the parents or whatever, they write it down. We have already worked with many of the children, we know them from various other referrals, from their parents, or somewhere else, we are not aware of that file or they don’t know that we have many more data abaout

> the respective child. It's somewhat confusing and not very clear, police officers don't understand anymore what we do, what their business is with us, what their business is with the Board …" (DPC, Bucharest)

Another structural factor affecting the inter-institutional cooperation relations is the lack of specialization in juvenile matters particularly at investigative bodies level. The fact that in the police and the prosecutor's office there are no workers to deal exclusively with juvenile delinquents makes it harder to establish cooperation relations.

> "[…] if in the Police I didn't have to call on everybody who works in the judiciary, in criminal investigations, if there were groups working with minors and if in our service there were colleagues who worked with minors, I think a relationship could be established between those professionals and the work would be easier, we would waste less time, we would eventually speak the same language, of the workers from various institutions in charge with minors" (SRSS, Braşov)

> "…to be honest, I as a judge of criminal matters who has tried minors don't know very well how the Child Protection Department is organized, I don't know what institutions there are, I have learned of a few NGOs active in sexual abuse, domestic violence, but for the rest I don't even know what state institutions are involved in minor protection... this I know: the Social Reintegration and Supervision Service operating within the tribunal prepares those reports on minors, otherwise there is no cooperation between us …" (judge, Cluj-Napoca)

Human factors also play an important role in inter-institutional cooperation relations. Among them, building informal relations between the workers of various institutions help the institutions cooperate better.

> "There are also signed protocoles, but usually it's working at informal level. […] we have telephones, we exchange telephone numbers and we meet what to do to avoid this bureaucracy, red tape... maybe the time, right?!? Maybe it's an emergency... the Police, Public Prosecutor's Office, Court cooperate well. We are doing our best to solve the matter and to put on the file everything that should be there and it's required. We cooperate with SRSS too, when they call on us, and we on them, with the Child protection Department, again it's a good cooperation... so it's good". (police officer, Braşov)

The mentality of some workers, their lack of interest in the matter of juvenile delinquents is clearly a factor that affects the possibility to establish cooperation relations between various institutions. The fact that juvenile delinquency is not among the top areas of interest of some institutions is in itself a barrier against the development of a system of juvenile justice.

> "It's my point of view as a police officer: that is the unconcern for this line. For instance, how this line – minors – is viewd, since in our system as long as you don't produce criminal files it's considered that you don't work; and

working with minors, as I have said once or two times before, means 80-90% prevention work and criminal investigation work – 10%". (police officer, Braşov)

4.3. Procedures, practices and problems at criminal prosecution stage

4.3.1. Criminal prosecution from the standpoint of institutional actors

In this sub-chapter we will approach three topics related to institutional actors' perception of procedures and practices at criminal prosecution stage: their degree of adequacy in the case of juvenile offenders; observance of procedural rights, problems and specific needs they are confronted with during criminal prosecution.

A. Adequacy of procedures and practices in the administration of justice in the case of juvenile offenders

The qualitative analysis of the institutions representatives' statements about the adequacy of procedures and practices in cases with juvenile offenders reveal the existence of four types of positions or attitudes.

In the first place, there can be distinguished a positive attitude towards procedures and practices at criminal prosecution stage, especially among the lead institutional actors involved at this stage – police officers and prosecutors. The provisions of the penal code and of the code of penal procedure are considered to be adequate by the fact that they are sufficiently comprehensive and they ensure good protection of the rights of the minor. In general, though, interviewed police officers and prosecutors tend to focus on the strictly legislative dimension and not on the difficult aspects of the implementation of legal provisions. Positive elements of the current penal procedure in cases with juvenile offenders are considered: mandatory legal assistance and notification/summoning of legal representatives (parents, guardian, etc.); reduced terms of holding in custody and arrest of minors and the fact that pre-trial detention is an exceptional measure taken only in case of grave offenses.

"...every time we interrogate minors legal assistance is obligatory, the presence of the lawyer. Also, if he/she is below 16 years of age when he/she is interrogated, both during criminal prosecution and during trial, we ensure the participation of his/her parents at the interrogation". (prosecutor, Alba-Iulia)

"The problems are not with the investigation of offenses, criminal prosecution and trial. I think that they are going rather well respecting the rights of the minor..."(prosecutor, Craiova)

The second type of attitude is directed at the implementation of legal provisions on penal procedures, with emphasis on the fact that there are cases where they are not observed and where the rights of the minor are infringed. This position is spread especially among lawyers, SRSS and DPC workers, and representatives of non-governmental organizations. They acknowledge that legal provisions are relatively adequate, but they contend that in many cases the

observance of the procedure is just formal, on paper, and that the provisions on the protection of the child's rights are not respected in fact at criminal prosecution stage. Those who express such opinions also criticize the fact that there are cases where:

a) minors' statements are taken outside the presence of the defender (especially the first statement);

b) legal representatives (parents, guardian or representatives of child protection institutions) are notified with delay to participate in interviews;

c) minors are intimidated, threatened, sometimes even subjected to physical aggression;

d) investigators put pressure on minors to also admit to acts they did not commit;

e) sometimes investigators obstruct the activity of the lawyer, by denying confidential meetings between the lawyer and the minor in custody, or by not making available to the lawyer the complete criminal prosecution brief.

> "I know that rights have become to be more respected, but still I have had situations with minors whose rights were violated during the investigation and who told me that they did not have a lawyer present, that their parents were not invited when evidence was collected and that if you don't know your rights, being a minor especially, it is very easy to abuse a statement" (probation counselor, SRSS, Bucharest)

> "In cases with minors the same thing happens as in cases with adults... Categorically, something must change... from the manner the first statement of the minor offender is taken, to the ensurance of an effective defense by respecting the rights of the lawyer, infringed more often than not in one way or another... there is very strage policy of some investigators to not make available the complete file. […] Minors are easier to influence and then, they take their statement, make them admit to everything..." (lawyer, Iaşi)

> "Unfortunately minors are arrested, yes, very many are arrested, very many are not interviewed in the presence of their parents or of a lawyer and this is a violation, how shall I put it, of human rights, of the rights of the child – not to talk about, yes, very many are used unfortunately to identify adult delinquents […]" (NGO, Cluj-Napoca)

A third category of opinions expressed by institutional actors includes assertions about the traumatic character to minors of certain stages in criminal prosecution: the interrogation, the preventive arrest and more generally the attitude of and the way they are treated by investigators. The fact that the minor is interviewed several times (at the police station, at the public prosecutor's office, at first court, at appeal court, etc.) is considered by some police officers and prosecutors included as stressful. Also, the environment these interviews are usually conducted in – crowded offices, where sometimes several interviews are being conducted, commotion – is a factor which may potentially affect the mental state of the minor.

> ”...for a minor who commits an offense, regardless of his/her motivation, to be taken by the police, to that environment, in a restrictive institution, with unknown persons asking all kinds of questions, assisted or not by a parent or social worker... I think he/she would be rather confused and scared”. (psychologist, NGO, Timişoara)

> ”They are never interviewed in separate rooms, or in a specially designed room. They are interviewed in rooms with 3-4-5-6 desks with the other police workers and people come in, go out, slam doors. The child sits scared and wide-eyed and does not understand what is happening to him/her”. (lawyer, Braşov)

> ”We have tried, at the police station, about these interviewing rooms for minors if possible to be located, when you enter the police station, on the ground floor, right by the door so they don’t come into contact with other offices and other participants in various offenses under investigation, but these are the possibilities”. (police officer, Iaşi)

The fourth type of attitude concerns the measure of preventive arrest (pre-trial or pre-sentence detention) and those who manifest it refer especially to:

a) the measure of preventive arrest is taken too lightly in some cases / the number of minors under preventive arrest is too high;

b) preventive arrest (be it in police custody or in the penitentiary) is an opportunity to come into contact with other offenders and to become ”skilled” in various criminal techniques;

c) the first experience of arrest is very traumatic to a minor;

d) detention conditions in police custody facilities are extremely harsh;

e) there are no alternative preventive measures to arrest.

> ” [...] ...custodial preventive measures are taken too lightly and I’m talking about preventive arrest of minors, 15-16 year old minors.” (lawyer, Iaşi)

> ”More could be done at criminal prosecution stage. Many minors complain about the regime, the way they were treated. We are generally all aware, and it’s the same in Braşov: arrest facilities are small, overcrowded, there is separation of minors from adults, but in totally inappropriate spaces.” (probation counselor, SRSS, Braşov)

> ”They should, of course – procedure – be kept separate from adults... from what minors tell me, it doesn’t quite happen. After barely two weeks of detention a defendant came out as if he had been there for three months. Super educated, between inverted commas let’s say. He was already telling me: ”when I come out, they won’t catch me again, next time I know how to be the smartest thief” ...or something to that effect.” (lawyer, Braşov)

Institutional actors refer as well to other aspects indicative of the fact that the procedures and practices at the stage of criminal prosecution of juvenile delinquents are not adequate. The absence of a psychologist at interviews or who provides counseling to the minor throughout the criminal prosecution is an element that makes working with minor offenders more difficult. Largely related to this aspect, some respondents indicate that insufficient attention is given to the motivation of the child and to the context in which he/she committed the offense. Also, the analysis shows that in some cases, due to the lack of infrastructure, inadequate measures are taken by investigators or their work is made more difficult. For instance when street children are interviewed: many times when they are brought in they are dirty, hungry and they need to be interviewed. Or, at police stations it is impossible to provide humane conditions to be able then to have a conversation with them.

A few police officers, even if they admit that in the case of minors criminal prosecution should be expedited, criticize the rigidity of the penal procedure, in the sense that there are situations when deadlines are too short to be respected, all the more so since the bureacracy in state institutions is hard to push.

> ”Sometimes we think that they are good, because justice is quick, it doesn’t drag on for one, two years and the current legislation imposes an expeditious criminal investigation, but many times there is no time, time is too short and maybe a better evaluation of external factors might have been accomplished.” (police officer, Timişoara)

> ”Many times we find ourselves in the situation to finalize investigations calling on inter-personal relations with other institutions. The legislation is not flexible enough. Many times you need more time, and terms are too short. For instance, I have a minor in Constanța, I have 10 hours... well, in 10 hours I can barely bring him from there.” (police officer, Alba Iulia)

B. Interviewing room for minors

The interviews reveal that there are no special rooms to interview minors, neither at police stations nor at public prosecutor’s offices, in any of the cities included in the study. In Iasi, at Iasi City Police Department there is a special room supplied with video-recording equipment, but to date it has been used exclusively for interviewing minor victims of offenses.

At police stations, juvenile offenders are interviewed in the offices of police officers in charge with criminal investigations, and often, due to lack of room, it happens that a minor is interviewed in the same office at the same time with the interview of adults accused of other offenses. At the public prosecutor’s office the interview takes place in the office of the prosecutor who supervises the criminal investigation of that particular case. In general, it does not happen that more than one interview take place at the same time in the same prosecutor’s office.

C. Forensic expert examination to determine competency

In the case of minors aged 14 to 16 years it is mandatory to determine if they were competent at the time of the commission of the criminal offense. This determination is made by expert examination conducted by a commission of the Forensic Institute (Institutul de Medicina Legala – IML). The examinations to

determine competency take place only one day a week. The minors are accompanied by investigative bodies, meaning the police officer in charge with the case, and by parents, but it frequently happens that minors go to IML accompanied by police officers only, especially in those cases where parents are not concerned with the fate of their children or the minors do not have parents. It also happens that minors go to IML accompanied only by their parents, in case the family appears trustworthy enough to investigative bodies.

D. Ensuring mandatory legal assistance at criminal prosecution stage

When held in custody by the police the minor is advised that he/she has the right to an attorney, and in case he/she does not have one, a public defender will be provided to him/her. Police have a list of lawyers on duty every day from the Bar, list updated weekly or monthly and containing also the telephone numbers where the respective lawyers can be contacted. A request is made to the Bar to delegate a public defender. Usually police contact by phone one of the lawyers on duty and ask him to assist the minor under investigation. The investigators, as the judges too, complain not of the fact that lawyers would not respond to these requests, but of the quality of public legal assistance, in the sense that lawyers do not give enough attention to these cases.

> ”[…] public defenders don’t bother at all with cases involving minors.” (judge, Cluj-Napoca)

> ”[…] the appointed defender, for 200 thousand or 400 thousand, whatever he gets, does an absolutely perfunctory job.” (judge, Braşov)

> ”[…] appointed lawyers are as if they weren’t.” (prosecutor, Bucharest)

E. Provisional release under judiciary supervision or on bail

As an alternative measure to preventive detention, provisional release under judiciary supervision or on bail is extremely rarely used, if ever in some places. The large majority of interviews with police officers, prosecutors, lawyers and judges confirm this assertion. The explanations given by respondents about the reasons for not using this measure target in the first place legislative aspects.

From a legislative point of view provisional release is not used in the case of juvenile delinquents because this measure can be applied only for offenses where the maximum sentence is no more than 7[27] years, while preventive detention is imposed for offenses where a sentence to at least 10 years can be passed. In other words, institutional actors claim that there is no way they can use provisional release since minors are anyway arrested only in case of very grave offenses. On the other hand, there are respondents who say that this measure is not applied because lawyers do not ask for it. On the other side, lawyers maintain that this is a relatively new measure in penal procedure in Romania and as such prosecutors and judges are not used to it and reject it as a form of resistance to change. As to bail in the case of minors who commit criminal offenses, an additional argument is that many

[27] In fact, Art. 160 item 2 was amended by Law 281/2003, so that provisional release under judiciary supervision can be granted now if the maximum sentence is to 12 years.

juvenile offenders come from poor, broken families and practically there is no one to pay it.

F. Observance of minors' procedural rights at criminal investigation stage

The Code of Penal Procedure provides several special rules to be applied to cases with juvenile offenders. Thus, during criminal prosecution the minor shall be assisted by a lawyer, at presentation of the criminal prosecution material it is mandatory to summon the parents or legal representatives. If the minor is aged 14 to 16 years a forensic examination is mandatory to determine competency. The minor cannot be held in custody for more than ten hours and can be under arrest for 20 days at most.

Our research looked into the way the juvenile offender's procedural rights are respected in practice. Analyzing the answers of instituitonal actors three types of opinions can be distinguished. First, there are those who say that it never happens that their rights be not respected (in general this is the predominant answer among police officers and prosecutors). To be more convinving, respondents argued that a violation of rights would trigger the dismissal in court of results obtained in this way, which would lead to resuming prosecution proceedings. This could be indicative of the fact that some workers in the judiciary field focus on the pragmatic aspects of the respect of rights which ensure their professional success and not on the fact that these rights in themselves are part of the psycho-social characteristics of the minor.

> ”Certainly they are respected, because most of them are provided under sanction with absolute nullity: with psychiatric examination, with social inquiry, with appointed counsel, all these are always respected.” (prosecutor, Bucharest)

> ”Nobody would risk their skin to violate these rights, which in the end are simple things.” (police officer, Bucharest)

> ”No, no way [procedural guarantees they are entitled to are not ensured]. There are codes of procedure with clear provisions about the procedural rights of the minor and whatever is done that infringes those provisions is null de jure.”

Secondly, there are those who do not deny the possibility that sometimes the procedural rights of minors may not respected, but state that it happens very rarely and that generally juvenile delinquents are treated fairly.

In the third place, there are those who say that it does happen that these rights be not respected. In this category we could include those who focus on the formal character of the respect of rights. The most frequent violation mentioned by respondents refers to the fact that statements at police station, especially the first statement, are taken outside the presence of the lawyer. In practice, it happens that parents or legal representatives be notified with delay of the preventive measures imposed on some minors and thus they are not present at interviews.

> ”They are formally guaranteed, but there are violations in a system we all know. To guarantee means it’s in a law. Statements are taken without a lawyer, outside the presence of parents who are not always invited.” (lawyer, Iaşi)

> „Yes, unfortunately yes. Although legal assistance is mandatory in all cases with minors, the right to defense is not guaranteed, in the sense that judicial bodies have the obligation to appoint a public defender, if the minor does not retain a lawyer, but this right is most of the times violated since certain stages of criminal prosecution unfold without mandatory legal representation. Also, the obligation to notify in as short a time as possible close relatives or certain persons designated by the minor, in case certain custodial measures are imposed, this obligation is not fulfilled […] I think the reason is the requirement to process criminal cases with dispatch and the existence of quite a number of files.” (lawyer, Craiova)

Other practices violating the rights of the minor are related to the attitude of investigators, who in some cases resort to threats, sometimes even to physical abuse, to intimidate minors and make them confess. It also happens that minors be asked to admit to offenses they did not commit, offenses listed with the police as files with perpetrators unknown.

> ”I even had files where I had doubts about how those statements had been taken. I don’t know, I think there is still that habit to say... well, because the man has a perpetrator unknown in a case, to catch someone who, I dont’t know, is not an alter boy in the village, and the man says: ’it’s OK, just say that you did it, nothing will happen to you’. I have the feeling that things like that still happen; then they come to me and say: ’sir, they beat me or they did this or that to me’, and I believe it. This moral threats, this moral coercion, I think that it still works. ’Careful, I’ll keep my eye on you and I’ll make trouble for you’, something like that... there is no need to beat him up.’’(judge, Iaşi)

> ”I have encountered situations where the first statements given by the minor to police […], the minor is made to write ”I have been advised of my right to an attorney, but I refuse.” ... or here it is ignored the fact that this is a minor and that counsel is mandatory.” (judge, Craiova)

> ”Yes, it happens and especially they are intimidated... I personally know of cases with minors who were forced by criminal investigation bodies to take upon themselves offenses entered as PU: perpetrator unknown, so that police officers can get rid of these files while minors with known criminal record take upon themselves cases, crimes they did not commit... and for small favors like a soda or a pack of cigarettes, they are willing to do so.” (judge, Cluj-Napoca)

> ”At the moment the lawyer is called, a first document has already been drafted, even if it’s a notice of initiation of prosecution, of investigation. A discussion has taken place, between the minor and the police officer. Categorically a discussion has taken place.” (lawyer, Braşov)

> ”Yes, it happens that their guarantees are not ensured, in the sense that – they are caught by police, so this is how it’s done – caught by police, they take him, they bring him in, they smack him to tell everything, and the statement is taken in the presence of the parent and of the lawyer – retained or appointed – but after he has been probably threatened, if not hit too... Abuses are being made.” (lawyer, Bucharest)

In some cases the defense cannot contact the client who is in police arrest or the confidential conversations between lawyer and client are hindered by investigators.

> ”They are denied for instance, by police, or by investigative bodies, access to visits with parents, unconditional access of the lawyer... there are problems in criminal prosecution, I have notice in the country, in villages, where minors are beaten up. I’ve heard many. They are still beaten up.” (lawyer, Bucharest)

> ”[…] I was very upset because the police officer was sitting there, between the two of us, and we were supposed to have confidentiality. So, let the minor tell me what he has to say... ,he was sitting there looking at me because the policeman wouldn’t...’ so I say: ,look this is a confidential conversation, you are not allowed.’ ,Well, but what if you slip him something in his pocket, well, what if...’ ,Take everything I have and let me talk to him.’ And he wouldn’t leave for half an hour of haggling over the right... that he’s a minor, that he’s an adult... it’s his right to speak freely to the lawyer, otherwise he cannot say what he has to say.” (lawyer, Braşov)

Other times minors are held in custody for longer than the legal term by investigators:

> ”I had not long ago a minor... they turned him from defendant into witness to get evidence against the main suspect... let’s say, but they kept him for 24 hours. Or, a minor cannot be held for more than 10 hours, handcuffed. That’s what he told me, that’s how the co-defendant saw him, handcuffed to the chair, to make him tell what he was supposed to tell. And his mother was notified the next day because she simply couldn’t be located. Or, if the mother cannot be found, you call somebody from the Board of Guardians, you call the lawyer, you do something, or else you don’t take anyhting. You don’t take any statement.” (lawyer, Braşov)

The study also reveals that it happens that minors are placed in the same room with adults, contrary to legal procedure. This was explained by a prosecutor by the fact that sometimes there is not enough space in police arrest, but the observations in the field and the interviews with minors indicate that there is a practice to place an adult in an arrest room for minors as ”room leader”.

The problem with the non-observance of procedural rights by investigators (police officers in particular) is generated, besides the mentality of some workers, by the fact that deadlines are too short and the workload is too heavy. At the same time, even if a right of the minor has been infringed, it is difficult to prove, and some lawyers file complaints, while knowing that nothing will be resolved.

On the other hand, the perfunctory observance of procedural rights is often generated by the mentality of appointed lawyers, who often, not being financially motivated, just come, sign and go without even talking with the accused for five minutes. Also, it is useless to invite the Board of Guardians because nobody from this service appears, and sometimes not even the minor's parents care about what happens to their child and do not participate in interviews.

G. Problems and needs institutional actors are confronted with during criminal prosecution

The problems that face police officers and prosecutors during criminal prosecution of juvenile delinquents are mostly related to four areas: existing human resources, infrastructure, legislation and attitude of some institutions or categories of persons they come into contact with in their activity.

With regard to human resources, the problems may be classified into two categories. On the one hand, at the level of the two key institutions involved in the criminal investigation of juvenile delinquents, the staff is insufficient for the large number of cases they have to investigate. As a consequence, the workers are extremely busy and are not able to give each and every case much attention. On the other hand, both police officers and prosecutors perceive the lack of specialization in minors as an obstacle in their daily activity. By lack of specialization we mean both the absence of in-service training in juvenile delinquency and especially the fact that there are no professionals who work **only** on juvenile delinquent cases. Both police officers and prosecutors are in several lines of work, among which that related to the investigation of offenses committed by minors. Another difficulty, related to the human resources available at the level of the two institutions, is the shortage of psychologists and social workers to call on in some cases with juvenile offenders. Also, some police officers consider to be a problem the fact that there is too much turnover of staff assigned to juvenile cases, determined on the one hand by too much mobility between the various lines of work, and by the hierarchical advancement policy of the system. Therefore, when you need a person who you know works in minors you may learn either that he/she has been promoted to the directorate or the inspectorate, or that he/she is no longer assigned to this line of work.

> "In my case, the main obstacle is my lack of experience in working with children. […] ...you ought to have specialized staff, to know how to conduct this interviewing, investigation of minors." (prosecutor, Timişoara)

> "A problem for us would be the workload. As I've said before, both I and my colleagues in the city and towns, we don't have just this line. We have other lines of work, and everywhere we are asked for results and so we are caught between a rock and a hard place." (police officer, Timişoara)

> ”In the first place, I don’t think there are people well specialized in this, there are no police officers, prosecutors, as I said, psycologists, social workers to cooperate permanently with our institutions and to be available anytime, any day, whenever needed. I should also mention the very large number of cases in general, not necessarily cases with minors, when you are very busy, very engaged, and you cannot give too much attention, you cannot put in so much work equally in all files, you have to make a selection based on gravity, efficiency and so on.” (prosecutor, Bucharest)

> ”It’s a large volume of work. The cases are treated mechanically and then everything is so random, that you cannot tell. The range is very wide in terms of where someone who did something could get. Meaning someone could be convicted to do hard time let’s say, to many years of detention, and for something similar someone else may be forgiven, reprimanded... A major deficiency is that too little chance is given to first offenders.” (lawyer, Timişoara)

> ”[…] this turnover of staff, one person comes stays for a year or two, they move him I don’t know where, another one come. There should be some stability in the line of work, and somebody to coordinate them there. And even a police officer who is assigned to minors, he should, when he gets there, be bound not to leave for 2-3 years at least, if if he wanted to.” (police officer, Braşov

> ”What is our institution confronted with?!? … It would be the number of police officers specialized in minors and working with minors, in all departments and I tell you... that is, in criminal investigation and in judicial and in organized crime and in... well, everything that means, I don’t know, the structure of the institution... where as a rule we encounter minors, even in traffic as I said.” (police officer, Iaşi)

The inadequate infrastructure is the second category of problems identified in the conversations with police and public prosecutor’s office workers. In this category, institutional actors frequently mention the shortage of computers, the insufficient space and the lack of a special interviewing room for minors, possibly provided with audio-video recording equipment.

> ”...obstacles... shortage of staff, lack of infrastructure, of special rooms, lack of supplies, of computers, I have a computer since 1994, Word is barely running; sometimes it stops and stays like that for half an hour and I keep saying: ’come on, come brother’. How can I write on it?” (prosecutor, Iaşi)

> ”...there are no special offices to interview them, where to conduct an investigation with minors. There is a chance to interview him in the presence of other five, interviewed in other cases.” (Prosecutor, Timişoara)

Police officers in particular also mentioned during the interviews problems related to legislation. Too short periods allowed to hold in custody or keep under arrest minor offenders are the provisions they refer to. Besides, there was reference to legislative instability, and also to the fact that effective measures to put a stop to the criminal activity of minors investigated at liberty are not available to them, in other words, they do not have effective alternatives to the measure of pre-trial detention.

> ”Problems face our colleagues from Criminal Investigations who have to obtain the forensic examination report, to go with the brief of the case and many times the brief isn’t sent from the court house in case the minor is under arrest. Or, the term of preventive arrest is short, the brief is with the judge, the brief must be taken to IML, and here is where inconsistencies appear.” (police officer, Timişoara)

A third important category of problems facing police officers and prosecutors in the activity of criminal prosecution of minor offenders includes the attitude of certain institutions or categories of persons they come into contact with while carrying on this activity. In this respect, investigators complain of the following: the fact that the social inquiry reports drafted by the board of guardians are too summary and do not reflect the motivation of the minor to commit a specific criminal act; appointed lawyers show disinterest are in many cases, their presence during the criminal investigation is rather a formality; the bureaucracy is too intricate when they intend to send a minor to a placement center. In addition to problems relating to the way other institutions are operating, investigators also mentioned, as obstacles in their activity, the attitude of minors, who sometimes elude criminal prosecution, as the attitude of parents who in some cases practically do not care about their child.

> ”A minor, a juvenile delinquent who has been apprehended now and under investigation, right now... at County Police Inspectorate, steals cars. So these are grave offenses, car theft. And yesterday he was at the Public prosecutor’s office, this is what the legislation says – that the offense is not a social risk, that he is a minor, he was let go and in the evening he stole another car again. And so this work is an ordeal. And again, call the lawyers, interrogate him again, take over the goods, so more paperwork. And people work, people who could direct their efforts and energy somewhere else, to serious things, while a minor like this holds you down. So this is problem number 1, the fact that you investigate him, let him go and he can do it again anytime...”(police officer, Constanța)

An interesting problem arising from the interviews with police officers is the disinterest shown by the legal system on the whole in the matter of juvenile delinquents. There are police officers who believe that at the present time juvenile delinquency is not a priority for anybody in the system, and furthermore there are preconceptions about what they call „minors line of work”, in the sense that it is considered that to do police work means „to produce criminal files”, while in fact working with minors means primarily prevention.

> "...the disinterest in this line. For instance how is this line – juveniles – treated, since in our system as long as you don't produce criminal files it is considered that you don't work. While working with minors, as I said, I think this is the second third time, implies 80%-90% prevention work and criminal investigation – 10%"(police officer, Braşov)

A very pointed problem that came up during a few interviews with investigators refer to the costs of forensic examinations which must be borne by police or public prosecutor's office and this is an additional financial burden for this institution. It is a rather important aspect to note, since IML does not issue any certificate before the required fee has been paid and this triggers delays in the file.

> "The problem is the payment for this forensic psychiatric expert examination. We make an appointment, they receive us there with the minor, he's examined, but the findings certificate is not issued until the fee has been paid […] As a rule parents pay it, if the minor comes from a family with possibilities. If they don't, it's paid from the budget of police. A report is forwarded to accounting upon approval of the director general, the bill is paid. And only after a while we receive the report with the findings of the examination. […] It can take even months." (Police officer, Bucharest)

4.3.2. The experience of criminal prosecution from the standpoint of juvenile delinquents

A. Social context of offenses committed by minors

The social context in which minors commit offenses encompasses the key socialization media – the family, the school and the group of friends.

The family and the minor's relation with the family are factors of great influence over the juvenile behavior. Many delinquent juveniles come from dysfunctional and / or poor families. The tensions in the family, against a background of material hardship were in the case of some of the interviewed minors a determining factor for their criminal behavior. But a much more determining factor appears to be lack of supervision, losing control over the child. Some of the interviewed children used to run away from home, not because they were treated badly but because they were kept on a short leash.

Although poor material resources are in many cases the motivation for committing crimes, in other cases the cause resides more in the minor's inability to withstand peer pressure in his/her group of friends. Most of the children motivate the acts they committed by the company they kept and besides very few of the interviewed children committed the offenses alone.

Generally, the family's unconcern is associated with school drop-out, creating the conditions for the emergence of a criminal behavior. The petty offenses committed by his/her companions become under these circumstances accepted means for the minor to supplement his/her pocket money. Often, adults come in too and in exchange for some money ask the minors to steal various things. The more this conduct is not sanctioned in one way or another, the more acceptable it tends to

become to minors, especially since they start committing offenses at an age when they have no penal responsibility.

> ”Q: Were you getting along well with your parents?
> A: So my parents are separated and I have a step father, but now I realize I didn’t much like to study and he was scolding me, he was beating me sometimes. And I also had a schoolmate, now I can call him an enemy, who was teaching me, you know... he said: “Do you want to have money?”. Well, I had money, but not millions. Like any parent he would give me 50 thousand. How much should he give me every two days? Enough to hold me. And I stole once, I got used to it, I saw there is a lot of money, nothing happened to me, I saw that nothing happened to me and I kept it up until…” (minor, 16 years old, RC Găieşti)

> ”Q: Were you having problems with your parents?
> A: I’ve had problems since I was little. When I was about 6-7 years old my father died, since then I went astray like this… I couldn’t, so, to go to school, I couldn’t... I got all confused then… I would go to school, I couldn’t stay for all the classes. When the bell rang... if I stayed one hour, when the bell rang I would leave. I would leave the school, hanging out with others. When my father was alive, he would come to school sometimes, take me to school, from school. Since my father died nobody came to take from school and I couldn’t go to school anymore.” (minor, 17, Iasi penitenciary)

> ”Q: Come on, tell us how it happened?
> A: Well, I was at my girlfriend’s and my friend phoned and said „how are you”, I say „look, I am playing games on the computer”, I liked playing games on the computer. And he says someone was giving him a phone, „ what phone, I want to see”. And afterwards, on the way he told me (...) I was thinking to go, not to go, and there was another friend of mine who went home because he had a headache. Well, I think if he hadn’t had a headache he would be here too. Fine, „come on” he says „look when he comes out of the store I hit him and you take his phone behind my back”. Well, he couldn’t hit him and I hit him right in the nose and he fell to the ground and we took his phone. Afterwards we ran and the police caught him, we got separated and they caught him, they took him to the precinct, then I went too and that’s it.” (minor, 17 , Timişoara Penitentiary)

> ”Q: Have they enticed you in any way, have they pushed you to take part in …
> A: I don’t know. Simply the first time I did it, we were many, just like this boy here with us, so I practically didn’t know what was happening and I went there with them, they gave me some money... I don’t remember how much, a few hundred thousand and when I saw what they were doing I joined in. This is how it started, from a hub cap to stereos.” (minor, 17 years old, Bucharest, under preventive arrest)

B. Experience of the minor with investigation bodies

Regarding the direct experience of minors with the legal system, the interviews conducted highlight many of the problems mentioned by institutional actors too.

A first set of problems pertain to the investigation stage. The following are the results of the interviews with minors:

- the first statement at the police station is taken outside the presence of the lawyer and of the parents or other legal representatives;
- investigation bodies obtain statements using threats and intimidation;
- statements obtained under coercion of physical abuse;
- minors are forced to admit to other criminal offenses than the ones they were under investigation for;
- parents' notification conditional upon admission of guilt.

> "Q: […] the police picked me up from outside the apartment building and they didn't tell why should I go to the police station, they got me in the car and they took me to the station.
> Q: Didn't you want to let someone know?
> A: I said I didn't want to give a statement before my mother came and they said they would call my mother only after I gave a statement. And I give the statement and I didn't see my mother.
> Q: When did your mother come?
> A: Mother…so since Thursday when they took me she came only on Tuesday when she found out, after we were on tv, in the newspaper." (minor, 17 years old, Bucharest, placed under police arrest)

> "Q: Coming back to the interviews at police and public prosecutor's office... who else was present except the police officers and you?
> A: There was the prosecutor...
> Q: Did you have a lawyer?
> A: No.
> Q: Wasn't the lawyer present at interviews?
> A: No, because I didn't have a lawyer. Only an appointed lawyer.
> Q: Well yes, appointed... during the interviews at the police or prosecutor's office...
> A: No, I didn't have... when I gave statements I didn't have no lawyer.
> Q: Were your parents there?
> A: Yes, just my father.
> Q: Then he was at the police when you gave statements, right?
> A: Yes. But he didn't know why he was there for... he was outside, he was not there when I was giving statements.
> Q: When did you meet with your appointed lawyer for the first time?
> A: In court...
> Q: So during the investigation you did not have a lawyer.
> A: No." (minor, 17 years old, PMY Craiova)

”Q: How many times did you go to give statements?
A: I went many times, in about a month I went six, seven times I think... only for statements. Then they called me...
Q: Did you go to the public prosecutor’s office?
A: Yes, I went there too. And they kept calling me... they had unsolved cases and they wanted to play me, to make me admit to those too, that we did it too. But no, we... so every time they called me... there were two more offenses without perpetrator. And they were telling me, come on, we have your composit, but I had nothing to... I knew they were lies, because I never did such things...
Q: And they?
A: I denied every time... why should I take upon myself offenses. Then in November, in December ...
Q: Did they treaten you in any way?
A: Yes. They told me that anyway we arrest you now for these offenses, then we’ll give you another sentence and we’ll pin these on you too and they were saying ”you’d better admit now, I’ll add them in this file too”... so to give me... you know that they join if they are all in one file and they wanted to pin them on me to join them and they were threatening that they would open another criminal file for those two. And I didn’t agree, I knew I had nothing to do with that, none of my business. Then I went to the public prosecutor’s office, the prosecutor took my statement.” (minor, 16 years old, RC Găeşti)

”Q: But, still, there was a lawyer when you gave your statement?
A: No, it was late at night. There was no lawyer when I gave my statement. There were only three policemen.” (minor, 17 years old, MSP Iaşi)

”Q: How did it happen? They picked you up from the street, they came to your home (…)
A: Yes, they picked me from the street. They put me in the van and (...) that is, no, I’ll tell how it went. I stayed another half hour and I said I was heading home and meanwhile this boy went to Police and it was... and when the van came with him... police chased after him and I came out... and another one, a policeman started punching me, kicking me to make me say that I did that, that I took other three bags.
Q: Oh, so they wanted you to admit to acts you didn’t do?
A: Yes.
Q: And did you?
A: Well no.” (minor, 17 years old, Alba Iulia, in police arrest house)

”Q: […] and when we get to precinct 19 they separated us like this and he started asking me. ‚Look here you what’s with that?’ ‚What?’. So he didn’t want to say it, he wanted to hear me say it. ‚What’s that sir?’ they grabbed a baseball bat. ‚You, put your hand on the desk’, ‚Why, I can’t put my hand on the desk!?’ ‚You put your hand on the desk boy’ ‚How can I put my hand on the desk, sir, cause it’s (...) Sir, why do you do that,

what did I do?'. Look here you, what's with the house?' ‚What house?', Yes, so and so and so. We admitted we did it, they took us to …
Q: Did they notify your parents, did they tell your parents?
A: No, they didn't let our parents know, they didn't want to.
Q: Who didn't want to?
A: They didn't want to, I told them, sir, why don't you let me, please let me call home so my parents know…".
[…] a gentleman, an investigator hit me with, a, a slap, I don't know what it was, I think it was the edge of the penal code. I said nothing. And he told me to give a statement. I said ‚What statement?' ‚What you've done!' ‚Well, if I dont' know what I did' and he slapped me. ‚Sir, what should I say?' ‚Say it", so he wanted to hear me say that I broke into the house. I didn't know what he was talking about, I didn't know why they brought me in. I said, but sir, I admit, couldn't you tell us what it's about, why not?'. He wanted to hear it from us, cause he did say, well, what if you've done other things, if you've broken into other houses' and he kept us there like this until about 6 when they notified our family, we were interrogated until 12:30 – 1 at night. Then they took us to city." (minor, 15 years old, MSP Rahova, Bucharest)

"Q: Were your parents notified that you were under arrest?
A: Yes, they were, by a lawyer by phone.
Q: Meaning the police didn't inform them?
A: I don't know, I told the lady lawyer, I don't think the police... Police are trying hard to harm me, to pin on me (…)" (minor, 17 years old, Iaşi, police arrest house)

„Q: During your discussions with the judge or police, were you accompanied by a lawyer, or only by your parents?
A: The first time, during the discussion with the police, not even by my parents.
Q: Only the policeman.
A: Only police officers, yes." (minor, 17 years old, under supervision of SRSS Constanța)

Another problem identified from the interviews with minors is the fact that when they are under police arrest minors are not always separated from adults. In general, there is a practice to place an adult with the minors in their room, as a kind of room leader.

„Q: Who stays with you now, or who stayed and who stays in the cell with you (…)?
A: So, there are 3 minors, one stole a car, one …
Q: Except yourself there are 3 more?
A: 3 minors and an adult.
Q: In the same room?
A: Yes … we are 5 and another one's coming, a mute from Socola …"
(minor 17 years old, Iaşi, in police arrest house)

”Q: How many more stay in your room?
A: Four more minor boys and the room leader who is an adult. He’s a gentleman around 55, economics. Some forged documents” (minor, 17 years old, Timişoara, police arrest house)

”Q: Who is here in arrest with you, just minors or adults too?
A: Adults too, but they are not bad or... that is we get along well and most of them are boys from my hood.
Q: You know them all?
A: Almost.
Q: So you are minors?
A: No, only I am a minor.” (minor, 17 years old, Bucharest, police arrest house)

Many minors complain of the services provided by their appointed lawyer, believing that since they are not paid they do not do their best. Appointing a lawyer appears to be in many cases just a formality, which confirms the institutional actors’ assertions. According to some minors, the lawyer does nothing else but signs the statement.

Also regarding the defense, some complain of the fact that they had different lawyers at investigation stage and at trial, who did not have time to study the brief thoroughly and consequently cannot provide an effective defense. It can be said that there is a high level of mistrust in appointed attorneys, at least among minor offenders. Probably because they had several lawyers representing them during the process, when they are asked about their meetings with the lawyer minors are inclined to refer to the one who represented them in court and answer that the first time they met was in court, although in most cases they had met a lawyer before, at least at the Public prosecutor’s office, if not at the police station too. Many interviews reveal the fact that the minors did not have confidential meetings with their lawyers and that in general lawyer-minor client interaction is extremely poor. Also relating to defense, a case was encountered where the lawyer retained by the family advised the minor to change in court the declarations made at the Public prosecutor’s office.

„Q: Right, and when you gave the first statement, who was present?
A: Where?
Q: At the station.
A: The policemen.
Q: That’s all, nobody else, a lawyer or...?
A: A lawyer, yes, yes…
Q: A lawyer?
A: Yes, but I gave many, you know, I gave many and afterwards in the morning, the lawyer came.
Q: So you gave the statement with the policemen and only the next day the lawer came and signed…
A: Yes, yes. The lawyer asked me.
Q: If you maintain your statement.
A: Yes, yes the lawyer said but he didn’t read, he didn’t read to see if I say so. And he said that it’s like that, like that.” (minor, 16 years old, Braşov, in police arrest house)

”Q: At the prosecutor’s, did you have an appointed lawyer at the prosecutor’s?
A: Yes, yes, yes they gave us one.
Q: Did the lawyer talk with you?
A: He didn’t talk nothing …
Q: He signed ...
A: He signed, he asked me to sign and him and me both, but I didn’t talk with him, no nothing.
Q: But did he, the lawyer, ask?
A: The lawyer they gave me…
Q: Yes, the lawyer appointed to you at the police or …
A: ... didn’t ask anything. At the prosecutor’s I told how the act happened, he signed and I signed too and that’s it.” (minor, 17 years old, Bucharest, MSP Rahova)

”Q: And in court the appointed lawyer was always present?
A: Yes, he was always there...
Q: Did you speak with him about your case?
A: No, he spoke and left.
Q: You never talked with him?
A: No, if I was alone... father wasn’t there, there was... there was no one to help me...” (minor, 17 years old, PMY Craiova)

”Q: You said the lawyer was appointed, did you talk with him, one on one, just the two of you?
A: Yes, we talked and he has nothing to tell me... if you don’t pay he won’t fret about you... no point.” (minor, 17 years old, Iaşi, police arrest)

”Q: Did you talk with the appointed lawyer?
A : Talk, we talked nothing, he was looking at me, to give a statement and he didn’t tell me anything what to say.” (minor, 17 years old, Timişoara penitentiary)

”Q: How was your first meeting with the lawyer?
A: So he came at the station when I was interviewed this lawyer, at the prosecutor’s another one came, and at Bucharest Tribunal another. So maybe you know how it goes with appointed lawyers.
Q: I don’t know, you tell me.
A: So they are appointed lawyers, there isn’t one you’d say represents you everywhere. The one who’s somewhere close by that’s the one who represents you.
Q: And practically each of them knows your case?
A: So they asked me what offense I committed, how I committed it and... so without reading the file.
Q: Your meetings with every lawyer were confidential, that is were you two alone or others were there too?
A: No, there was a mister prosecutor, Mrs President.
Q: So everytime someone else was there.
A: Yes.” (minor, 17 years old, Bucharest, in police arrest house)

Another problem with preventive arrest is the way minors are treated in general (and probably not only them):

> ”that is, once you are a prisoner, people look at you differently... you go to the doctor’s, he says „you don’t sleep for three days, you’ll sleep the fourth”... „you have a headache, drink water with salt”, so everybody... nobody cares about you.. today I went to the doctor’s because my hand was swollen, I hit it by mistake... he gave me a bit of ointment and I asked for something else, some dichlophenac: go to your room, cold water compress... so that’s it... once a prisoner people look down on you as if you were nothing.” (minor, 17 years old, Timişoara, police arrest house)

In closing this chapter we will present a few remarks based on direct observations in the field. In some places, the police officers who accompanied the minors from arrest rooms for the interview were too cautious, bringing the minors in handcuffs and hardly allowing us to have a confidential meeting with them.

Not a few times those who went on site visits found themselves in the situation to interview a minor in a police arrest house or in a penitentiary and to ask themselves the inevitable question whether it was really necessary for that minor to be detained in that place. In spite of what institutional actors say that juvenile delinquents are arrested only for very grievous crimes, we met in police arrest houses minors who were first offenders and who had committed thefts without significant damage. Furthermore, we met a 16 year old minor in police arrest, who was enroled in a special school for the disabled, in 8th grade, and whose retardation was easily apparent to anyone who had a conversation with him. He was guilty of stealing together with „an older boy” various objects from cars, which had been recovered. The unrecovered damage consisted in three broken windows.

> „Q: For starters, tell me your age and why you are here.
> A: For what offense I am here?
> Q: What is your age and why are you here, yes?
> A: I am 16, I was on July 5th and I am here, I came with a friend of mine and he lost his money on games and we took stereos, we broke into cars and took car stereos.
> Q: So for theft.
> A: Yes, the first time
> Q: Were you in trouble with the police before?
> A: Never, nothing, I’ve never been in, not one finger, nothing, this is the first time I’m inside.
> Q: How did you come to do these things?
> A: How did I come to do, I was with this older boy...
> Q: Was he an adult?
> A: Yes.
> Q: How old is he?
> A: I don’t know, but he’s older. And I came with him here and we did it, we were busting a window and busting and he was going in and took them you know, cause I didn’t know how to pull them out, what to do. When I’m at, in the home, the special school for children, I met him.”

4.4. Procedures, practices and problems at trial stage

4.4.1. Institutional actors on minor delinquents' trials

This chapter presents mainly ways of ensuring procedural guarantees to the minor at trial stage, respectively: trial proceedings, obligatory social inquiry, persons summoned to trial, mandatory legal assistance. Subsequently, dispatch and impediments in achieving it will be discussed. Another topic of this chapter is the cooperation between the Court and the other institutions involved in the administration of juvenile justice. Finally, a discussion about the resolution of cases involving minor defendants, about choosing sanctions and about needs at the level of trial courts.

A. Trial proceedings

The Code of penal procedure stipulates that the session where a juvenile delinquent is tried shall take place separately from the other sessions and shall be closed to the public. Most frequently, sessions where juvenile delinquent cases are tried do not take place separately from other sessions, but efforts are made to ensure its closed character. Minors stand trial, as a rule, during the same session in which adults stand trial. In the opinion of of the persons we interviewed, the most important consequences of this fact would be:

a) The minor is not protected from the criminal environment of adults. By the time their case is called, minors come into contact with adult defendants, recidivist defendants, are present at the hearings of adults and may copy their „models";

b) The minor may be traumatised by the manner adult cases are tried. He/she becomes scared, inhibited and one cannot work well with them;

c) The minor may not enjoy the treatment which is appropriate for a minor if the judge has previously had a case/cases with adult defendants charged with grievous crimes. It is possible that the judge may show irritatation, impatience, a harsher treatment.

„...it is possible to summon the minor for 11 o'clock, let's say, but he/she comes in the morning, or to be summoned in the morning and his/her case comes up at the end of the session. He/she sits in the room, has contact with the others under pre-sentence detention, or with convicts who are brought into the room..." (judge, Braşov)

„We are trying to follow the provisions of the Code of Penal Procedure in the sense that the hearing of cases with minors is a closed one, but this is not enough. They are brought in together with adult defendants from the penitentiary, [...] to court they are brought together, in the same van, they sit in the dock together, they can watch until their case is called, they can also watch the hearings in cases with adult defendants [...] They may copy a model from what the older ones have done, so the system is not quite optimum, as it should have been... the Code of Penal Procedure says that the hearing is closed and separate, so you would suppose that there should be a separate court room, where only minor defendants

> appear [...] The intention of the law-maker was to process them separately, meaning not to be brought together with adult defendants, not to watch the hearings of adult defendants because maybe they are on trial for more serious offenses, they are impressed and …" (judge, Timişoara)

> „... the moment you bring in the minor, shackled for example, who is in pre-sentence detention, you bring him in cuffs, walking the same hallways as adults, sitting in the same waiting room as adults, coming into the court room in the special place reserved for pre-sentence detainees together with adults, he watches the entire criminal trial of the others and so on... and as long as they are not tried separately, we cannot speak of an adequate environment to adminster justice." (judge, Cluj)

> „all this jazz: interviews, statements, court. The court where you wait. They are summoned for 8:30 and the juvenile court is at 10. They send them out, they call them back in again. He/she must stay human though, a human so you can have someone to keep working with. And that is not a scared person..." (SRSS, Bucharest)

> „you finish with one who you know what very grievous crime has committed... adult, recidivist... and you go in to the minor. Well, you go in frowning, you go in angry, you go in highly strung... The poor minor does not get much of a ... I don't know, of a special treatment... as would be proper." (judge, Braşov)

As for the closed character of the session, many respondents maintain that efforts are being made to follow the provisions of the Code of Penal procedure, but there are difficulties relating to infrastructure and time.

In the absence of a room specially designed for hearing cases of juvenile delinquents the judge is forced to clear the court room whenever it is the turn of a case involving minors to ensure the closed character of the session. This is difficult to do and correlated with the heavy caseload of a court leads to infringements of this legal procedure.„... to ensure a closed hearing is rather complicated, you have to clear the room, to have a police officer there, to make sure nobody comes in, so in the first place we need a separate room, in the courthouse..." (judge, trial court, Bucharest)

> „I have tried in public sessions too, although we call them closed, but under the circumstances when, I repeat, you have I don't know how many cases on the docket, the same day, you cannot wait to clear the room, to fill the room again. [...] Sure, it's wondeful in the Code, absolutely wonderful, but if you wait for the room to clear a quarter of an hour, and to come in, and then by the time they all bustle about and are seated another quarter of an hour, you waste too much time of the session." (judge, trial court, Bucharest)

Iaşi county is from this point of view an exception to the rule. Here, cases involving minor defendants or minor victims, or where minors are brought to trial together with adults, are tried by panels specialized in juvenile cases, maintaining the separate and closed character of the session.

> „at least in Iaşi and since the Juvenile Court has been set up all their procedural guarantees are ensured, including the closed session. And this happens in the entire county [...] cases with juvenile offenders were tried separately at all the trial courts: at Paşcani, and at Hârlău, and at Răducăneni, and in Iaşi." (judge, Iaşi)

Several respondents – including from Iasi – remarked that there was a need for a separate location where to try cases involving minors (offenders and victims). There, court rooms should be designed in a more minor-friendly manner, should be furnished with audio-video recording equipment, safety glass windows. The solemnity of the hearing should be of another type in the sense of a closer relation with the court, of more free discussions; in addition, judges might not wear robes.

> „Juvenile court is a room in a courthouse. Well it's awful when the child goes through that hubbub of people who are in front of the entrance to the court room itself, which is made up more humanely." (police officer, Iaşi)

> „In the first place there should be a separate building, not only a separate court room where the minor arrives getting through hallways full of people going to other dozens of panels. We need a separate building, with a separate room, well equipped, and possibly, with rooms like those separated by safety glass." (judge, Iaşi)

> „a room to try them separately from adults, these minor defendants, maybe some equipment for this room, maybe the solemnity of the hearing should be different in the case of minor defendants, at a very tender age a little over 14, they might be quite impressed by an ordinary court room, maybe the relation with the court should be closer, to talk more freely with them, not as ordinary criminal hearings are conducted now, because they might be intimidated by the presence of a court, I suppose the court room could be organized differently…" (judge, Timişoara)

> „a room with a different setting... the judge for example: I would rather the judge did not wear the robe in front of the minor so as to not intimidate him, traumatize him... discussions should be less formal and in discussions the social worker or the one from probation services might participate, so as to make up something like a group that decides the fate of the minor... but certainly, separate buildings and specialized people are needed."(judge, Cluj)"

B. Obligatory social inquiry

In accordance with the Code of Penal Procedure, Art. 482 par. 1, in cases involving juvenile offenders, the criminal prosecution bodies or the court shall dispose that social inquiries be conducted. To carry them out is incumbent upon the Board of Guardians operating within townhalls.

It can be concluded from the interviews conducted that this legal provision is respected. The Board of Guardians is requested to make social inquiries in all cases involving minors.

The problem, though, is that of the quality of these social inquiries reports and their usefulness to judges. The overwhelming majority of those who commented on social inquiries reports describe them as „formal", „very poorly done jobs", „lapidary", „incomplete", etc. Their usefulness to a judge who has to individualize the sanctions, and who therefore needs to know the personal circumstances of the minor defendant, is very little.

In contrast with these social inquiries, the evaluation reports prepared by SRSS are extremely well appreciated, and as a consequence, some judges indicate that they would rather rely on them instead of on social inquiries reports. There are judges who claim they make it a practice to order evaluation reports by SRSS.

> „When we need a social inquiry, we've come to a point where we don't choose this option, we rely on the services of the Service, on the activity of the Reintegration Service, because there we have qualified people who do not do it perfunctorily... I think I said it before. Here indeed, they help us very much. Those reports prepared sitting down, I don't know, in the office, don't help us at all. That he is the son of so-and-so, that the mother is employed, she earns so much, that the father is not employed, that they have a 2-room house, for example, modest furniture, they have electricity, a cow and two pigglets... it doesn't help me to know that child, to see why he got there, I have to... well, they do more during criminal prosecution but they've become so like a stereotype. I've noticed that they submit a social inquiry report, references from the guidance teacher and the school registration certificate. It's not enough." (judge, Braşov)

> "It is not that, it's a mere pretense of a social inquiry. If you came to see the social inquiry report... it's something on half a page saying: "We the support committee visited and learned that minor so-and-so ... mother divorced, father unknown" and that's all the inquiry. No, this I really kindly ask you, there should be more attention given to capturing all aspects that characterize the person's conduct since birth... you should see some social inquiries reports made in other countries... you won't believe it. [...] In criminal trials there is a specificity, it's different, but to make a social inquiry without talking to the mother, the father, the neighbors, school, police means that the trial with respect to the minor's criminal activity is a mere formality from the point of view of child protection, because he/she is a delinquent who needs protection and I told you why, he/she is at the developmental stage, when he/she is exposed outside his/her control... it is very easy to say he/she had competency in committing the crime... of course, when there is a social inquiry made or

> a socio-forensic examination. Sure the minor has competency in his/her acts, but in what context?" (judge, Court of Appeal, Bucharest)

> "... on may occasions, these social inquiries are three lines on a sheet of paper. More heading and more signature than content." (SRSS, Bucharest)

> „I, especially in cases with minors, where there are, where they don't have a criminal record, rely on these evaluation reports. They are very well done. That is, people do their job there. They go and gather data from school, from the family, neighbors, I don't know, giving you a picture. You need it, because there are special individualization criteria in this article, but you... You are not told, you must take into account the background he/she's been growing up against, so it's a very delicate issue indeed and you have no idea. You see him/her there, three seconds before you... you have 50 other persons waiting their turn, on the docket... they bring him/her there, you see him/her for a few seconds, he/she mumbles something, you cannot know about him/her. And you have to impose an adequate sanction. Well, this in every case..., more so as he/she is a minor. And I rely on these evaluation reports and they are very useful to me." (judge, Tribunal, Bucharest)

> "… the pre-sentence reports prepared by SRSS are very useful to us. Personally, I have ordered in all cases involving minors pre-sentence reports besides social inquiries." (judge, Braşov)

The information requested from the Board of Guardians and from SRSS would be in principle the same. The difference in quality between the social inquiry report and the evaluation report is due to the different qualifications of and probably to the different attention given by the representatives of these institutions. In the opinion of an interviewed judge, the fact the the Board of Guardians operates within townhalls and has other duties too has a bearing.

One of the respondents indicates that at Bucharest city level there are differences in the content of social inquiries reports and that this happens because the social workers' training is different.

> "From districts 2 and 4 we receive very good, complete reports, but from district 3 the reports are not at a very good level with respect to information. Some are too succinct." (judge, Court, Bucharest)

The interview with DPC confirms the fact that district 2 has a particular practice conducive to better inquiries that elsewhere.

> „Judges, prosecutors and police officers were dissatisfied with the disregard of the Board of Guardians for this social inquiry, which is most times made sitting in the office, while we managed, I can say that, we managed to get to the panel of judges of district 2 Court a social inquiry report prepared by our service, and to avoid a flaw in penal procedure, they accepted the Board's report too. Basic social inquiries, for trials in district 2, are made by D.P.C." (DPC, Bucharest)

C. Persons summoned to minors' trial

As a rule, summoned to the trial of a minor are the parents, the Board of Guardians and SRSS. Their appearance though is not mandatory, and the trial is not adjourned in case the legally summoned persons do not appear. Consequently, in practice, minors come frequently unaccompanied by their parents or other authorities and the Board of Guardians appears very seldom, only in exceptional cases.

> „... the parents are summoned, but there are cases when parents are unconcerned and then they do not show up." (judge, Alba Iulia)

> „Personally I never had a delegate of the Board of Guardians to participate in the trial of minor cases. [...] Yes, I understand there was one in a case without parental care and a representative of the Board of Guardians was present at the trial of the respective minor defendant, but isolated cases." (judge, Braşov)

> „Procedural guarantees are ensured, but in a formal way. For example, very frequently delinquent children appear unaccompanied by parents or other authorities. Many times parents, although they are summoned, are unconcerned and do not show up at trial. There is a problem with children who do not have parents. Children living in residential institutions may come accompanied by a social worker, but it does not happen every time. In the case of street children there really is no one to accompany them. Even when delinquent children are accompanied by their parents, a public defender or a social worker, it is not always that they find support in them." (judge, Tribunal, Bucharest)

> „They never appear for minors cases. But never, I've been a judge for seven years, do I see a representative of the Board, although we summon them – summoning them is obligatory. It's not part of the trial, but they should assist him/her, right? Well, nobody ever came from the Townhall to enquire." (judge, Tribunal, Bucharest)

The cases with minor defendants must be tried in their presence. As a rule, a subpoena is issued. Police officers have difficulties in executing these subpoena warrants.[28]

D. Ensuring mandatory legal assistance at trial stage

Legal assistance is obligatory. As such, the Court provides it by sending a request to the Bar for a public defender to be appointed.

Upon receipt of the bill of indictment by the court, the first date of trial is set and a memo to the Bar association is sent requesting that a public defender be appointed to the defendant. The minor may appear on the date of the trial with a chosen lawyer or may request a continuance to hire a lawyer (according to a judge in Iasi this term is always granted).

[28] For further details see sub-chapter „Dispatch. Impediments in achieving it" and „Cooperation of judges with other institutions".

As a rule, the Bar appoints a lawyer in an aleatory way, not following a pre-established method (Iaşi, Cluj). Although there are no specific criteria to designate lawyers to minors cases, it seems those who are appointed more often to provide legal assistance in such cases are trainees (Iaşi, Constanța).

The Bar issues a mandate to the respective lawyer, and he/she represents the minor in the case. The mandate is attached to the brief.

There is no continuity between in procedural stages as far as public defenders are concerned. For each procedural stage – criminal prosecution, trial at court of first instance, appeal and final appeal – another lawyer is appointed. It happens because every institution has the obligation to ensure manadatory legal assistance. In addition, it is a matter of the Bar's internal organization and of avoiding suspicions about the possibility to favor certain public defenders.

> „Today five are on duty, tomorrow five are on duty, and so on. It is possible that, by chance, one of the lawyers who receive today the memos from court to have been the lawyer at criminal prosecution stage, it is a probability, well, I don't know how high, but very small . [...] I told you, it's just a matter of chance, for the same lawyer to be appointed at trial stage. Same as it is possible to appoint at trial stage a lawyer who is not entitled to present closing arguments to the tribunal or to the court. Then, another lawyer is appointed for the tribunal, another lawyer is appointed to the court. [...] that is we don't have continuity and we don't have the possibility to ask the Bar to appoint the same lawyer either, because already there would be questions: wait a minute, why ask for... what's your business with that lawyer, why should you ask for that one to be appointed? No, you have to leave it to chance, otherwise you are suspected of doing favors to the respective lawyer, who, maybe, needs money." (judge, Braşov)

The opinion that it would be desirable to have the same lawyer during criminal prosecution and during trial is supported by some prosecutors too.

> „Theoretically, we attach the mandate to the brief and, in theory, the court should summon the same lawyers whose mandates are in the brief. His name is there, a telephone number usually. ... I attach it there to make it clear: look, this was the public defender, it's him I should summon, he is somewhat familiar with the brief. That's how it should be. The court does what it sees fit." (Prosecutor, district 2, Bucharest)

> „There are still small problems with appointing a public defender, but lately there haven't been many situations really. It used to take even 5-6 terms before the Bar appointed a lawyer. But now they have started to work better." (judge, Iaşi)

Assessment of public defenders' performance

There are quite a lot of negative remarks about the performance of public defenders.

Under a more recent provision, the period granted to a lawyer to study his/her client's brief (regardless if the client is a minor or not) is 24 hours in the case of a person placed under preventive arrest, and 3 days minimum in the other cases. (Judge, District 1 Court, Bucharest)

There is mention of the perfunctory and superficial legal assistance provided by public defenders who often study the brief at the last minute or even in the court room, who do not contact the minors to confer with them beforehand, or who simply have no dedication and preoccupation for assigned cases. Among the explanations given for such a behavior are:

a) public defenders' fee is very modest
b) time pressure
c) being a lawyer is a liberal profession which determines more interest for their own cases and neglect of assigned cases

> „We have to do away with this formality, because the public defender, for the 200 thousand or 400 thousand he/she gets, does an absolutely perfunctory job and only at our insistence... we have to ask the lawyer „Did you contact the defendant, the arrested? See if he/she has evidence, requests?" „No, I'm going now." So it's a formality we need to get rid of. We make efforts as we can, we simply tell them to talk to them and the minor says he/she wants this, and that..." (judge, Braşov)

> „...designates a lawyer who will come for the case, who as a rule studies the brief a day or two before the term or even the day of the trial, so there is no special behavior with respect to defense in cases with minors." (judge, Cluj)

> „You can imagine how much can he/she study! He/she has to suffer. Or how much dedication can such a lawyer shaw when the criminal prosecution is finished, the minor goes to trial. As for grading let's say a 7 to be lenient." (judge, district 4, Bucharest)

> „... they study the brief there quickly, in a few minutes, if one can call this studying and that's all. That's the entire defense. They glance over it quickly and it's finished." (judge, Bucharest).

One of the few positive appreciations about the performance of public defenders was made by a judge in din Alba Iulia:

> „They are young and they get involved generally, in the sense that they study the briefs, contact the defendants and are trying their best." (judge, Alba Iulia)

E. Dispatch. Impediments in achieving it.

The information obtained during the interviews allow us to state that legal action proceedings in cases involving minors often unfolds over a long period of time. Frequently, because of multiple impediments to be analyzed subsequently, an emergency procedure to finalize cases of juvenile delinquents cannot be ensured. The sanction is not imposed as close as possible to the moment the offense is committed. This fact also has implications on the mode a case is finalized. And, minors in pre-sentence detention suffer too.

Depending on the meaning of the expression „reasonable" time for the resolution of the case of a minor, we can mention Braşov as an exception.

> „No, cases with minors are indeed tried urgently and are given priority... in general, we respect the reasonable time stipulated in Article 6 of the European Convention of Human Rights... so, we don't have old cases with minor defendants, I mean cases older than one year." (judge 1, Braşov)

Impediments in achieving dispatch:

1. Busy courts. Limited human resources. There are very many case to be tried at one court. Under these circumstances the dates of hearings are set further apart.

> „Because of time constraints, of the workload, that is we have a very large number of briefs and particularly complex briefs, which all need to be studied. We, for example go in with adults, with minors, so we have tomorrow... for example I have tomorrow on the docket 17 appeals one more difficult than the other, with adult offenders and 5 minors. I have to review the entire session..." (judge, Braşov)

> „In court it takes time. Maybe that is why they set up special courts for minors, so that a docket can be cleared, because courts are very busy. Under the circumstances where a judge has... especially at City Tribunal they don't have enough judges – they have 60-70 cases [...] No matter how you... you cannot. I've seen it, from my experience: by the 15th case your attention is not the same. No matter how distributive your attention was, you cannot take everything in, you are tired." (judge, Court of Appeal, Bucharest)

Also, some persons estimate that the number of police officers and prosecutors working on criminal investigations is too small compared to the number of delinquents.

2. Summons and summoning procedures. Absent witnesses, failure to appear.

The resolution of very many cases is delayed by faults in the summoning procedure, by the legality of the method of summoning the parties involved in the trial. In addition, there are key witnesses who cannot be located to be served summons or who are summoned but fail to appear. Two of the reasons mentioned for failure to appear in court would be: witnesses cannot afford to pay for the trip from their place of residence to the place of the trial; it is difficult for these witnesses to travel.

One of the problems facing judges is that of incomplete bills if indictment with respect to the persons to be summoned to appear before the court.

Another problem relates to the summoning procedure stipulating that you have to wait for acknowledgement of receipt of summons from the parties invited to appear in the trial; when these acknowledgments are late judges need to set a new date of trial.

> „I don't know, I have a fault in procedure, the acknowledgment of receipt of summons from an injured party has not returned, I have to give a new term..." (judge, Braşov)

> „It would be better to make trial proceedings shorter – possibly by modifying the provisions on summoning: the injured party, the civil party, the other participants to be notified by registered letter, but to not wait for acknowledgements." (judge, Tribunal, Braşov)

In cases with several defendants or several injured parties, summoning procedures are very difficult to fulfill and this triggers new delays in minors' trials.

> „If in the same trial there are both adult and minor defendants it is difficult to bring them all to court at the same time. The more defendants, the longer the proceedings." (judge, Tribunal, Braşov)

> „... they broke into forty appartments and they have 40 injured parties so you never manage to have a complete procedure with everything at once. It happens, but these cases are quite rare." (judge 2, Iaşi)

An impediment in legal action proceedings is also related to the domicile of persons who need to be called in minors' trials or the domicile of witnesses. The addresses indicated initially, at criminal prosecution stage, are not longer valid at trial stage. In the case of homeless persons there are no addresses, summoning witnesses being all the more difficult. Dissatisfaction has been expressed at the cooperation with the Police in such cases and at the way subpoena warrants are executed. Thus, judges are put in the situation to grant repeated terms and further apart until they manage to hear all the witnesses.

> „... because of delays in relation with the Police. Many times the person to be summoned to appear before the court does not live at the address indicated in the file anymore, and in this case we have to write a memo to the Public Records Information Directorate to ask for the new address where the person you need to summon can be located and then you have to set a new term and so on." (judge 4, Bucharest)

> „I had a minor for homicide. I kept him one year, because there were witnesses... He wouldn't confess to anything. I'm explaining the situation, because nobody wants to keep him, but people need to understand too that there are professional problems, right? It's not played like that, by the ear. Homicide. And the witnesses were all from the sewers, vagrants. Now catch them, serve summons to their domiciles, send memos requesting new domiciles, this one is not admitting to anything, it's about

evidence, right? So what do you do? You send memos to Public Records, the answer comes back that he changed domicile. You send a memo to Public Records, by the time the answer comes back... These ones there simply is no way to locate them. So, many terms are wasted, terms are set after a month... they are wasted." (judge Tribunal, Bucharest)

„Because people don't want to come to court, you issue a subpoena. [...]. But these warrants are not executed. To execute a subpoena warrant means more than writing a report, I went to X's home, it means bringing in the person effectively. Or, this doesn't happen. And then, a year later [...] you are forced to admit that it is impossible to examine the witnesses." (judge, Court, Bucharest)

3. Obligatory appearance of the minor at his/her own trial.

To summon or to subpoena the minor to court may be a lengthy process caused by the lack of a fixed domicile of the minor. The court must wait for evidence to the fact that he minor is eluding legal action to be allowed to try him/her in absentia.

„We have problems with minors without a fixed domicile. The so-called itinerants that move from here to there. It is more difficult to locate. And by the time we take steps to find him: where exactly he/she lives, where to send summons, where to, by the time we find that he/she is eluding or is not eluding judgement... again, it takes time." (judge, Alba Iulia)

„There are some problems only when they don't come to trial [...] then you have to take the necessary steps to have them brought in by the Police. In case the Police don't find them they make a report and then they are tried in absentia. I had one who was in Ciresarii placement center and I was informed that he ran away from the center; the police went to his home, but they didn't find anybody there. He had an older brother who was under arrest, the mother was under arrest too and he had run away and bobody knew where to find him." (judge 3, Bucharest)

„I issue summons through the General Directorate of Penitentiaries, through City Arrest and with subpoena warrants at the domicile. This is where... If you don't receive the report you don't have proof, you have to wait for the police..." (judge, Court district 1, Bucharest)

„It's obligatory that the minor appears in court. The trial cannot take place in his/her absence. Minors will be minors, they would elude trial and we have this procedure: you look for them at home, at the address, they live somewhere else, they don't have a fixed domicile and these proceedings become very lengthy or since we have the obligation to try, he/she appears at one term and then goes away and again we have to wait and it's becoming very, very long. So for a while you have no contact with the minor, he is at liberty, he does what he pleases, you cannot take any measure, to say you can supervise him somewhat or..." (judecător, Cluj)

4. Motions for continuance.

In cases with several defendants, each defendant requests a different term to hire a lawyer. Lawyers too file motions for continuance by reason of ineffective defense (the fact that they did not have time to study the brief) or by reason of sick leave or annual leave.

> „I think there should be some changes made in the penal procedure rules where lawyers make a lot of trouble. They raise all kinds of exceptions. Exceptions of unconstitutionality of some term, although the term is regulated by law. Exceptions of who knows what... When they come and say that they have just received their mandate and they want to study the brief. There have been some changes in the code of procedure saying that the consecutive lawyer has the right to two terms, may file motion for two terms. Under these circumstances, you are put in an impossible situation, because they say you infringe their term of defense. It's killing you. [...] The moment the date for the hearing has been set, in most countries, the parties have the obligation to appear because it's in their interest. In a situation when let's suppose they don't appear with counsel for the defense, the court provides for their defense by appointing a public defender and the trial is over with." (judge, Appeal Court, Bucharest)

5. Delays in forensic examinations to establish competency of minors aged 14 to 16 years.

The reasons would be:

a) lack of efficiency of IML;

b) the costs of the forensic expert examination cannot be covered. In case costs are not paid by the family of the defendant, Public Prosecutor's Offices are forced to cover the costs of the examination from their own funds. Since they do not always have funds at their disposal, the expert examination and the report take more time;

6. Other impediments mentioned:

a) administration of evidence takes time. One of the interviewed judges estimated that it is even more difficult to administer in cases involving minors

b) delays in social inquiry reports

c) it is more difficult to work with minors

Implications of lengthy legal proceedings in cases involving minors

Lengthy legal proceedings against a juvenile delinquent have negative consequences on the decision procedure in the respective case.

If meanwhile the minor has attained 17 years of age, he/she can no longer receive probation. Also, if the defendant who committed an offense during minority goes to trial after he/she has reached 18 years of age, he/she will be tried following the ordinary procedure; this means that he/she will no longer receive an educational measure, but that the judge has to sanction him/her by a sentence.

„... there are rules about age. If he/she is over 17 years old you can no longer give probation because this lasts one year. You must keep him/her under supervision for at least one year otherwise it's not effective any more. Then, if he/she comes of age during the criminal legal action, you can no longer apply an educational measure, so are forced to pass a sentence. Of course, now speedy trial is the word, so that, quickly, before he/she reaches that age and educational measures are no longer effective. It's a possibility too. But, celerity, you have it to an extent when you go in with 10 cases at most per session, not with 50 first instance cases, and everything pell-mell, right? With homicides, with traffic, with who knows what, and a minor like this is brought in too, beacuse he snatched a phone. In there, added to the heap, right? Lost!" (judge, Tribunal, Bucharest)

Minors in pre-sentence detention are affected too by lengthy proceedings at trial stage. They remain in detention until a decision in their case is made. During the interviews one of the questions asked was referring to what the reasons might be for a minor to stay in pre-sentence detention more than one year. Quite a large number of respondents answered that they were not aware of such situations and expressed their doubt that this was happening.

During field surveys conducted as part of this research, we encountered at least two cases of minors who had been in pre-sentence detention in the penitentiary for about one year (Craiova, Rahova).

The impediments in achieving dispatch, as previously discussed in this chapter, remain valid explanations to the question: "How do you explain the fact that there are minors who stay in pre-sentence detention for longer than one year?"

In addition, there are other explanations too that we will present next.

a) Procedures are complicated in cases of minors who committed multiple offenses and are in pre-sentence detention.

A minor who committed several offenses will be investigated in connection with each separate case and consequently will be subjected to legal proceedings a longer period of time. When a minor commits offenses in various towns in the country he/she will go to trial at different courts with jurisdiction over those towns. In these cases, it is more difficult to ensure the appearance in court of the minor in detention due to transfer procedures. It will inevitably take longer to finalize cases in which he/she is involved. The same difficulties will be encountered too in cases with several defendants when one of them is detained in another town in another case.

„I have never seen an investigation from the time of the offense to conviction to take less than one year... the procedure is complicated. And then, there are very many minors who participate in one, two, three, four, five criminal acts. By the time you investigate them all, it takes time. For each separate one you bring witnesses, you have them examined, you confront statements, it takes time." (lawyer, Bucharest)

„... they may stay if they are arrested in connection with another case. For example, there are situations when one of the minors committed an offense in Craiova and one in Timisoara and he is in Craiova penitentiary

and stands trial there for an offense, while here I have no way of trying him. And I keep summoning him with transfer orders, but those guys at the penitentiary will not transfer him until they have finished trying him themselves." (judge, Timişoara)

„The minor has legal proceedings somewhere else, at other courts and then he is transferred from one penitentiary to another. I, who have a case with a minor defendant, transferred from Rahova penitentiary, or from I don't know which – I just give an example – Craiova Placement Center for Minors – cannot undertake any procedural act until I have the minor. And then, it's a whole process to summon with transfer orders, they don't give him to you until they are finished with him themselves, because it's normal, they have no interest to give him to you... that is the situation." (judge, Iaşi)

„If there are two or three defendants, one is somewhere else in the country and couldn't be transferred, then it's an impediment and I give a continuance of three or four weeks." (judge, Cluj)

b) The acts for which the minor defendants were indicted were grievous offenses. Legal proceedings in such cases are lengthy. You need expert examinations, additional expert examinations, etc.

„It is possible to go beyond this period of one year. It is possible that the minor is a dangerous person, let's not look at them as if they were all, so, I don't know, little lambs; some of them commit particularly grievous crimes – I had a minor who committed murder – it is possible, for the duration of the whole process, to have to keep them in pre-sentence detention." (judge, Braşov)

c) Complex cases.

When the minor stands trial in a complex case which requires serious judicial examination and the administration of ample evidence, it is possible that a minor remains in pre-sentence detention more than one year until he/she is sentences. Thsese may be cases with several defendants among which there are adults and in which they are charged with committing several offenses.

„it is possible to remain in pre-sentence detention for more than a year, due to the complex nature of the case. It may be, I don't know, a group of several defendants with very many offenses, which, I don't know, imply a complex judicial examination and when it is not possible to release them for various reasons, maybe, assurance of criminal proceedings, or... because there is suspicion that witnesses may be influenced, or injured parties, so there is such an explanation." (judge, Braşov)

„...probably when they are involved in cases with adults, for offenses that pose a high social risk." (judge, Bucharest)

„It depends on the case too, it depends very much... he/she may be prosecuted together with an adult and then the case drags on, I don't know, at the stage of administrating evidence against the adult..." (prosecutor, Public Prosecutor's Office, Timişoara)

d) Other explanations

"... at trial stage indeed, there is no maximum term allowed to keep a minor in detention." (judge, Cluj)

Beyond the arguments invoked in this sub-chapter for maintaining a minor in pre-sentence detention for even longer than one year, one of the lawyers interviewed in Bucharest contends that the court should be more responsive to motions to not extend the arrest warrant if the police, the public prosecutor's office have made no progress between two hearing terms in summoning / bringing in witnesses, in drafting certain documents, in the administration of evidence.

F. Cooperation of judges with other institutions

At Iaşi city level, the general opinion is that all the institutions involved in the administration of juvenile justice work well together. The fact that numerous meetings (symposiums, seminars) have been organized with the participation of both judges and police officers, prosecutors, has probably contributed to this situation.

In the other cities included in the research there are some nuances in the appraisal of inter-institutional cooperation.

The cooperation with SRSS is appreciated as very good and promissing. This opinion is the result of:

a) the promptness and professionalism of the response to the court's requests for evaluation reports;

b) more frequent cooperation due to the delegation of supervision to SRSS.

Regarding the Board of Guardians, the cooperation is limited to requests for social inquiry reports and to its being summoned to appear at trials of minor offenders. There is a profound dissatisfaction with the quality of these social inquiries reports and with the fact that representatives of the Board do not appear in court.[29]

The most frequent assertion about DPC is that there is no cooperation between the court and DPC. The exception would be district 2 of Bucharest where DPC is conducting social inquiries, in addition to those made by the Board of Guardians, because the judges of the court of district 2 appreciate them better.[30]

„…to be frank, I, as a judge of criminal cases and who has tried cases with minors, don't know very well how the Minor Protection Department is organized, I don't know what are the institutions, I know of a few NGOs active in sexual abuse, domestic violence, but for the rest I don't even know what state institutions are involved in minor protection…" (judge, Cluj)

[29] For further details please see sub-chapter „Persons summoned to minor's trial".
[30] idem.

Concerning the cooperation with the Public Prosecutor's Office, the appreciations are mostly positive. There is though an exception that should be mentioned; a judge in Bucharest is very dissatisfied with the legal charges which would be defective.

> „They are not well trained professionally. Bad legal charges. [...] I've had enough of changing the legal charges, not necessarily for minors. Therefore, they are not well trained professionally, briefly. At least the Public Prosecutor's office of Bucharest Tribunal, it's pathetic what indictments they send! I'll show you the docket of the session. Out of 40-50 first instance cases, I have to change the legal charges in about 30 cases." (judge, Tribunal, Bucharest)

As to the cooperation with the Police some say it is relatively good, as much as it is. There are fewer direct contacts between the Court and the Police; they cooperate more in the enforcement of sentences and in executing subpoena warrants. There are other respondents who consider that the cooperation with the Police is bad precisely because there are deficiencies in executing subpoena warrants (Buchareat, Iaşi).

> „... ours is a Sisyphean labor, every term we subpoena them. The minor comes at one term, you advise him of the next term. At the second term he doesn't come any more. You resume and issue a subpoena warrant... probably police officers get tired too to bring them in so many times, and don't do their job very well... [...] Or, anyway, I don't know what it is, what is their job in executing that warrant. The policeman goes to his home, finds the minor who promises to come. Well no, this is what a postman does when he delivers the summons. Not a policeman. The policeman has to go nicely, in the morning, the day of the trial, take him from there and bring him to court. I even had a minor, the policeman would go to his home, fetch him and bring him wrapped up to court, with the ID card, would leave him in the court room and then would go mind his own business, and the kid left, until, after I don't know how many requests, I asked the policeman nicely to stay there with the minor until I'm quite finished with him, even until I call the respective case." (judge, Iaşi)

G. Decisions

When asked about what causes the fact that „according to statistic data, the number of minors sentenced to prison is higher than the number of minors awarded non-custodial sanctions", some respondents challange the veracity of these statistics, from their own experience *[SRSS, Craiova]* or at least believe that these data reflect the situation generated by „the old procedure" *[police officer, Bucharest]*; some perceive that the situation has changed especially in the last year, non-custodial sentences being preferred more and more.

> „We have had a meeting not very long ago with representatives of the Ministry of Justice exactly on this issue of custodial sentences passed on minors and from their statistics I'm telling you they have dropped significantly and that now all the judges who try these cases involving

> minors, I don't know, think twice before they give a sentence to a minor. And always with notification of social reintegration and supervision services, which very many times are assigned the task by courts to draft some [...] special report – and of course in these reports the specialists say if the child has prior offenses, if he is a repeat offender. So there is some checking done about his/her activity prior to the offense he/she is standing trial for and usually if they are first offenders, if the offense is not grave, no judge during the past two years or the last year ventures to pass such sentences to years in detention." (police officer, Bucharest)

> „In the area of jurisdiction of Timiş Tribunal, maybe once in 30 cases a custodial sentence is passed, the rest are non-custodial measures." (judge, Timişoara)

> „I don't know that the court in Iasi has pronounced this year any sentence, one or two, I think there are two cases... two minors convincted for homicide... but otherwise they only look for non-custodial sanctions, educational measures, or probation." (judge, Iaşi)

Others try to find an explanation to statistic data, and one of the reasons given is mentality – referring particularly to those who have been in this profession since the days of the old system, and in their case there is a tendency towards harsher sanctions or a habit or an easy resolution. Due importance is not attached yet to the principle of social reintegration of minors.

Young professionals are considered more inclined to adopt solutions which for others still are an insufficiently promoted novelty.

The predominant opinion is that primarily sanctions are decided proportionate to the gravity of the offenses committed, but also depend on the offender's criminal record, the guiding principle being most of the times to decide sanctions favorable to the minor, taking into account precisely his/her status as a minor. Mostly judges, but some police officers too, contend that it is highly probable that custodial sentences are allotted to those who „relapse" and only in grave situations to first offenders – being actually the sanction under the law for grievous offenses.

The reasons for many minors to still be sentenced to prison or probation are manyfold and belong both to the system, the legislative framework, and the situation of the offender:

a) Although the Penal Code clearly indicates that „educational measures shall be taken preponderently", there are deficiencies in the legislative framework, as follows:
    i. there are many offenses excepted from suspension, the sanctioning regime takes more into account the offense and less the offender (minor versus adult); forced charges under legal articles for some offenses trigger the impossibility to pass non-custodial sentences;
    ii. after the minor has reached the age of 17 years, he/she cannot receive some non-custodial sanctions, and many times the new principle of dispatch is not functional;

iii. the legislative framework does not provide a wide enough range of sanctions applicable to minors, to allow the court some leeway in certain situations; there are few educational measures;

iv. in contrast with the sentence to prison, which allows early release on parole, remand to reeducation centers is for a period of one year minimum, and the minor cannot be released before this time is up – fact that leads to possible discrimination in comparison with an adult offender sentenced to serve an identical term in detention (in the sense that the reeducation center is compared by many with a prison – including by the minor who sometimes prefers to go to a prison with better conditions than to the reeducation center);

v. there are no provisions in the legislation for adequate solutions to situations where the minor is a drug addict (as mentioned in Bucharest), measures are needed to compel the minor to undergo rehabilitation treatment;

vi. mention is made of increased sentences, even of eliminating the possibility of probation (e.g. for theft)

b) The legislative framework is not sufficiently backed up by the infrastructure, by existing social services:

i. from what respondents know, there are no medical-educational centers;

ii. the 2-3 existing reeducation centers are perceived as even more detrimental to the minor than prison and, in fact, still as a custodial measure, although officially remand is included among educational measures (the conditions there are very poor);

iii. since there are few reeducation centers – meaning that in many cases it is far from the home of the offender – remand is conducive to „severe cooling of relations with the family" and a break from the community;

in the case of sanctions under supervision, supervision is often difficult since there are not enough specific institutions;

c) Non-custodial measures implying supervision cannot be decided especially in cases where the offender is a „street child", comes from a family with no authority over the child, from a broken family (in many cases this being the very situation which led the minor to commit the offense or repeated offenses – the majority of repeat offenders come from broken families) or from a group of friends with a bad influence over the minor. In these cases supervision would be impossible (when there is no one to be given custody) or it would have a minimal effect, since the minor would continue to be exposed to the risk of committing a new offense.

d) There is mention of the fact that there was a period of about one year (2000) when suspended sentence could not be passed. (prosecutor, Iaşi)

e) There are very many juvenile repeat offenders, minors begin to manifest aberrant behaviour at a younger age on average.

On the other hand, some think that mostly grave cases go to court, many other cases being cleared at the level of the public prosecutor's office – for example by administrative sanctions. At other times though – especially when the offender cannot pay the fine, the sanction becomes a sentence to prison. A sentence to prison is preferred to the fine also because the minor does not feel the weight of the sanction, since many times the fine is paid by the family.

Many prosecutors and judges consider that as a rule custodial sentences are avoided.

In the opinion of the majority, there is a preference mostly for conditional suspended sentence and conditional susupended sentence under supervision and to a lesser extent for educational measures – especially release under supervision. Remand to reeducation centers is less frequent, and the reasons are the small number of such centers and the lack of an attractive offer – the precarious conditions place them below the level of some prisons, being in fact considered a form of detention too and an inappropriate environment for the minor (although officially they come under the category of educational, non-custodial measures).

Reprimand is almost never applied.

„[...] sometimes you find yourself in a situation when you have this range of sanctions and none is effective. [...] there are rules about age. If he/she is over 17 years old you can no longer award probation because this lasts one year. You must keep him/her under supervision for at least one year otherwise it's not effective any more. Then, if he/she comes of age during the criminal legal proceedings, you can no longer apply an educational measure, so you are forced to pass a sentence. Right? Of course, now speedy trial is the word, so that, quickly, before he/she reaches that age and educational measures are no longer effective. It's a possibility too. But, dispatch, you have it to an extent when you go in with 10 cases at most per session, not with 50 first instance cases, and everything pell-mell, right? With homicides, with traffic, with who knows what, and a minor like this is brought in too, beacuse he snatched a phone. There, thrown into the heap? No. Lost!" (judge, Tribunal, Bucharest)

„As to release under supervision and remand to a reeducation center, I told you, if he/she is one day over 17 years, I cannot apply those measures, and other measures I don't have." (judge, Braşov)

„Let's say there are reasons of a procedural nature that demand such a situation, because it should probably be revised, the sentences chapter on minors. Maybe some additional alternatives should appear compared to adults. There aren't any! Except, well, that special school, which means detention too!" (lawyer, Braşov)

„Sometimes when you have non-custodial sentences to 7-9 years, 10 years, the minor comes to prefer to serve 2 years in prison and be done with it" (SRSS, Braşov)

„[...] you realize from the start that you cannot give him/her in custody seeing that the family is broken or that there is the criminal environment he/she is coming from, and giving custody to an institution or supervision service, at some point, after you give them custody of very many you realize they cannot cope anymore themselves... and then you prefer to decide a sentence to prison or prison with plain suspended sentence." (judge, Iaşi)

„Educational measures can be applied to a rather limited range of delinquents [...] reeducation centers... well, you decide those for more serious offenses, I know of only two in the country [...] These educational measures to remand to a medical-educational institution, at the present time, I have no knowledge of a medical-educational institution in operation... they should be more diverse somehow, there should be more of them, and they should offer a variety of services to convince me, the judge, that, after all, I'm doing him/her a favor by sending him/her there." (judge, Iaşi)

„Here, in Romania, for a long time there there has been this disease, this pleasure to place under arrest... The bad part is that if in court it becomes clear that the guy is nevertheless innocent, it is very difficult to obtain a decision of acquittal." (lawyer, Iaşi)

„[...] for more serious offenses, for repeated offenses, where you have repeated thefts, where the minor has already entered a group that makes you think that if you let him/her at liberty he/she would commit such crimes again, many times the court is inclined towards a sentence to prison [...] as I said before, this measure of remand to a reeducation center hasn't been much applied during recent years." (judge, Timişoara)

„Judges need to be more flexible about preventive measures. The law gives judges much discretion in choosing the sentence... In theory, the punishment aims at the «reforming» the minor; they are pinned in a certain... scheme and it goes on a conveyor belt." (lawyer, Timişoara)

„It depends on the offenses they commit. In the first place, so, as far as there is a possibility of finding understanding on the part of the investigation body and of the prosecutor... those files don't even reach the court. That is simply on humane criteria. Because even if a case goes to court... there is a possibility to receive – what do you call it? - an educational measure or not. But generally, the cases which might receive an educational measure... I'm telling from my own experience, they don't even get to court, because the law is open to interpretation, the prosecutor considers that it is not necessary to ruin the child's future." (lawyer, Bucharest)

„[...] these measures are imposed because there is no adequate legislative framework for minors, because cases are not referred to social services, because these social services are not developed, they can say «Yes, Sir, I'm sending the child, but where to?» - cause you have no department, no guidance center – as many departments in the country, and even in Bucharest, do not have services for children or for delinquents." (DPC, Bucharest)

„The majority of the cases we work with are on probation... the problem is that what is missing from this penalty are obligations. Most times the sentence is passed mentioning measures only. There are four measures: to appear at set appointments and keep in touch with the counselor, to notify any change of address, if he/she leaves Bucharest, place of work and to provide documents justifying how he/she earns a living. But in addition to these measures there are others, unfortunately ignored. Example: in the case of a drug user there might be an obligation for him/her to undergo rehabilitation treatment – which would help us very much. Because if he/she were compelled to do that plus the counseling we provide to go and get treatment, his/her motivation would be doubled by obligation. There are judges who practice these obligations, but there are cases we get without obligations and then our work is made more difficult. Or there are cases of sentences where the judge sets the term – the respective case is a case of risk – and the judge set the appointment once every three months, while knowing that was a case of risk. These are the problems we are confronted with, and lately we have noticed that probation is getting particular attention." (SRSS, Bucharest)

„ [...] many times you have a minor in pre-sentence detention, you want to give him/her an educational measure, telling yourself: fine, he/she is going to a reeducation center, he/she will study, will be enroled, will be helped, will be trained in some trade, and when the minor hears that the prosecutor is asking remand to a reeducation center he/she says: «Please, don't send me to Găieşti, give me Gherla penitentiary cause conditions are better». This is one aspect. On the other hand, fines are not so frequent – they cannot afford to pay them – and you replace the fine with prison, so we achieved absolutely nothing." (judge, Cluj)

„Maybe another factor would be the mentality and the fact that there isn't – or wasn't – a practice to give more alternative penalties nor are there specialized institutions to check, to enforce these non-custodial sentences... before 2001 that was the duty of the Police, who, as we know, have a lot of other things to do, and supervision was exercised, let's say, rather summarily." (SRSS, Cluj)

„In recent years we notice that minors manifest aberrant behavior at younger ages; although still minors, you see that at 17 they are in fact very dangerous. Between 10 and 14 they are in training so that by 16-17 they are already experts, have a modus operandi, a life style. Many times the children are out of control, families are beyond taking steps." (SRSS, Constanța)

„[...] there is inequity between adults and minors: if they both commit the same offense and the adult gets one year in prison, he/she can be released on parole after 8 months, but, if we apply to the minor the educational measure of remand to a reeducation center, and he/she is 16 years old, the measure is for an indefinite period, until the age of 18 with the possibility to be extended for another 2 years. Since this measure does not differ too much from the sentence to prison, this is great discrimination and that is why the judge prefers to sentence the minor to prison too, so that the minor can benefit too from parole. It is true that a minor remanded to a reeducation center can be realeased too before he/she comes of age, but only after a year has elapsed." (judge, Craiova)

„There is also the mentality of society today. Everybody sees in a bad light those situations when defendants get non-custodial sentences. People forget though that some of them can still be reeducated. I used to say: everybody want to see laws from the times of Vlad Tepes enforced, but on other people, not on themselves.„
I believe that between imposing an educational measure – that is remand to a reeducation center – and probation, it is better for him/her to receive probation, than this reeducational measure which does not count as criminal record but which might harm him/her more." (judge, Bucharest)

H. Requirements at trial court level

According to the assessment of many interviewed judges, the requirements of the institution, from the standpoint of the implementation of the new legislation, derive for the most part from the special status of youth.

„The health of society depends on them, if you don't know how to correct them from the start, the consequences are catastrophic."

„In general, working with a child, a juvenile delinquent, implies more diligence in the case, one should aim at the key objective which is the recovery of that minor."

„[...] there are situations, not exceptional, almost frequent, when from a simple game or some circumstances they don't even realize, [youth] are found guilty of extremely serious charges."

From the answers given by judges two issues stand out: how to arrive at specialization – in the best interest of the minor - in this type of work, and how a minor can be spared the negative influence deriving from the intersection of activities concerning minors with activities concerning adult defendants.

a) There is a need of separate rooms or even a separate building from the ordinary tribunal – in the first place court rooms, but also hearing, interrogation rooms or a council chamber where the measure of reprimand may be applied; possibly, specially designed rooms with tape recording equipment and close-circuit TV.

b) The court room should provide privacy to the minor, and a type of solemnity to the trial different from the usual one in cases with adult defendant, it should be less traumatic for the minor.

c) Although there are cases where the staff is adequate, in many instances there are reports that additional staff is required or that some of it should be assigned to juvenile cases only.

d) Additional specialized staff would be needed – particularly specialized judges (critical situation in Bucharest where courts are so overloaded that trials proceed on a „conveyor belt"), but also support staff, prosecutors, SRSS staff, court clerks.

e) There are signals about the need to approach juvenile delinquents from the appropriate psychological angle – and this could mean training judges in the psychology of juvenile delinquency, but mostly involving psychologists who already have a level of professional knowledge hard to attain by judges during training courses. It has been suggested that the psychologist give testimony to explain aberrant behavior.

f) Many judges claim they need training – that could be provided through training courses, seminars, but also exchanges of experience with other judicial bodies.

g) Seminars on amendments to the law, information systems, jurisprudence on the computer (which would imply in some cases information equipment), access to the internet and to subjects specific to the activity could be of help also to ensure a united practice in the interpretation of legal provisions. Concerning juridical support, there was mention of the possibility that courts have their own archives and access to West-European legislation and practices in the field.

h) In Bucharest, mention was made about the need of much more detailed social inquiries than the ones currently conducted.

4.4.2. Minors' experience in court

Respondents mention the contact of minors with the court in two circumstances: when the pre-sentence detention warrant is issued and extended, and at trial in the first instance or at appeals. Minors' cases should be tried in closed sessions, a provision that has not been respected in the cases of several interviewed minors.

Despite the attempts made through the Code of Penal Procedure to provide some protection to the minor, the reality is he/she comes into contact with adult delinquents during legal proceedings in various ways, as follows:

- minors are transported from the police arrest house or from the penitentiary to court together with adults, in the same vehicle;
- minors and adults are together in the court's or tribunal's arrest room;
- in the court room minors are present at other trials on the docket in the session;

The interviews reveal that the court sessions when a decision is made on the investigation bodies' motion to extend the period of arrest are always open to the public in cases involving minors.

In addition to the open/closed character of the session, other problems have been encountered at the trial of minors:

- in some cases the minor is not accompanied by a parent or other legal representative making him/her feel alone, helpless and adopt a pessimistic attitude about his/her future; moreover, the failure to appear of certain persons results in continuances and in some cases minors tried at liberty will finally no longer appear in court.
- those who appear before the court for the first time, in particular, do not understand what is going on or what is being discussed in court and what is going to happen to them.
- some minors are not aware whether a social inquiry or a psycho-social evaluation has been conducted or not in their case, because they have not been visited by a representative of the townhall or SRSS to talk to them.

"Q: Did you say anything at all there? Did you talk to the judge?
A: No, she did not ask me to speak, cause my father wasn't there and she just asked me if he appeared, I said no, and she gave another continuance.
Q: And in the end the trial went on under those circumstances...
A: Well, no, it didn't, cause I didn't show anymore in court... and they judged in my absence and convicted me to two years. I had no one to come with me to court...
Q: What impression did this trial make on you? How did you feel there?
A: Alone. I felt bad, I had nobody by my side to support me, nobody helped me.
Q: Did you know what was happening to you? Were you afraid?
A: I was afraid too cause I knew I would end up in jail... Nobody helped me." (minor, 17 years old, MTP Craiova)

„Q: Your mother was at the trial, wasn't she?
A: Yes, every time.
Q: Do you remember what was discussed, there, at your trial? Were you not paying attention or you didn't understand what was being said?
A: I didn't understand anything.
Q: The session was public or behind closed doors?
A: Public.
Q: Were there both adults and minors?
A: Yes." (minor, 16 years old, RC Găieşti)

„A: So how many times I appeared in court?
Q: Yes.
A: I don't remember… my trial lasted 4 months and some, 5 months they tried me... but, I don't remember…
Q: Why did it take so long? They kept postponing?
A: Yes… they postponed my trial…

Q: Why? They needed witnesses? Or what?
A: I don't know why... they postponed... like... 20 days, 30 days …" (minor, 17 years old, MSP Iaşi)

One of the impressions given by many interviews is that the minor watches his/her trial more like a spectator, a spectator who does not quite understand what is going on. When asked about what they said in court, most of them use practically the same verbal stereotype: „I said that I admitted the act and I regretted it."

„During the trial, what can I say? They talked nice, like normal, there was no bad language. So too much about the trial you can't say because they don't talk to you too much […]" (minor, 17 years old, SRSS Constanța)

A:[...] so they didn't tell me „you are a public danger because..." In fact they did not even talk to me... they don't care if I understand or not.
Q: Did you speak?
A: Yes, they asked if I had anything to say and …
Q: And What did you say?
A: I told them I regretted the act... that's about all. (minor, 17 years, Iaşi, police arrest house)

4.5. Sanctioning v. reintegration

4.5.1. Sanctioning offenses committed by minors as viewed by institutional actors

In this chapter we will dwell on the outlook of institutional actors on the current situation with respect to the execution of sanctions by juvenile offenders. By sanctions we mean both sentences, be they to serve or suspended, and educational measures, that are in fact one of the few elements of differentiation between juvenile justice and justice for adults. We will first refer to the opinions of those who work with minors in the legal system about the effectiveness of custodial sentences. We will briefly present the situation of minors who serve custodial sentences with special emphasis on educational programs they participate in. We will also present what happens with minors who receive suspended sentences or probation under SRSS supervision, focusing on the services provided by this institution. We will close with an analysis of the institutional actors' perception of the factors determining the effectiveness of alternative sanctions[31] in the case of minors.

A. On the effectiveness of custodial sentences in juvenile cases

From the discussions with representatives of various institutions dealing with juvenile offenders two categories of opinions stand out with regard to the effectiveness of imprisonment in reducing juvenile delinquency.

The first category includes those opinions which do not refer strictly to the effectiveness of imprisonment, but emphasize the necessity of having such an

[31] By alternative sanctions we mean either non-custodial sentences, including suspended sentences, or educational measures imposed on minors who commit criminal offenses and who have penal responsibility.

institution. In other words, a good many workers from the legal system who deal with juvenile offenders perceive the effectiveness of detention not from the point of view of reeducation and reintegration of the minor into society, but from the point of view of protecting society against certain social risks. There are cases when practically – contend some institutional actors – there is nothing left to be done with the minor but send him/her to jail. Some even say that they are aware of the fact that this is not a solution to reform the minor, but they are „hopeless minors" and as such the only solution in their case is detention. „Hopeless minors" are, as perceived by the respondents, those who commit „very grievous crimes"[32] or who persist in committing offenses even if they received non-custodial sanctions.

> „I go for alternative sanctions, but there are persons to whom only a sentence to imprisonment can apply." (judge, Iaşi)

> „it's not effective, but sometimes, when there is no other possibility and when you are really convinced, as a judge and as investigation bodies, that there is nothing else to be done... he/she is removed from society so that he/she ceases to represent a risk to social values, personal rights, bodily integrity." (judge, Timişoara)

> „it doesn't seem effective, but there are minors who inherit the criminal gene, and although they commit an offense for which they benefit at liberty from the clemency of the law, they don't understand to go straight, and they commit a second, and a third, and finally a sentence proves to be absolutely necessary." (lawyer, Constanța)

A second category includes opinions around the idea that custodial sentences are ineffective in the rehabilitation of the minor. The main arguments for the opinion that imprisonment is not an effective solution in juvenile cases are:

- in the penitenciary minors come into contact with various other criminals from whom they learn new methods to commit unlawful acts. In other words, prison is practically a training ground in crime;
- the conditions and the social environment in penitentiaries are very tough for a minor and he/she practically „hardens" in there and will not be able to recover after this experience;
- the penitentiary does not provide proper reeducation, as the environment is not propitious to this type of activity;
- the minor will bear a stigma in the community when he/she goes back to after serving the sentence;

> „It is not effective because, in the first place, the most real danger is that juvenile defendants come into contact with other „professional" offenders, from whom they learn a lot of things and, believe me that in penitentiary he/she loses all hope at re-socialization. So, anyway, when he/she gets

[32] It is difficult to understand from interviews what institutional actors mean by very grievous crimes. Their personal definitions may coincide with a definition relating to the sentence provided in the Penal Code, but in general they mean something diffuse including the relapse situation, and the inappropriate social background of the minor, etc.

> out of there, I don't believe he/she sees any other way of living except committing antisocial acts. […] Plus, he/she is stained. That minor is stained. When he/she gets out of there, anyway, the neighbors think badly of him/her, everybody... at school..." (judge, Iaşi)

> „I think that most times the sentence to prison does not achieve the expected purpose, many times minors come out of the detention block and continue to commit other offenses, they enter the crime field. So many times the educational activity at penitentiary level where they serve, has negative influences on them as seen in light of their age. Many times minors instead of learning what ought to be learned by the deprivation of their liberty, instead of learning what's good, learn what's bad. They learn methods to commit criminal acts, and in addition they get used to this social stigma and then they don't care when they commit crimes again." (prosecutor, Alba-Iulia)

> „It is not effective precisely because detention in penitentiary, instead of educating minors, quite the opposite hardens them and practically, it's clear, the penitentiary is a hostile environment to the minor and he/she perceives it as being hostile, and then it hardens him/her even more, and furthermore he/she is in there together withe other juvenile offenders, maybe more versed and so on, a behavior is perpetuated or learned now, repeat offending." (judge, Cluj-Napoca)

B. What becomes of a minor in detention?[33]

In Romania there is only one penitentiary for minors (Craiova Penitentiary for Minors and Youth) and three reeducation centers (at Găeşti, Buziaş and Târgu Ocna). In the other penitentiaries there are special sections for minors. From the very beginning it must be mentioned that not all minors detained in a prison serve a sentence based on a definitive decision. For some of them the penitentiary is a transitional place between the police arrest house and the place where they will serve their sentence or the educational measure after a definitive decision has been entered in their case. Concretely, in many cities (in our study we can make reference to Bucureşti, Iaşi, Alba-Iulia, Timişoara) the practice is that minors who were investigated in pre-trial detention to be transferred to a penitentiary after the criminal file has been finalized and submitted to court – unless it is ordered that they stand trial at liberty. For example, juvenile offenders under preventive arrest in Bucureşti are sent during trial stage to Rahova Maximum Security Penitentiary, in Iaşi from the police arrest house they are sent to Iaşi Maximum Security Penitentiary, in Alba-Iulia they are transferred to Aiud Penitentiary, and so on. Besides, at Iaşi and Rahova penitentiary all minors are „in transit", in the sense that they all have various legal affairs to be finalized in court.

[33] For the purpose of this study we conducted interviews at Craiova Penitentiary for Minors and Youth (PMY), Rahova Maximum Security Penitentiary, Iaşi Maximum Security Penitentiary and Timişoara Penitentiary. In addition to the four penitentiaries, interviews were also conducted at Găeşti Reeducation Center.

Next we will present the situation of the penitentiaries we visited, with respect to the conditions they offer and programs developed for minors, as it appears from the statements of workers in the system. It should be mentioned that strictly speaking the field operators did not visit these penitentiaries/reeducation center, the reason of their trip to those locations being to speak with minors in detention and with employees.

At **Rahova MSP,** at the date of this field study there were about 80 minors, all in pre-sentence detention. The minors' section is separate, but in the same block on the floor above an adults' section is located. Moreover, the rooms of the minors have windows facing the sports ground where inmates play football, so that minors can communicate with adult prisoners. Minor girls have adult women as room mates. There are 8-bed rooms, with television set – brought from home mostly. The rooms have their own toilet, meals are served in the room. The rooms are rather bright and ventilated, compared to rooms in other penitentiaries. The section has two clubs for various sports or activities of an educational nature. The minors detained in the two rooms that were visited had committed, in general, thefts and robberies. There were also two minors being tried for rape, one of them had been there for 7 months, after spending other 4 months in police arrest house.

Among the programs developed with minors, not necessarily specific to them, are included:

- INSTART – program for the 21-day quarantine period.[34] Its purpose is the gradual adjustment of detainees to the penitentiary environment. In this period they familiarize themselves with the internal conduct rules and are under medical observation. During quarantine they do not come into contcat with the other inmates, they have separate activities: walks, games (table tennis, chess) at one of the clubs. The program consists in daily group meetings of one hour.
- A literacy program – for those who cannot read and write;
- A general education program, teaching them various skills, like: how to greet, to eat using the fork and knife, to set a table, to give a present, to write a letter. Many of the inmates do not have such basic skills. They are also taught some geography, history.
- The „Seven Steps" program to change behavior, starting from the premise that „what you think makes you act, if you change what you think, you will change your actions too". It relies on exercises, role playing, it teaches them how to make decisions, to make concrete plans to change.
- A religious education program, implemented by the priest of the facility, but also by outside collaborators.
- Health education program – teaching basic rules of personal and group hygiene, as well as knowledge about various diseases, addictions.

[34] INSTART is a general program implemented in all penitentiaries in Romania, for all prisoners in quarantine, meaning a period of 21 days from their arrival at the penitentiary or the reeducation center. There is also another general program PRELIB – preparation for liberation – implemented towards the end of the term of detention.

- Sports activities program – twice a week they play football on the field of the facility, and four times a week they come out for sports activities at the club inside the section (they play table tennis and chess). Competitions and championships are organized. It is their favorite program.
- Family life education program;
- Hobby program – art education. On various holidays art circles are organized.

During their time in penitentiary they do not attend any formal education program, because the exact period of their stay in the facility is not known and it is impossible to organize groups or classes.

At **Timişoara Penitentiary**, the minors' section is also separate, on the same floor with adults sections. At the time of the study tehre were about 20 minors, most of them for thefts and robberies. They all had definitive sentences, but some were still standing trial in other cases. There were two rooms with 6-8 beds, dark and poorly ventilated. They had a TV in the rooms and each room has a toilet. There was an informal „room leader", recognized though by the workers of the penitentiary.

None of the workers of the socio-educational service was strictly in charge with minors. Minors do not have the possibility to continue their education during their time in detention. There are a few educational programs for minor detainees, among which: health education, civic education, litterature (they write essays). For those who cannot read and write, literacy courses. In addition, there are sports activity programs, a dance group, and festivals are organized on various occasions. In parallel, psychologists provide counseling programs, related to readaptation issues, reducing aggressiveness. There are cases of prisoners with mental disorders and retarded minors who are not kept separate from the others. Theoretically, they have educational program every day, but in practice it happens that when one of the workers is absent the program to be cancelled. As one of the psychologists said, the work is directed only towards avoiding or solving crisis situations, and because they work with adults too they do not have enough time to spend with minors. In the penitentiary there are also activities organized by a few NGOs, as well as by churches (especially the neo-protestants who bring packages to prisoners)

At **Iaşi MSP**, the minors section is separate from the adults section and consists of three rooms with 8 beds each, accomodating 8-10 minors each. 23 minors were „in transit", having various legal affairs in court. There is only one television set, property of the penitentiary, used as bonus for those with good conduct. Meals are served in the room. There is one club for each section, a sports ground, and before they used to have access to the club of the staff for sports activities. In addition to daily walks and sports activities (table tennis, foorball) there are various educational and counseling programs:

- a socio-family education program providing individual counseling to those who have problems with their family, as well as group counseling;
- hobby-type program of activities – drawing, reading, crosswords;
- a general education circle;
- competitions on various themes;
- moral-religious support – there is a church inside the penitentiary;
- „Hope" folk group;

- SRSS implements the „Seven Steps" program to change behavior and prepare for life outside;

Generally, the activities have a playful character.

Once a month, „social visits" are organized, facilitating minors' meetings with their parents at the staff club house, a kind of parents-teachers meeting, where the problems they are faced with are discussed. The workers of the socio-educational service estimate that about 30% of the minors are never visited by their parents.

In order to be able to individualize the socio-educational programs they participate in, each minor undergoes a socio-family evaluation (a kind of social inquiry based on a standard questionnaire).

There is no proper formal education program, but one of the schools from Iasi sends a teacher who teaches three hours a week. There are seven persons employed at the socio-cultural service: a social worker, a psychologist, a sociologist and the rest are non-commissioned officers (currently, after demilitarization, they are called instructors).

Among the problems listed by the employees of the penitentiary we can mention: insufficient staff – at least four more educators would be needed to have one at least for each section of the penitentiary; insufficient space for educational acivities – one club for each section would be required; lack of a sports hall; lack of special workshops for arts; shortage of material for various activities.

At **Craiova PMY** there are only male prisoners. At the time of the field study there were 309 inmates from all over the country[35], 131 of them minors aged 14-18 years and 178 young adults aged 19-21 years. 15 were in pre-sentence detention, and 12 were convincted by a court of first instance. Those with sentences to more than 10 years are separated from the ones with sentences to under 10 years. Accommodation is in two blocks with two floors each, with about 7 rooms on each floor. A room has between 6 and 12 bed, toilet and television set. There is a common showers room but they have separate stalls. In every section – meaning one floor – there is a club room for educational programs or literacy classes, training courses, with a few desks for spare time activities, correspondence. Meals are served at the canteen. The food is in large part supplied by the Isalnita agri-animal farm, which belongs to the penitentiary. When orders are placed, the minors and the young adults may work and get paid in the production workshops.

There is a school with 23 classrooms, 2 laboratories, an art education room, 1 educational programs room, sports hall and sports grounds for mini football, handball, basketball, a library, 2 computer rooms with 11 computers available to inmates.

As to formal education, Craiova PMY organizes primary education classes, grades 1 to 4 amalgamated, secondary education, arts and trades education, grades 9 and 10 awarding qualification diplomas. There are also two literacy groups with the support of an NGO which provides two primary school teachers. The school operates like any ordinary „outside" school, and upon release prisoners receive

[35] It is important to mention this fact because the proximity of the penitentiary to their homes is conducive to more frequent visits by the parents. At PMY there are also prisoners of Hungarian ethnic origin who do not speak Romanian and they are very difficult to work with.

education certificates without any mention of the place where they were obtained. Classes are taught by qualified teachers, vocational instructors respectively.

In addition to school, there are other educational programs: health education, family life education, knowledge of civic rights and liberties. There are counseling sessions – occupational therapy, development of artistic skills, behavioral therapy. With the support of an NGO, they participate in programs of therapy through theater, music, sports and journalism. There is a computer circle (initiation in PC operation). Also with the support of an NGO there are training courses in various trades as cook, barber, mason and tailor, apart from the vocational training provided by the formal education program. There are also a painting circle and a reading circle. There are a variety of physical development programs: sports games, out-door activities, especially in week-ends and during vacations. Also, various festivals and shows are organized on certain occasions (religious holidays or important days in Romanian history).

The psychologist we talked to states that the programs carried on in the penitentiary are effective but the fact that there are no post-penal assistance services curtails their effect by much.

There used to be frequent activities organized with the participation of parents (to celebrate the coming of age or the end of the school year), but they were abandoned because of the commotion they produced. At the present time, the guiding counselor and the other teachers talk to the parents when they come to visit.

Among the problems facing PMY, they mention: shortage of materials required for carrying on programs; insufficient number of employees for the needs of the assisted (they work with groups of 10-12 inmates and ideally the groups should be smaller, of 4-6); insufficient number of specialists – psychologists, sociologists, psycho-pedagogists.

> „The place of a minor, it's not only my opinion, is not in jail really, as much as possible, somebody should take care of him somewhere else, but for this time he stays here with us, what we can do is rather limited, be it that reeducation is out of the question, it really bothers me, this child bets no education, if we don't consider education as being any acquired behavior ragardless if good or bad, then, yes, they are educated and... but, some of them have never except in theory heard of a toothbrush or of soap, so you have to start from scratch. In this interval and at this age level, when some habits are already set, some behaviors are already settled or in the process of settling, you have to destructure, to put something in their place, and when you go to consolidation, they are released, and then nobody takes them over, this is what pains me so, and they go back to that very same environment which contributed to his getting here and... anyway you cannot just leave them like this. With those who come from a healthy environment, we do have those too, who have a level of education consistent with their age, things are a bit different and we work in a different way with them, and their response is different and the effort goes somehow in another direction, because you have to help them cope with the impact of release, for them the fact they were in here is a stigma, they are afraid of social rejection and so on, and we have to give them support." (psychologist, PMY Craiova)

C. Supervision of minors by SRSS

As mentioned in the chapter on the role of institutions involved in juvenile justice, the Social Reintegration and Supervision Service has three main responsibilities: 1. prepare psycho-social evaluation reports of the accused / defendant at the request of investigation bodies or the court; 2. supervise the sentenced person's compliance with the measures and obligations ordered by court in case of suspended sentence or release under supervision, and 3. provide assistance and counseling at the request of clients under their supervision. In practice, it happens that SRSS provides assistance and counseling services to persons who are about to be released / have been released from the penitentiary or from a reeducation center, and also, in other towns, it is involved in actions for primary juvenile delinquency prevention.

Next, we will dwell only on SRSS supervision and assistance and counseling activities with juvenile delinquents.

Supervision begins the moment SRSS receives the definitive sentence from court. SRSS contacts the minor and a meeting is scheduled, with the participation of his/her parents. During this first meeting the minor is explained what the measures and obligations are ordered by court in the respective case and the consequences he/she may face in case of non-compliance. Sometimes the minor is advised of the sentence, since it happens that he/she does not know what was the court's decision in his/her case. Then they identify the needs and problems the sentenced person is confronted with and establish a supervision plan, containing the number, duration, frequency and place of appointmetns with the probation counselor. If the court did not order any obligation, supervision consists in the fact that the minor has to comply with general measures[36], that is: to inform in advance of any change of address and any travel over 8 days as well as the date of return; to notify and justify the change of employment; to provide verifiable information about his/her means of subsistence. The court may impose on the minor one or several of the following obligations: not to frequent certain specified places; not to come into contact with certain persons; to perform without remuneration work in a public interest institution (community service) specified by the court, for a duration of up to 200 hours, 3 hours minumum a day, after school hours, during holidays and vacations; to have employment or attend education or vocational courses; to undergo special treatment or care measures, particularly for rehabilitation purposes.

In practice, sometimes judges do not impose obligations on the sentenced minor, but the situation appears to be changing in the sense that SRSS is beginning to convince judges of the importance of these obligations and of the fact that compliance can be supervised.

In its supervision activity SRSS cooperates with the family of the sentenced person, the police, the school, other persons and institutions connected with the supervised minor, makes surprise visits, to make sure that he/she complies with the obligations imposed.

[36] The measures and obligations were taken from the Legal Guidelines of sentenced persons under supervision of social reintegration ans supervision services, developed by the Ministry of Justice - Social reintegration and supervision department, and the League of Human Rights – LADO, „Romania Libera" Publishing House, Bucharest, 2004.

SRSS workers perceive it as a problem that assistance and counseling are only provided at the request of the supervised person. They are few those who make this request, although they are aware of this opportunity, but they think this would complicate their life, as they would have to go to SRSS more often. Nevertheless, in practice probation counselors do sit down and talk to their clients trying to counsel them and support them in solving their problems, even if they do not file a request.

From the interviews conducted at social reintegration services, it follows that the main assistance and counseling services provided to minors under supervision consist in support by supplying information and facilitating access to various institutions in order to:

a) continue education;

b) resume or improve family relations;

c) obtain various documents;

d) obtain material help or even find shelter;

e) search and find employment;

f) enrol in vocational training courses;

g) access non-governmental organizations services, programs;

h) develop social and human relations skills.

At the same time, with the assistance of psychologists they help them become aware of the causes leading them to commit an offense, to develop their capacity to empathize with the victim of the crime, to take into consideration the consequences of a certain decision, to resist peer pressure in their group.

All the probation counselors who were interviewed estimated that supervision is very effective, in the sense that very few of their clients relapsed during probation. Nevertheless, some of the counselors consider that they cannot meet the needs of these clients adequately.

Among the problems mentioned by counselors (please see next chapter – Factors influencing the effectiveness of alternative sanctions) during interviews is the fact that sometimes sentences reach them very late after they are pronounced and during this delay a lot of time is wasted when nothing is being done with the minor who should be under supervision. Also, there are some lost clients due to the fact that new criminal prosecution files are open on them after they have already been sentenced to probation under SRSS supervision for crimes committed before the period of probation.

D. Factors influencing the effectiveness of alternative sanctions

In the opinion of institutional actors there are several factors which at this time make alternative sanctions less effective in the case of juvenile offenders. These factors can be grouped in four categories, as follows: 1) factors relating to the supply of existing services for the supervision and reintegration of juvenile offenders; 2) a relatively limited involvement of state institutions and the lack of cooperation; 3) the current legislation and its implementation, and 4) the level of material and human resources.

1) With regard to existing institutions and services available at this time in the field of the delinquent minor's supervision and reintegration, very many workers in the legal system estimate that they are insufficient. On the one hand, there are those who say that „there are no institutions to implement alternative sanctions", and on the other hand some say that there is a need of assistance and counseling services required in the effort towards the reintegration of the minor. In the view of institutional actors, there is a need of services to provide psychological counseling, social assistance, occupational therapy and cognitive-behavioral therapy programs. Also, day centers should be set up where minors could participate in various educational or other activities, where they could be effectively supervised and counseled in relation with the problems they are facing. Programs are needed to occupy their spare time, and counseling services for the families of these minors, as the family is perceived as an institution indispensable to achieve the minor's reintegration. Another problem is the absence of an institution or of cooperation relations to enforce community service.
2) Low interest, lack of cooperation and involvement of institutions which could do more for the supervision and reintegration of the juvenile delinquent. This refers to the family and the school too. In the absence of clearly defined relations between institutions, of a network of institutions in charge with supervising and bringing the delinquent juvenile on the right path it is difficult to make any alternative sanctions effective.
3) The legislative problems affecting the effectiveness of alternative sanctions are generated, on the on hand, by the limited range of such measures provided in the current legislative framework, and by the fact that institutions like SRSS and DPC do not have enough authority to constrain the minors and their families to participate in the programs. An important aspect too is SRSS autonomy. This service needs to be independent. Another problematic issue is the way judges order these sanctions, more precisely the fact that in too few cases judges specify the obligations of the probationer under SRSS supervision.
4) Last but not least more workers are needed in the field of supervision and reintegration services, persons trained in working with minors. The estimation is that currently the number of SRSS probation counselors is insufficient compared to the number of cases they deal with and it is a problem too the fact that there are no counselors working exclusively with minors. At the same time, the technical infrastructure currently available to reintegration services is inadequate, and many times they have to use supplies belonging to the tribunal (motor vehicle, copier, etc.)

> „several resources like these should be identified to come to the minor's help, to work on him/her to motivate him/her, more social services, I don't know, more alternatives […] I don't know... psychological counseling services, social assistance services of the type: find me employment, find me a training courses, because he/she doesn't know how to do that, really he/she cannot fend for themselves and then, he/she should, somehow be integrated in such services to take care of his/her future at least for some time." (judge, Iaşi)

„First those improvements we were talking about should be made in the Penal Code to clearly specify the role of our service, as in preventing relapse, as an alternative to prison. More obligations to be added on the list of those already stipulated in the Penal Code under Article 86 (...) more careful training of the staff and it's not for nothing I'm saying that a day center would be beneficial and I'm not talking about those day centers that operate under the authority of townhalls, because they are restrictive. At the age of 16 you already cannot go there and we need some centers where, in addition to activities like a computer, to learn how to work on a computer, to play games of creativity of imagination, to get also counseling only for those who commit crimes, it seems essential to me." (SRSS, Bucharest)

„Judges should, when they give these persons in our supervision, force them to comply with the obligations stipulated in the Penal code or at least some of them... we, in principle, over 90%, I think, of the persons under our supervision, they have only the measures, because they are mandatory, the obligations are optional and so they are not ordered. For example, the obligation to not frequent certain places, to not meet with certain people, to attend a vocational training course or to continue education, what we were saying before... I think they would react differently if they knew the court forces them to do all this." (SRSS, Timişoara)

„also, we need material resources, especially transportation means, because if I go by bus to see I don't know how many minors a day I won't have the strength and the motivation to work with them and you waste a of of time travelling, time which could be better spent with the client." (SRSS, Constanța)

4.5.2. Sanction and reintegration from minors' standpoint

In detention, in addition to learning other various methods and techniques to commit crimes from other prisoners, some even learn how to fool the system and to obtain for instance a transfer from the reeeducation center, where they were remanded by definitive decision, to a penitentiary located closer to his/her family or where he/she might have friends. Such a case, and the minor himself said it was not singular, occurred in Iaşi and is presented in the following quote.

„A: Then they gave me, in court, they gave me with (…)…a school and they sent me to Târgu Ocna, there, to do school. And now, again, I came here, for a month I've been here, again. A friend of mine brought me so I be closer to the family, me too.
Q: Aren't you here in pre-sentence detention? Aren't you standing trial for another offense?
A: Yes... Yes, not another offense. It's a kind of offense like this... who... Many thiefs do it like this. To come, if they are gone to... or they're gone in the country and they want to come closer to their family he write, he give to a friend of theirs where he is at, and, if he's gone from here somewhere else he writes to a friend of theirs in here and that one is getting into an

act with some guy and then withdraws his complaint like this... and closes the file and nothing else happens.
Q: That is he asks someone to blame him for doing another offense only to go to trial and be sent here.
A: Yes."
(...)
„Q: Have you been to Court now?
A: Yes, I was twice. I came here on 3 September, I had court on 3... then I had on 17 September and now I have on 15 October, now, this Friday. Now I think I finish everything here and go back to Târgu Ocna. I still have 6 months and I get out, from there.
Q: But isn't there a chance to receive another sentence?
A: No how... no way I receive another sentence.
Q: Why not?
A: Because the front man, who does it for me... and when he gets to court, as a front, withdraws his complaint.
Q: And what if he doesn't withdraw it?
A: He withdraws it cause then he wouldn't do it for me. He's a friend of mine who does or... is someone I know. I send him a letter from there: „Man, do me a business" and I came here…
Q: Well, but this file has not been, practically, through the Police, the …
Q: Isn't there an investigation here for this thing?
A: No, no investigation. He sends... sends a paper from here, takes a paper from the court clerk's office here … that special application paper …
Q: Petition…
A: Yes. He writes there what act I did to him, something bad that I did to him.
Q: What did he sue you for?
A: Now a friend of mine did it for me … this guy I came with now… with some horses, with some carts… like I stole some carts and some horses.
Q: But how can he do it from here? If your friend was here?
A: He… this friend of mine had another pal of his… a friend. And, he was liberated and he wrote to this one, who was liberated now, to his friend, to sue me and another one like we stole the cart and horses and that.
Q: Did you know each other before?
A: No, with my friend in the job, that's it. My friend in the job said to him: "Man, do like so for him an affair to come here" and he sent the paper to court or I don't know how he did that … he went to court there and declared I stole from him a cart with horses." (minor, 17 years old, MSP Iaşi)

A particular problem is that of minors who were attending school before being arrested and/or sanctioned for an offense. Because of the investigation and the trial under arrest some missed the end and/or the beginning of a school year, and then if they do not receive a sentence to be served in a reeducation center or a penitentiary for minors – where they can somehow continue their education up to a certain level – the education process of the minor is practically on hold for a few years, enough though for the minor not to be accepted by any ordinary high school because of his/her age.

The influence of the custodial sentence is perceived by minors as having both positive and negagive aspects. The main positive aspect mentioned in interviews consists in the fact that the experience itself helped them really appreciate the value of freedom, so that many seem determined not to return there. When asked what lesson they learned from their whole experience with the legal system the majority of the minors state that they have learned not to commit other offenses. Being deprived of their liberty, the break from the family, the strict rules of the penitentiary, as well as the behavior of the other minors in detention are aspects which had an impact on many of the interviewed minors, making some of them admit that the experience has made them worse.

In most cases the minors appear to be optimistic about their chances of reintegration after release from the penitentiary or the reeducation center. Generally, they wish to find employment and hope their family, friends and acquaintances will support them. Few think they might be rejected by society and discriminated because of the acts they committed. Some even express satisfaction at having committed the offense during minority, on the one hand because if they were of age the sentences would have been longer, and on the other hand because they will not have a criminal record.

„Q: And, what will you do when you get out?
A: What will I do? I'll look for employment and settle down.
Q: And, do you think you have a chance to get employment?
A: Well, that is… for these employers for sure I'll find some work too …
Q: Yes, but maybe they know you have been in a reeducation center, that you stole, do you think they will treat you badly, or don't you?
A: Yes, they will treat me badly, but… I'm glad it's not on my record… they didn't put in, and… that's why… I couldn't get hired by anybody if I had a criminal record. Here, the ones they send to school there they don't make criminal record for them, no nothing… Only the ones who do time in the penitentiary. […] it was very good I did it like now, maybe if I fell later when I was over the age of minority and I'd do more time here. And, this reeducated me some." (minor, 17 years old, RC Târgu Ocna, in transit at MSP Iaşi)

„Q: Do you think it will be hard to find employment?
A: Employment, I don't think it will be hard because I have many friends, I have...
Q: When you were on probation, were you still working?
A: Yes, I was still working.
Q: And they knew you were on probation?
A: Yes, they knew.
Q: And, were they treating you badly?
A: No, no. So that I was even afraid of, I thought they would treat me differently, that they would call me jailbird, but no, they all were very sympathetic to me, they helped me very much." (minor, 17 years old, Rahova MSP, Bucharest)

„A: It did me good in a way, that I changed, but otherwise it didn't do me good. I've changed, I am not such a child, I used to be more nuts, I would do any stupid thing and now, no, I've changed. What's bad is that it's not good to be shut in here, to not see freedom.
Q: What do you miss more from outside?
A: Freedom... nobody to hold me in leash, like in here... or orders... if you don't wake up at order, they put you on report... they do... it's not good." (minor, 17 years old, PMY Craiova)

„Q(1): What did you understand from all this?
A: I've grown up quite a lot, that is, how shall I say, now I understand what it means to be deprived of liberty, far from the family, now I realize too and I thought it was a game, when I was outside, when I did all this…
Q(1): Do you think it will have a negative influence on your life in the future? Will it be hard to find work?
A: No. So... That I don't know... Anyway my parents will help me find work, to continue to learn a a trade... No, so the problem with employment no way, I have to find something, to do something, I won't just sit and get to...
Q(1): Your neighbors, do you think they will see you differently?
A: I don't think so, because I didn't do anything to them... maybe they will have a reaction like because I was in a Center, but they don't have to worry because I am in a Reeducation Center, I'm reeducating, I won't go back worse than I left." (Minor, 17 years old, RC Găeşti)

„Q: How do you think you have been changed by everything you've been through?
A: I don't know. More for the worse than for the better.
Q: In what way?
A: That this place here... from what I understand, it should make... I don't know how to put it... you should leave a better person from here. So when I get out not to do it again, but it had more a negative influence on me. It influences me in here... the persons I share the room with...
Q: Do you get along well with your room mates?
A: I get along well, but how they behave, like, in general, not with me.
Q: What do you mean when you say "how they behave in general"?
A: Their behavior day by day... everything, everything...
Q: Are they aggressive? Use foul language? They do things like that?
A: They use foul language, they fight... many, many things I hadn't seen before I came here." (minor, 17 years old, MSP Iaşi)

There are two other problems revealed by the interviews with minors, but also by direct observation in penitentiaries and in the reeducation center in Găeşti.

In the first place, the transfer of minors from the police arrest house to the penitentiary the moment his criminal case is submitted to court, which means the minor goes through several detention institutions and every time he needs to adjust to new detention conditions, while sometimes in the end the decision in his/her case to be a sentence to be served in another penitentiary, reeducation center or even suspended sentence. In addition to the trauma of permanent readjustment it is a great waste of time with respect to the work with the minor on reeducation. Being „in transit" again and again through various detention institutions, the minor does not

stay long enough to be included in an educational program or a formal education program.

In the second place, comparing the conditions in a reeducation center with the conditions in a penitentiary it becomes obvious that a minor cannot be reeducated in an ordinary penitentiary which only offers literacy courses, or thanks to the benevolence of local institutions three hours of teaching a week, useful only to those who have not passed beyond primary school.

4.6. What becomes of children without penal responsibility?

4.6.1. Institutional actors' view

In accordance with the legislation in force, the minor under the age of 14 years, as well as the minor aged 14 to 16 years who does not have competency, has no penal responsibility. It means that in his/her case the procedure stops at the investigation stage and theoretically he/she is taken over by the system of protection of the child in difficulty. But this happens only in theory, because the interviews revealed that in many cases, practically, **nothing happens with such a child**.

From the interviews that were conducted it is rather difficult to trace a clear route travelled by a child who commits an offense but has no penal responsibility. Once identified as the possible perpetrator of an offense, the child is taken to the police station to give a statement. If he/she has a family, in the best case, he/she is interviewed in the presence of his/her parents, the prosecutor orders no further criminal prosecution, and the child goes back to the family. If the minor is a street child, and is found to be below 14 years old, the minor is taken to an emergency placement shelter, belonging to the system of protection of the child in difficulty, for 15 days, while the police possibly continue their investigation. In parallel, DPC conducts a social inquiry to assess the minor's situation and the protection measures that can be taken for him/her. Once the police investigation is finalized, the file reaches the Public Prosecutor's Office where the prosecutor issues an order of no further criminal prosecution. The file is sent to the Commission for Child's Rights to dispose a certain protection measure under the law and which consist in custody or placement of the child with a family or in an institution.

> „Those without penal responsibility, let's say he/she has a family too in the best case, is interviewed by us in the presence of his/her parents, he/she is not brought to trial […] so the file is closed here at the police, doesn't go to trial, and the minor is given in the custody of the family. Our obligation is to monitor and see what becomes next of that minor. So that minor is checked on by us, to see if he attends school, or, if not, he stays home, who he hangs around with, what he is up to... The family is invited, is instructed, is warned." (police officer, Constanța)

> "In principle this is the route: police find the child, take him/her to Cireşarii Center; from that moment he/she receives an emergency protection measure from our institution, during this measure the parents are deprived of parental rights, we take over the case, so we conduct the social inquiry or we request a social inquiry from the child's town of birth and we are tied

> theoretically to the completion of the investigation. So, the moment we receive information from the police that the investigation is finalized and the child can be released from the Center, at that moment we go to the Commission for Child's Rights where we discuss every file and we propose reintegration in the family or anything else is in the interest of the respective child." (DPC, Sector 1, Bucharest)

Unfortunately there are situations, and not a few, where minors without penal responsibility are simply let go by the police without bringing the respective cases to the attention of DPC. Other times DPC learns very late from the Public Prosecutor's Office of a child under 14 who committed a criminal offense, so that their intervention is in many cases tardy.

> "Q: What about DPCs, then, for instance, when they are children without penal responsibility, do you advise the, or …?
> A: We advise them too, yes, yes, we sometimes write a memo to them telling that it has been decided […] because he/she is under 14 years, to take the measures …
> Q: Does it always happen like this, it's a legal provision, how does it work?
> A: No, it is a decision... No, I don't know exactly, now frankly maybe not always, maybe we forget sometimes, so I don't know that we always write these memos, but we do, I know I have written too, but maybe because of the workload we might forget sometimes, there are very many files and we might miss some, but I know that every time we advised them, the girls came right away, inquired, took over the respective case." (prosecutor, Timişoara)

> „[…] With the police we should probably find a more concrete way to be advised of the cases they process especially these ones under 14 years, that is the moment they investigate a child, they should find a method to inform us [...] they need our services, but no a child should come to us through the emergency placement shelter." (DPC, Iaşi)

> „Many times we receive referrals from the Public Prosecuror's Office a few months after the offense was committed. We know nothing at the time the child committed an offense, the police investigate, they send – after the situation has been clarified – the file to the Public Prosecutor's Office, the Public Prosecutor's Office advises us, after a few months, that is when I go there and tell them why I came, they say 'Well, now you're coming?' " (DPC, Cluj-Napoca)

What does DPC do for the child who committed an offense? A social worker contacts the child's family, in case it exists, conducts a social inquiry and establishes appointments for the child to receive psychological counseling and to be evaluated from the point of view of behavioral development.

„We receive the referral, we go on a field trip, to the home, we do a kind of primary counseling with the family, with the child, with the school if he attends school, we try to assess from all points of view the situation of the child, and, if applicable, we refer the child to psychological counseling either here, or within the school, every school has a psychologist. We talk to the guidance counselor teacher, to the psychologist and we try to make the child attend a few sessions." (DPC, Cluj)

The most frequent measure is to keep the child in his/her natural family, if it exists, and to monitor the child for a period of 6 months – 1 year. Theoretically, during this period the child should attend counseling sessions but this does not happen too often. The problem with counseling sessions is a very serious one and is facing all the DPCs where our interviews were conducted and consists in the fact that the Department does not have the authority to constrain the families and the child to attend these meetings in case they refuse to do so. Moreover, there are relatively frequent cases of children who run away from home and commit other offenses. There is a possibility to call on the police to determine the parents to come with their child to counseling but many times the police do not intervene.

„The problem is that we, in the other cases too when we are confronted with opposition from the family or the people we work with, it's very hard to obtain the police support to intervene, because we don't have the authority, we cannot take a child from his/her mother, we cannot without her consent, we don't have such power […]. We don't have this authority that is we are not vested by any law, the Department for child protection and the social worker employed at the department, with the power to intervene in family matters. It's written in the law that in the enforcement of protection measures taken by the Commision of Child Protection, the police shall provide their support, but I'm telling you how much effort and how much we have to insist for them to come, because they keep telling me "Madam, I am responsible for what I do and I'm afraid I'll have to answer for it, because I am not permitted to intervene in family matters"." (DPC, Cluj-Napoca)

„It is very difficult for us to work with delinquent children... because practically, if the law doesn't force them, I have no way to bring them to counseling, the parents are generally totally unconcerned, I have no way to awaken their interest and we are ineffective …"(DPC, Braşov)

„...they seem deficient to me the system and the legislation on the child under 14 years of age. [...] since there is no legislation for this category, you cannot make the family cooperate with you... so I cannot make the parent come to a counseling session with the minor, I cannot make him keep an eye on the child […] I don't have methods to raise awareness in the family that they must do something about it... or to constrain them, because there are situations when they need to be constrained a little." (DPC, Iaşi)

„Because I cannot force them to do something... many times they don't come at all, neither the family nor the child …" (DPC, Sector 2, Bucharest)

The problem of children's participation in counseling sessions is not related only to the lack of cooperation from the family. Children from rural areas, for instance, would have to travel to the city for counseling, but many times they cannot afford to do so. Since it does not have the possibility to travel in the jurisdiction, DPC tries in these cases to have the child monitored by the community social worker employed by the local townhall, but they usually treat these cases superficially.

Besides the problems relating to counseling attendance, there is also the problem of the inexistence of special centers for delinquent children. Several categories of children are brought to emergency placement shelters: abused children, street children, as well as children who commit offenses. Many of the persons we interviewed consider that it is inappropriate to keep together children who commit offenses with children in other types of difficulty.

> „We rely very much on the social inquiry made by the community social worker, and if the community social worker gives a positive result of the inquiry and the child in fact, continues to steal chickens, we get to a point when we receive referrals by ordinance that... we find when ordinances come to us [...] ... one, two, three. Even the other day I had talks with a townhall and we received three ordinances for the same child [...] a child who already had a file with me and I knew and I asked the community social worker to meke a proposal to think of a measure..." (DPC, Iaşi)

> „What we miss is this specialized center, because, in placement centers you cannot confine together cases of abuse, social cases and cases of children who commit crimes." (DPC, Iaşi)

In addition to these problems there is police abuse, mentioned by some representatives of DPC in interviews. The most frequently mentioned examples of abuse is the fact that there is a practice to make minors without penal responsibility admit to having committed more offenses than it is true.

> „[…] there are cases of children who are beaten, there still are cases of children who are charged in P.U.s (perpetrator unknow), we find out somehow, lately through slips." (DPC, Sector 2, Bucharest)

Taking all these things into account, the majority of DPCs workers who have been interviewed consider their activity related to juvenile offenders as ineffective.

> "The current measures of family supervision are not effective... it would be better that minors who repeatedly commit criminal acts to be supervised in an institution, with their parents' consent, for a definite period against his will. So I don't refer to penitentiaries for minors, I refer to an institution where they could enjoy every... all that is necessary for a good development, but at the same time to... to participate in instructive educational activities." (DPC, Craiova)

> "It is not very effective because unfortunately for us, the figures say: there are minors who relapse... they relapse, regardless... probably prevention of the first offense should be more serious... some campaigns of this kind much more serious... yes, for this you need personnel, you need cooperation with various institutions, and now there is another problem, so the school doesn't cooperate much... for the school it is a problem to have a child like this, it's shameful [...] the moment a child makes a mistake, so immediately he/she is expelled, so there is no second chance, so many times the younger ones even cry, so they don't want to accept him/her, the principal calls him/her and says: you look for another school because I dont' want you here anymore." (DPC, Iaşi)

As the respondents have remarked too, the fact that nothing much is being done for juvenile delinquents without penal responsibility is extremely serious since they do not realize the gravity of their acts as long as they are not sanctioned in some way. They go on committing offenses because they are aware that nothing will happen to them until they are 14 years old. Then they arrive at the age of penal responsibility and in many cases it is already too late to redeem them.

> „Minors without penal responsibility under the age of 14 years, so the large majority even form groups, commit offenses knowing they have no penal responsibility, many times they associate with adult gangs, who make the minors commit certain offenses because they don't have penal responsibility, many times it is very difficult for us to demonstrate that the adults are the brain of the offense, we identify these minors, they don't have penal responsibility, we cannot take any measures and this goes on for ever, I think this is the biggest deficiency." (police officer, Craiova)

> „[…] they keep stealing and they see nothing happens to them and you cannot do anything in this situation, since they do not have penal responsibility you have no way of... you wait until they are 14 years old, and then if they have penal responsibility, against them you can take …" (prosecutor, Bucharest)

4.6.2. Experience of children without penal responsibility

Concerning the minor offenders without penal responsibility and who come under DPC care, the situation is extremely serious at the present time. From the interviews[37] that we managed to conduct with juvenile delinquents in the care of child protection departments, it appears clearly enough that only in very few cases DPC has the possibility to effectively do something for these children. For the rest, in the majority of cases of delinquents without penal responsibility, the story of these children follow the same pattern: the police caught them, took them to the police station, asked them questions, took them to the emergency placement shelter from where they would be let go, would run away or their parents would come to pick them up.

[37] A total of 8 interviews were conducted with minors under DPC care, but, for practical reasons, no interview was conducted in three of the cities included in the survey: Braşov, Cluj-Napoca, şi Timişoara.

There is also some testimony of various police abuse; as for the rest, many of these children continue to comit offenses even after they reach the age of penal responsibility and then they are taken over by the legal system.

„Q: Were you interviewed at the police station? Did you admit the charges?
A: I did.
Q: And after you were interviewed what happened, were you sent to the Minors Center?
A: Yes.
Q: And there what happened? Can you tell us?
A: We were there two or three days, then they let us go." (minor, 14 years old, DPC Constanța)

„A: […] the first time the police caught me I was about 8 years old. Then beeing a minor they let me go and didn't do anything to me […] I started to steal, to steal I moved into this neigborhood here in Baicului the police caught me, same like they caught me they kept me a day and then took me to the center I stayed there two three months.
Q: Where did they keep you?
A: At the station. Then they took me to Cireşarii I stayed 4-5 months, 9 months I was out and went to stealing again." (minor, 17 years old, DPC Sector 2, Bucharest)

„Q: What are you going to do?
A: When I get out of here?
Q: Yes.
A: What I am going to do... look, I don't hide from you, I go walking the streets and begging, when I come out of here, lady. By stealing you gain nothing cause the police kill you with the truncheon, with the fist, with the slaps, with the boots in the belly, no point, you better have sex for money with one guy and with another and still you have your money in the pocket, and a pack of cigarettes, why steal... and I buy myself a condom too (...) ugh, was I stupid to mind these guys yesterday, cause I wouldn't be here at the minors center, believe me lady, what can I do, now when I get out of here I do know what to do, I better go begging, better get 150 thousand from begging, I'm content with that much even, and a pack of cigaresttes a day, and food, and to sleep I have where to sleep, cause I have a home and I have a family.
Q: And this is what you want to do from now on, prostitute yourself and beg?
A: But what can I do? Go stealing when I get out of here, so police kill me?" (minor, 16 years old, DPC Alba-Iulia)

4.7. Priorities in juvenile justice as viewed by institutional actors

One of the goals of this research was to identify what institutional actors propose as solutions to improve the situation in juvenile justice. This chapter is designed to summarize the respondents' proposals relating to the priorities of justice reform in the filed of juvenile delinquency.

The qualitative analysis reveals the existence of four main priority areas, in the opinion of institutional actors, and they are: 1) specialization of institutions in the legal system which deal with juvenile delinquents; 2) reform of the sanctioning system of criminal offenses committed by minors; 3) setting up mechanisms and community-based institutions to provide supervision, assistance and counseling services to minors who infringe the law, and 4) development of a strategy in juvenile delinquency prevention and of sustainable programs in this respect.

A. Specialization of institutions in the legal system

This priority practically envisages the creation of a coherent juvenile justice system. Specialization, from the point of view of institutional actors, aims at creating within the institutions in the legal system specialized structures to deal with cases of offenses committed by minors. In the first place, juvenile courts[38] need to be set up, but before going to court the minor still has to be investigated by specialized structures within the police and the Public Prosecutor's Office. This specialization means that police workers, as well as prosecutors and judges who are in charge with juvenile cases do not have other responsibilities in another line of work. Certainly, the staff of these specialized structures requires adequate training and in addition they should be able to cooperate permanently with psychologists and social workers who can assess the situation of the juvenile delinquent and propose the measures they consider to be appropriate. Some of the respondents mentioned that a multi-disciplinary team would be required at the minor's investigation stage consisting of a police officer, a psychologist and a social worker. Also, another idea came up, that of a „child's attorney" to provide the legal assistance necessary in these cases. Therefore, in the view of institutional actors a separate legal system is required to deal with minors.

> „The priorities would be the following, set up instances for minors at the level of the Ministry of Justice, at the level of judges with trained people, prosecutors, judges and at the level of the Public Prosecutor's Office and at the level of the Ministry of Justice, at... at the same time at the level of the police to set up specialized offices, specialized services with people." (police officer, Bucharest)

> „Create specialized personnel, I'm talking about the Police, Public Prosecutor's Office. Trial courts, for cases with minors and which are able to cooperate, as I said, with social workers, with psychologists, with experts in the field." (prosecutor, Bucharest)

[38] The Court for minors in Iaşi is an example of best practice frequently mentioned by respondents.

„Effectively set up, in the first place... these specialized courts, the first step has been made. In my opinion, at all levels there should be... training of those who participate in the process with minors from the first step, to the last. This means from referral to the criminal prosecution body up to the execution of sanctions ordered. Same thing, set up for the minor a specialized defense system, effective in these juvenile problems" (judge, Braşov)

„I am very much in support of setting up juvenile tribunals and the public prosecutor's office to have prosecutors in charge only with cases with minors, also specialized in cases with minors, same as at the police. To be equipped accordingly because it is a very sensitive issue." (police officer, Cluj-Napoca)

„Specialization throughout the country. So, what we have managed to do in Iaşi for the past few years, that is since '99 to date, should be gradually done in... those who are designated should not be designated until they have had some specialization, should not process juvenile cases, starting from the police up to trial stage." (judge, Iaşi)

B. Sanctioning system reform

This priority includes the proposals of institutional actors referring to sanctions under the law as well as to the way these sanctions are enforced. Three types of proposals may be distinguished in terms of the aspects they focus on. In the first place, the proposals relating to a change of approach in the administration of justice, in the sense that it should focus on the perpetrator and the process of his/her reintegration into society and not on the offense itself and on the punishment of the person who committed it. In the second place, the need to widen the range of alternative sanctions to detention provided for juvenile offenders by the legal framework. In the third place, even if the decision is a custodial sentence it should be served in specialized institutions and not in a penitentiary.

„On the one hand the concerned institutions to provide us with data relating to methods of reeducation and reintegration of the minor, on the other hand the legislative to provide a wider range of measures applicable to minors." (judge, Constanța)

„In the first place the center for minors, to me this would be a... the top priority. I don't find it appropriate at all to keep a minor in the penitentiary... in a reeducation center something could be done, but in a penitentiary for a minor nothing will ever be done." (lawyer, Braşov)

"There should be a larger variety of sanctions to lead to more effective reeducation and a reduction in the number of penal offenses committed by minors." (judge, Timişoara)

> „An even more pronounced modification of the type of sanctions that could be applied with emphasis on diverse educational measures and not on sentences. By no means an increase in the number of penitentiaries, this has never been and it's not a solution and I will always stand by it. I think that the reform of the sentencing system would be the solution but here this is up to the future." (judge, Craiova)

C. Institutions and services

Regarding this priority we put together all the proposals advanced by institutional actors in relation to the institutions that should be in charge with juvenile delinquents and to the services they should provide for them.

There have been many opinions with referrence to the need to establish more institutions for minors who commit penal offenses. Some refer to the establishment of many more modern reeducation centers, considering that the three existing ones are insufficient. Others refer to day centers and special centers for delinquent children, where the minor is offered counselling and specialized care, and is included in a reeducation program. Besides, this type of institutions would be needed both at the stage of serving a sentence, and to avoid at the investigation stage his/her being detained in police arrest house. Connected to these institutuions are psychological counseling services, considered by very many of thoses interviewed as obligatory immediately after a minor has been identified as the perpetrator of an offense. There were opinions that NGOs providing this type of services to this category of minors should be supported and encouraged.

At this time, in Romania, according to information obtained from respondents, there is no medical-educational institution to be given charge of a minor with health conditions who committed an offense, although there are provisions for this measure in the Penal Code. Therefore, the establishment of this type of institutions is necessary, more so as from information gathered in the field there is a number of minors with mental conditions who infringe the criminal law and end up in penitentiaries or reeducation centers.

Also, another proposal that might come under this topic consists in expanding the application of mediation between the perpetrator and the victim, both with the view to its use at national level and in a wider range of penal offenses.

Another category of proposals refer to the need of post-penal assistance services for those who served a custodial sentence or measure. The absence of post-penal assistance is considered by many a very big obstacle against the reintegration of offenders. Upon release from the penitentiary or the reeducation center, an institution should take charge of the minor, to monitor him/her and provide assistance according to his/her particular needs.

Another category of proposals focus on the assumption of responsibilities by community-based institutions and an increased involvement of these institutions in the rehabilitation of the juvenile delinquent. Among these institutions institutional actors included primarily the family and the school.

Finally, with reference to institutions, a last category of proposals address the mode of operation and the cooperation relations between institutions. Poor cooperation and excessive bureaucracy result sometimes in the principle of dispatch to become inapplicable and other times in the due process rights of the child to be

infringed or formally respected. Forming multidisciplinary teams in charge of the minor at the investigation stage could be a solution of efficient cooperation between various institutions: police, public prosecutor's office, department of child protection.

> „It would be ideal for these children under 14 years to have specialized centers, similar to placement centers for ordinary children who are under privilleged or some other situation causing them to come to placement centers, to have centers specialized in delinquent children, where there are standards and the child can learn practically the rules of society." (D.P.C., Cluj-Napoca)

> „It should be introduced in the legislation the establishment of this Restaurative Justice Center, I think that for less grave offenses injured citizens could call on this center directly, which would try to mediate between them and the perpetrators of the offense, maybe in this way police work would diminish a little, police should in my opinion deal with more serious offenses not with those punished following complaint which any way are referred to the competence of the court but for now citizens may file a complaint with the police, which, finally forward the complaint to court." (police officer, Craiova)

> „In the first place I think the establishment of more institutions and organizations to address the problems of minors, by problems of minors I mean both psychological support and social welfare but also school assistance and by saying that it covers the whole range of minors' activities." (NGO, Craiova)

> „[…] these minors to be supervised, after serving this sentence, whatever it is, an institution or a body, able to observe for a certain short while, a probation period, for one year, two, three, to see what is this minor up to, what is the family doing? Are they helping him/her? Are they giving him/her support? Because maybe the family too rejects him/her after this offense, and you imagine, he/she is alone after getting out of the penitentiary, where he/she got information, training, and his/her only chance is to do something." (lawyer, Bucharest)

D. Juvenile delinquency prevention

Last but not least, a good number of respondents included among their proposals relating to juvenile justice reform the development of a prevention strategy of both primary and secondary juvenile delinquency. This strategy should be sustained by the development of concrete programs to be implemented in cooperation by local institutions: school, police, local administration council, DPC, church. Beyond information campaigns, we need to set up children's clubs for various recreational activities, to identify groups at risk of delinquency as targets of social assistance programs. As for the prevention of minors' relapse, post-penal assistance is one of the solutions proposed, but it is necessary too that the minor who is issued an order of „no further criminal prosecution" to be taken in charge by specific institutions and included in various supervision, counseling and assistance programs.

It is also necessary to identify solutions to reduce the number of cases where minors without penal responsibility are used by adults to commit offenses.

> „I believe that the most important thing is to focus on the prevention of juvenile delinquency, especially through close cooperation between schools, townhalls, foundations, as well as on what happens to these children after they serve their sentence in order to be reintegrated into society and not to relapse." (lawyer, Cluj-Napoca)

> „In the first place prevention, then issues relating to the improvement of their economic situation because most of those who commit offenses come from such poor families with a very low standard of living, very many have no education, as I said, crime prevention too depends again on changing minds because if the community, the public opinion don't change their mentality vis-a-vis these persons who committed offenses, they will relapse, if we help them reintegrate many will leave criminal behavior behind them." (NGO, Cluj-Napoca)

> „I think we should work very much on primary prevention... exactly as it happens and how enough programs have been developed now vis-a-vis drug use... not necessarily that I am pessimistic or... it is difficult to work with child after he/she has committed an offense... he/she finally gets to a specialist, after committing practically multiple offenses, it is hard to take him/her out of that welter, to make him/her see something, but I believe that if we worked much more in primary prevention in schools, if alternatives were provided, if we helped the children understand the differences between values that are real and the false values of those who have money and I don't know what cars, or I don't know what sneakers or... or if we worked more with the parents, to know how to approach their children... I think that now there is quite a wide gap between the parents' generation and the children's generation, because all the new temptations appeared after the revolution and that have taken root here too, are rather foreign to the parents who don't know too well how to approach these issues" – „ and then I think children miss spare time activities... before the revolution there were a lot of sports clubs, of, I don't know what they were doing at the Children's Center, at... now schools don't have all these activities, children have nothing else to do, I mean they come from school in the afternoon, the parents are not at home, they are at work, especially now that everybody works from morning till evening... they have nothing to do, there are a lot of temptations they cannot resist, because they have practically nothing to do with their spare time, if they organized at schools, or by the townhall, or by anybody, a kind of clubs for adolescents, I think they would go there gladly and I don't think it would create I don't know what problems, but something to to spend their time in such a way as not to end up at risk." (NGO, Timişoara)

CHAPTER V- ANALYSES CORRELATION

The qualitative evaluation of the route followed by the juvenile delinquent and the two statistic analyses supply data that complete and reinforce each other, but also information indicative of the fact that the social reality as perceived or rationalized by institutional actors does not always coincides with the objective reality of statistic data.

Next we will briefly present a few conclusions based on the correlation of the three analyses, starting with the findings relating to juvenile delinquents without penal responsibility and continuing with those who may receive penal sanctions.

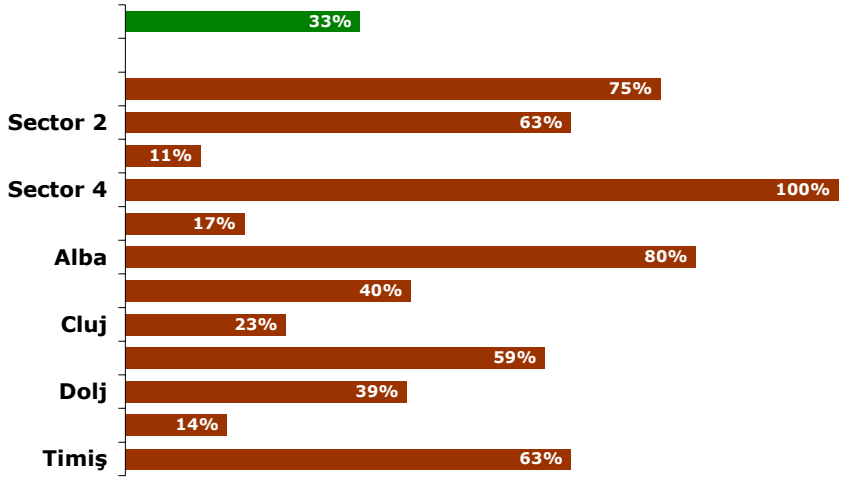
A. Minors who are issued an order of no further criminal prosecution

From the statistic analysis based on data supplied by departments of child protection we find that out of the total number of delinquent children on record in the protection system only about one third are children over 14, who theoretically could be held criminally responsibile. Many of the interviewed police officers and prosecutors stated that a large number of cases of offenses committed by minors at penal responsibility age stop at public prosecutor's office level, never go on trial, as in general the prosecutor turns penal responsibility into administrative responsibility. In principle, these cases should be referred to DPC too, and we would expect to find a number of children over 14 years old in the protection system, but this does not happen. At the same time, DPC workers interviewed in some cities contend that regarding the minor who has the age of penal responsibility, they take charge only of delinquent children coming from institutions managed by the department and they do nothing for the other juvenile delinquents over 14 because this does not come within their competence under the law. Fact which is confirmed by the large variations from one city to another in terms of the percentage of children over 14 years of the total number of delinquent children coming into the protection system, and not only[39] (please see fig. 1).

There are variations also concerning the referrals received by DPC from the police and the public prosecutor's office, in the sense that in some cities referrals are received mostly from one of the two insitutions or even only from one of them.

[39] Taking into account the small number of cases in DPC's charge in some cities and taking into account that we are talking only about data for a period of 6 months, these variations should be regarded with some caution.

Fig.1.Percentage of minors over 14 in the total number of delinquent children in DPC's charge (October 2003- March 2004)



The absence of a united practice with respect to the procedural route followed by delinquent children who enter the protection system is the result of three inter-correlated factors: 1. lack of clear legal provisions on the delinquent child who is issued an order of no further criminal prosecution; 2. high degree of non-involvement on the part of DPC in some of these cases, since some workers consider this is not their business; and 3. police and public prosecutor's offices do not refer to DPC all cases of juvenile delinquents where the decision is made not to initiate criminal prosecution.

All of these are leading us to the serious conclusion that a number of delinquent children who are issued an order of no further criminal prosecution and whose case stops at the public prosecutor's office do not enter the DPC system, meaning practically that nobody is in charge with them.

Another important issue revealed by the three analyses is related to the importance of developing mechanisms to involve the school in juvenile delinquency prevention. Many institutional actors emphasized the the need of sustainable delinquency prevention programs in schools. Data about the education level of children, who committed offenses, both those in the protection system and in the legal system, show that approximately 60% of minor offenders were enroled in a form of education, while school drop-out is associated to delinquency in about 25% of the cases. It is to be expected that a more intense involvement of the school in cases of children at risk of delinquency to significantly reduce delinquency among minors.

B. Minors who are indicted

With regard to juvenile offenders who come into contact with justice, from the correlated analysis of the qualitative study with statistic data, we can distinguish several relevant elements both in relation to practices at criminal prosecution stage, and at trial stage.

In the first place it should be pointed out that although many of the interviewed institutional actors support the application of the principle of dispatch in cases with juvenile offenders, statistic data show that in 16% of the cases criminal prosecution alone lasted at least one year, and in almost 10% of the cases the trial lasted more than one year. Also, institutional actors state in interviews that minors are arrested only for very grave offenses. Statistics show that one in four charged minors are arrested, when 88% of the cases are offenses against property, and 81% are first offenders. Which leads us to the hypothesis that the definition given by investigation bodies to grave offense is in fact the definition in the penal code for particularly grievous consequences[40], thus confirming the assessment of some respondents that the system focuses on the act committed and not on the perpetrator.

In the second place, statistic data fully confirm the allegations of institutional actors about the quality of social inquiries, while at the same time bringing the evaluation reports prepared by SRSS into a less favorable light that it appears from the qualitative research. Thus, in 52% of the cases the social inquiry report /SRSS report do not contain data relating to the minor's group of friends, and in 23% of the cases the occupation of the minor's parents is not specified.

Last but nor least, statistic data confirm the fact that courts impose sentences and not educational measures and that they also prefer to individualize sentences by deciding the conditional suspended sentence and only in few cases decide suspended sentence under supervision.

Table 1. Percentage out of total of defendants who received sentences

Sentence	To serve	Conditional suspended	Suspended under supervision	**Total**
<=6 months	4.7%	13.6%	0.1%	**18.4%**
6 months - 1 yr	6.8%	6.6%	0.6%	**14.0%**
1 - 5 years	30.8%	17.1%	2.3%	**50.2%**
> 5 years	0.7%	0.0%	0.0%	**0.7%**
Fine	3.4%	0.7%	0.0%	**4.1%**
Total	**43.1%**	**37.2%**	**3.0%**	**87.4%**

[40] Art. 146 - By "particularly grievous consequences" it is to be understood a material damage of more than 50.000.000 ROL (approx. 1250 Euro) or a particularly serious disturbance of activity, caused to a public authority or to any of the facilities stipulated in Art. 145 or to any corporate body or natural person.

Table 2. Percentage out of total of defendants who received educational measures

Type of measure	% from total
Reeducation center	2.6%
Release under supervision	7.7%
Reprimand	2.3%
Total	**12.6%**

It remains to be analysed in the future what are the factors that influence the choice of a sanction by judges in the case of minor defendants.

CHAPTER VI – CASE STUDIES

This chapter will outline the procedural route followed by a child who committed a penal offense, taking into consideration the institutions involved in processing the file of a juvenile offender, the procedural guarantees of the minor. Also, it has been our intention to expose concretely the way these files were processed by the competent institutions.

To this effect, two case studies are described (sentences in definitive decisions) involving minors who were of penal responsibility age at the time of the commission the offense: one case study from Iaşi (to observe the practices of a juvenile court already in operation) and a case study from Bucharest. Also, we analyze the case of a minor under the age of 14, to observe the procedural route he followed. This case is from Bucharest.

6.1 Case studies of the procedural route of a minor with penal responsibility

6.1.1 Case study - Iaşi

By the indictment of the Public Prosecutor's Office of Iaşi Tribunal it was ordered on April 6, 2004 the initiation of criminal action and bringing to trial of a minor aged 16 years and 5 months for committing the offense of attempted rape, provided and punished by Art. 20 related to Art. 197 par. 3 of the Penal Code, with application of Art. 99 and next of the Penal Code, retaining that on the date of 29 Sept. 2003, the minor tried to have sexual intercourse with a minor girl aged 4, taking advantage of her inability to defend herself and express her will, unsuccessful attempt though.

Journey of juvenile offender in criminal trial

A. Criminal prosecution[41]

Police officers from the local police station in the town of residence of the minor-victim were notified on the date of 29 September 2003 by the mother of the minor-victim by written complaint *that their neighbor, the minor tried to have sexual intercourse with her daughter, aged 4 years and 3 months.*

The police proceeded to perform the **preliminary actions** to criminal prosecution, consisting in:

- interviewing the minor at the Police station in his town of residence (the same as the victim's, neighbor of the minor) only in the presence of his father and without the assistance of a lawyer, thus infringing imperative

[41] This is the first stage of a criminal trial and its object is to gather the necessary evidence about the existence of offenses, the identity of perpetrators and determine their responsibility, to find if it is the case or not to indict.(Art. 200 of the Code of penal procedure).

legal provisions[42] on ensuring obligatory legal assistance to the accused minor[43];

- conducting on the date of 30 September 2003 an investigation on site, the findings regarding the situation at the crime scene being entered in a report;
- entering on record, on 30 September 2003, the statement of the witness present at the reconstruction;
- questioning the person who owns the courtyard where the minor committed the act, as well as the parents of the minor;
- obtaining the forensic certificate no. 2332 dated 30 September 2003 issued by Iaşi Forensic Institute *which found that the victim is a virgin;*
- obtaining the report of the social inquiry conducted at the domicile of the minor by the social worker of the local town hall;
- submitting a request to the forensic psychiatric Commission of Iasi Forensic Institute to proceed to a psychiatric examination of the minor. He was examined in the period 03 – 11 December 2003, and *the findings of the forensic psychiatric examination report were that he had competency of the act*. In the same expert examination report the following mentions were made:
  - *the minor displays behavioral disorder with antisocial act against a background of puberty and borderline intellect;*
  - *has competency of the act;*
  - *supervision in the family is recommended.*

On the date of 24 February 2004, the Criminal Investigation Division of the Iasi County Police Inspectorate drafted a report of **initiation of criminal prosecution**[44] against the minor for the commission of the offense of attempted rape, provided and punished by Art. 20 related to Art. 197 par. 3 of the Penal Code, with application of Art. 99 and next of the Penal Code, action confirmed by the prosecutor of the Public Prosecutor's Office of Iasi Tribunal who exercised supervision over the criminal prosecution activity[45].

[42] Art. 6 par. 5 of the Code of penal procedure: judicial bodies have the obligation to advise the accused or defendant, before taking the first statement, of his/her right to be assisted by an attorney, and this shall be entered in the minutes of the hearing. Under conditions and in cases stipulated by law, judicial bodies shall take steps to ensure legal assistance to the accused or defendant, if he/she does not have a chosen attorney.

[43] Art. 171 par. 1 and 2 of the Code of penal procedure: (1) The accused or defendant has the right to be assisted by an attorney throughout the course of criminal prosecution and trial, and judicial bodies have the obligation to advise him/her of this right. (2) Legal assistance is obligatory where the accused or defendant is a minor, is a conscript in compulsory military service, a reduced term conscript, a called-up reservist, student of a military education institution, remanded in a reeducation center or medical-educational institution, or even under arrest in another case or when the criminal prosecution body or the court deems that the accused or defendant is not capable to provide for his/her own defense, as well as in other cases under the law.

[44] In accordance with provisions under Art. 228 par. 3 of the Code of penal procedure.

[45] In accordance with provisions under Art. 228 par. 3^1 of the Code of penal procedure.

The police performed the following criminal prosecution actions:

- on the date of 07 March 2004 they questioned witness;
- they requested a psychologist from an NGO[46] to conduct a psychological evaluation of the minor-victim to determine whether she was sexually abused and, if so, what were the consequences of same abuse for the minor-victim. The psychological evaluation report was submitted to police on the date of 16 March 2004;
- they obtained the minor offender's criminal record, school registration certificate, registry certificates of the offender and of the victim;
- on the date of 17 March 2004 police officers of the Iasi County Police Inspectorate – Criminal Investigation Division proceeded to interview the minor-offender, respecting all procedural guarantees and rights of the minor, in the presence of an appointed public defender and in the presence of the parents of the minor.

During the interview, the minor asked permission to write the statement by himself, because he was very nervous.

In both statements, the minor recounts in detail how he committed the act, mentioning at the same time that he knows what sexual intercourse means from a magazine.

B. Trial

Iaşi Tribunal – as competent body to try the case as first instance court – was referred the case on 9 April 2004, the first term in court was set for the date of 17 May 2004.

The judicial investigation took place in close sessions, separate from other sessions[47] and declared secret by the president of the panel of judges[48].

Summoned to appear in the case were, besides the parties, the minor's parents, as civil liable parties, the board of guardians, and the social reintegration of offenders and supervision of the execution of non-custodial sentences service of Iasi Tribunal[49].

The minor was examined in the presence of the appointed lawyer and of his father[50], and declared that*: he knows why he is brought to trial, he confesses and regrets very much the act he committed and maintains all the previous statements given during criminal prosecution... The minor indicates that he has read the indictment, and the situation in fact was the same as retained in this document. The minor mentions that he knew that the injured party is about 4 years old, that he did not want to commit the act and he could not explain why he acted in this way. The minor states that he saw the injured party after the act was committed and he believes that she is all right; she does not speak to him but she is playing with other*

[46] „Alternative Sociale" Association.
[47] In accordance with provisions under Art. 485 of the Code of penal procedure
[48] In accordance with provisions under Art. 290 par. 2 of the Code of penal procedure
[49] In accordance with provisions under Art. 484 par.2 of the Code of penal procedure.
[50] In compliance with provisions under Art. 70 of the Code of penal procedure, the minor was advised of the charges in his case, of the right to an attorney, as well as the right not to make any statement.

children. The minor also maintains that he had never attempted before to have sexual relations with little girls and that he wants to continue to go to school.

The minor, through his lawyer, indicated that he agreed with the statements of the witnesses on record, circumstances under which the court disposed that witnesses would not be heard[51], the prosecutor indicating that he renounces their examination.

The minor, through his lawyer, requested only to present evidence in favor of mitigating circumstances and submitted the following documents:

- medical certificate issued by the local medical practice certifying that the minor suffers from plurimalformative syndrome and mild psycho-motor retardation, recommending medical treatment;
- genetic consultation report no. 137/25.11.2003 issued by the Office of Congenital Abnormalities and Genetic Diseases of the "Sfanta Maria" Clinical Hospital for Children in Iaşi certifying the fact that the minor is on record with this office with the diagnosis of plurimalformative syndrome and mild psycho-motor retardation, the clinical evaluation finding a general appearance of macrosomia (high height, proportionate); facies: deviated nasal pyramid, high and narrow palate; big, gross hands and feet; liminal intellect;
- note no. 6240137/02.06.2004 issued by the Police station of the town of residence of the minor attesting to the fact that the minor has not been investigated for penal offenses, has not been sanctioned for offenses with violence or of other nature, is not in a state of conflict or enmity relations with the citizens in the community and has not been previously suspected of committing unlawful acts;
- from the references drafted by the local town hall it results that the minor's family is a functional one who has never created problems in the community ; its members are industrious people, honest people who work the land and that the family's income is low;
- the references concerning the minor were drafted by the guidance counselor teacher of grade 9 at the local school who states that the minor attended classes during school year 2003-2004 for 20 days, sporadically, and that while he attended school, from the way he acted, he was not a social risk and his behavior was one of taciturn, reserved, even very reserved child;
- certificate no. 640 of 29.06.2004 issued by School no. 1 of the town of residence of the minor, attesting that the minor was enrolled in the 2003-2004 school year, being declared a drop-out at the close of the school year because of absences, but that he may attend classes during the 2004-2005 school year.

The trial court ordered, at the hearing held on 31 May 2004, the Social Reintegration and Supervision Services to draft a psycho-social evaluation report of the minor, that was finalized on the date of 25 June 2004 and submitted to court for the term of 28 June 2004.

[51] In accordance with provisions under Art. 329 of the Code of penal procedure.

The report provided data about the family and social background the minor was coming from, his group of friends, school performance, and the behavior of the minor after committing the act.

The court, after finalizing the judicial proceedings and debates, found, in **deliberations**, as being solidly proven based on the conclusive evidence submitted in the case, the following de facto situation:

In fact, the minor aged 15 years and 11 months is from the same village as the minor girl aged 4 years who has lived with her parents in the immediate vicinity of the minor for the past two years with approximation and with whom he had a relationship of friendship, playing sometimes together with the minor girl.

The day of 29 September 2003, the minor went to the home of the said C.A. to help her with household chores and there he met the minor girl with whom he decided to have sexual intercourse.

To this effect, the minor enticed the little girl in a shed in the courtyard of the above-mentioned person where he took her clothes off and sat on her. Although the little girls started to cry, the minor tried to have normal sexual intercourse with her, but he did not succeed.

As the little girl kept crying, the minor let her go, but she told her mother what had happened.

The mother, together with the minor girl, went to the home of the witness C.A. where witness A.Z. was too and told them about the act perpetrated by the minor...

The witnesses noticed at that time that the minor girl was scared and was crying...

Finding the minor guilty of the offense of attempted rape, as provided and punished under Art. 20 related to Art. 197 par. 3 of the Penal Code, with application of Art. 99 and next of the Penal Code, the court proceeded to hold the minor criminally responsible.

When deciding upon the sanctioning treatment, the court took into account both the general criteria provided in Art. 72 of the Penal Code, and the particular criteria established by Art. 100 of the Penal Code, respectively: the concrete degree of social risk of the offense committed, the age of the defendant at the time he committed the offense – not yet 16 years old – the precarious development of the minor, mentally speaking, in the context of a school performance characterized as adequate, with periodic absences from school, being used by his father in farming work, but also against a background of liminal intellect, the minor's very good behavior prior to the commission of the offense, but also the minor's deficient communication with the other members of the family generated by his psycho-social development particularities; the low level of education; the lack of understanding of the gravity of the act and its consequences; the lack of empathy, against a background of a reduced level of affectivity.

Taking also into account the findings of the forensic report, the court decided that to rehabilitate the minor the educational measure provided under Art. 103 of the Penal Code is sufficient and adequate.

By **penal decision no. 650 of 13.09.2004** it was imposed against the minor the educational measure of release under supervision, provided under Art. 103 of the Penal Code, ordering the minor to be released in custody for particular supervision

for one year to his parents, who were cautioned that they have the duty to closely watch over the minor, with the view of his rehabilitation, but also the obligation to notify immediately if the minor eludes the supervision exercised over him or behaves badly or has committed again a penal offense.

It was decided to advise the school attended by the minor about the educational measure imposed on him and the minor was warned about the consequences of his behavior.

C. Execution of decision

The penal decision was not appealed and remained definitive, and the educational measure was put into execution by informing the minor and his parents of the dispositions of the decision, respectiveley the duties and obligations of each.

The minor was advised to contact the representatives of an NGO specialized in providing support to juvenile offenders, for assistance and counseling in the following areas:

- improvement of communication skills;
- reducing negative effects of material frustration and making the minor assume responsibility for his own behavior;
- behavioral therapy adapted to the mental condition of the minor, with the intent to raise awareness of the importance of compliance with socio-moral standards, to obtain the information required for a normal sexual behavior.

The minor was cautioned about the consequences of his behavior and on the provisions of Art. 103 par. 6 of the Penal Code.

Journey of minor-victim in the criminal trial

The minor girl was not interviewed by criminal investigation bodies or by the court, in order to avoid traumatizing her, the child's mother was the one giving statements in the case and stipulating that she did not file civil claims in the case.

In the course of criminal prosecution the minor-victim was accompanied to Iasi Forensic Institute for a genital examination in order to confirm or not a sexual aggression and obtain a forensic certificate. After the examination, a report was issued whose findings were that the victim was a virgin, and that the conformation of the hymen does not allow for a normal sexual intercourse with intromission, without defloration.

At the request of the police, the victim underwent a psychological evaluation by specialists of an NGO, who had two meetings with the minor girl and one meetging with her mother, all the meetings taking place at the psychology office of the organization.

The psychologists found that *the victim is a normally developed child from a social point of view: establishes social contacts with adults, mimics their roles, and participates actively in day to day house chores. The minor girl easily establishes contact with children of the same age, participating with pleasure in group playing.*

As to language, the child has a rich vocabulary, uses correctly the personal pronoun when she communicates with the others, describes images using varied words.

With regard to the sexual abuse and its consequences on the minor girl, the results of the applied tests have led to the conclusion that the minor girl manifests the symptoms of high level traumatic events:

- psychological abuse – humiliation, deception by a trusted person;
- sexual abuse.

The severity of the consequences of the sexual abuse she suffered is also influenced by the following aspects:

- the young age of the minor girl at the time of the abuse (4 years old);
- the close relationship with the aggressor (abuse of trust on his part).

After the abuse she suffered, the minor girl manifested acute stress syndrome, characterized by sleep disorders: insomnia, restless sleep, nightmares. Subsequently the minor girl ceased presenting these symptoms, the adjustment to trauma manifesting itself by defense mechanisms entering into action (the minor girl cannot remember all the details of the trauma and is avoiding the subject).

Taking into account the best interest of the child and her developmental requirements, it has been recommended that the minor girl should be brought up and educated in a secure environment, where she can establish non-traumatic attachments, where her mental, cognitive, emotional and social needs are met. It has been also recommended that the minor girl should avoid contact with the aggressor in the future, attend individual counseling to process the traumas suffered in the abuse.

6.1.2 Case study - Bucharest

Penal decision remained definitive by non-appeal, **August 2004.**[52]

Charge: offense of aggravated theft provided under Art. 208 par. 1- 209 par. 1, let. g, i, with application of Art. 99 of the Penal Code and next.

Date of offense: **28/29 .04.1998**

Offense committed during minority - 14 years and 4 months, 6th grade student

Journey of juvenile offender in criminal trial

A. Criminal prosecution

1. Initiation of criminal prosecution: by report dated 29.07.1998, by Police station X, for the perpetration of aggravated theft, 208-209 let. g, i, prejudice estimated at 29.242.800 ROL(lei). In fact the minor broke in a commercial company premises and stole *7 cell phones.*

The injured party constitutes itself as civil party, without bringing accounting proof of the damage incurred;

Civil liable party: minor's parent.

Minors' situation on the date of 29.07.1998

Indicted in another case for perpetration of 4 other offenses of aggravated theft (placed under arrest since the date of de 27.05.1998), commited before the offense for which he was indicted on the date of 29.07.1998, and after this date, at very short intervals of time. The offense committed on he date of 28/29.04.1998 was discovered by extending the investigations in the previous file[53], thus the file containing 5 offenses of aggravated theft.

In 4 of the offenses which are the object of the previous criminal prosecution file, the minor defendant is in association with the same 2 adult perpetrators.

The forensic examination raport is drafted on the dtae of **11.06.1998**, at the request of Police station X. The report finds that the minor had competency at the time he committed the acts in the initial criminal prosecutuion file; *for the act perpetrated on 28/29.04.1998 there is, at this date, no forensic examination report;* the minor was accompanied to the Forensic Institute by police worker from the station; *the parents or an adult member of the minor's family did not attend.*

At the request of the criminal prosecution body, a social inquiry was made by the Board of Guardians; *the report is extremely succinct, not providing a complex picture of the minor's actual situation.* In its report, the Board proposes that, in case it is found that the minor defendant needs medical treatment, he should be remanded

[52] Since 6 years elapsed between the date when the offense was committed and the date when the court decision remained definitive, there should be taken into account the provisions of the Code of penal procedure in effect at the date when the criminal trial was initiated as well as the subsequent modifications brought by GEO no. 66/2003, and Law no. 281/2003 respectively.

[53] Art.238 Code of penal procedure, prior to the modification brought by Law no. 281/2003: "If the criminal investigation body finds new acts to the charge of the defendant..., makes proposals to the prosecutor to decide on extending criminal investigation..."

to a medical-educational institution; since this type of institution does not exist, just the mention by the Authority of this educational measure provided under Art. 101 let. d) and Art. 105 of the Penal Code is indicative of the excessive formality of these social inquiry reports.

Regarding the act perpetrated on the date of 28/29.04.2004, the probatory material includes a report of investigation at the scene, statement of injured party, statements of defendant, statements of the accused (the 2 adults), reconstruction report, statements of witnesses.

The finalized criminal prosecution report drafted by Police Station X proposes issuance of the indictment and referral to court for 5 counts of aggravated theft; it also proposes to dismiss from criminal prosecution the 2 adults accused (Art. 10, let. d Code of penal procedure – the act misses one of the consitutive elements of the offense).

At the presentation of the criminal prosecution material the appointed lawyer and the minor's parent were present. *The Board of Guardians, although legally summoned, did not appear.*

By ordinance, the Public Prosecutor's Office of the trial court of sector X declines its competence in one of the offenses of aggravated theft. For three of the offenses it issues an **indictment** on the date of **19.08.1998**, and for the act perpetrated on 28/29.04.1998 it orders the disjoinder, the creation of a separate file to be sent to Police Station X. The motivation for disjoinder consisted in the absence of evidenciary material, respectively the lack of a dactyloscopic examination to establish if the fingerprints collected at the scene match the defendant's or not.

At the date of the finalized criminal prosecution report or at the date the indictment was issued there was no forensic examination ragarding the act perpetrated on 28/29.04.1998.

The sentence decided by Decision no.X/2000 of Bucharest Court of Appeal, for the 3 offenses of theft, was 3 years in prison.

Completion of investigation (separate file): on the date of 20.10.1998, the Police station X performed the dactyloscopic examination finding the the fingerprints collected at the scene match the defendant's.

Criminal investigators proceed to interviewing the minor defendant, in the presence of his lawyer, on the date of **16.11.1998**; he admits to having perpetrated the act.

At the request made by Police station X on the date of 16.08.2000, the Board of Guardians conducts a social inquiry, on the date of **5.09.2000**. From this inquiry it results that the minor presented behavioral disorders from an early age, being hospitalized in the Infantile Neuropsychiatric Hospital in Paclisa.

The Police station X asks the Forensic Institute on the date of **14.02.2001**, to advise if, vis-a-vis the forensic examination perfomed for other acts, perpetrated within short intervals of time of the act on 28/29.04.1998, the competency of the minor defendant could have suffered modifications. *Without an examination proper of the minor*, the Forensic Institute answers that the minor maintained his competency in terms of the act committed.

At the request of Police Station X, the General Police Inspectorate advises, on the date of 13.02.2004, of the criminal record showing a number of 5 convictions for aggravated theft.

2. Finalized criminal prosecution. The criminal prosecution material was presented by the prosecutor, in the presence of the appointed lawyer, on the date of **20.02.2004.** At this date, the accused was under arrest in another case at Jilava Penitentiary.

Criminal action is set in motion and he is arraigned, by indictment, for having committed the offense of aggravated theft provided under Art. 208 par. 1- 209 par. 1, let. g, i Penal Code, on the date of **20.05.2004,** retaining the fact that the offense was committed during minority. In fact, the Public Prosecutor's Office charges the accused with the theft *of several cell phones*, estimated at 28.242.000 lei (ROL). From the statements of a witness, employed by the injured commercial company, it results the theft of *9 cell phones*. From the statements of the accused it results the theft of *7-9 cell phones.*.

B. Trial stage

Sector X Trial Court, as competent judicial body to try the case in first instance, sets the first hearing term for the date of 9 June 2004. The Court requests the Bar association to appoint a public defender. The minor is served summons at the place of detention (Jilava Penitentiary).

The hearing is adjourned, in June 2004, due to procedural flaws: civilly responsible party not summoned; mistaken summons of civil party (wrong name on the summons paper); appointed lawyer present.

At the next term, the same month, the civil party, the civilly responsible party and the witnesses do not appear. *Under these circumstanaces, the court cannot verify by hearing that the injured party maintains its civil claims, if it constitutes itself in civil party respectively*, the preliminary stage of judicial investigation.

Judicial investigation proceeds, respectively the reading of the charges as referred to the court and the hearing of the defendant. He admits having committed the ofense, stating at the same time that he disposed of the stolen objects giving them to the two adult persons (against whom no further criminal action had been ordered) who appear in the trial as witnesses.

The representative of the Public Prosecutor's Office does not insist to examine witnesses (*he does not have an active role in the judicial investigation*) and the appointed lawyer acquiesces in this position, *this not being in the interest of his client. Under these circumstances, a judicial investigation cannot actually take place*.

The court appreciates the stage of judicial investigation finalized and gives the floor for debates. The appointed lawyer only asks for a sentence as short as possible.

The court decides on a sentence to 1 year in prison, and the obligation, in solidarity with the civilly responsible party, to pay civil damages of 29.242.800 lei, as well as legal expenses advanced by the state, valued at 2.000.000 lei. The decision may be appealed within 10 days.

C. Execution of court decision

The decision remained definitive by non-appeal.

By joinder of several criminal sentences, in the year 2004, the convict has to serve 6 years in prison at Jilava Penitentiary. He filed a petition for conditional release, and on finding that the convict served 2/3 of his sentence (525 days in prison and 1462 days in pre-sentence detention), meeting the other requirements concerning behavior, the court approves the petition for conditional release.

6.2. Case study of the procedural route travelled by a minor without penal responsibility

Case: Minor under 14 years repeatedly apprehended by the police while trying to steal or after stealing a number of items from cars.

Summary description of the acts committed by the minor:

Act committed on the date of 02.10.2003. Representatives of police bodies on patrol caught the minor while trying to steal a number of items from the trunk of a car whose locking system had been broken with a brick.

Act committed on the date of 19.07.2004. Representatives of police bodies on patrol stopped four minors appearing to have a suspicious behavior.

It was found that they had participated in the theft of a purse from a car, the wallet and the mount of money in the purse having been appropriated by the minor who is the subject of the present case study.

Institutions involved in resolving the case:

Police – Police Station

Child Protection Department – of the sector with jurisdiction over the place the minor was apprehended.

A. Case resolution for the act committed on 02.10.2003

Action taken by police:

On the date of 02.10.2003, after apprehending the minor who tried to escape when police representatives arrived, he was accompanied to the police station for verifications and identification.

On the same date, police officers draft the report describing the context in which the offense was committed, the description of the minor, as well as the circumstances of his apprehension and of how he was brought in to the police station.

The report is signed by the two representatives of the police who verify that the act was committed and do not mention anything about the possible statements the minor was asked to make or his statements given at the police station.

On the same date of 02.10.2003, police draft a referral to the attention of the placement shelter belonging to the structure of the Child Protection Department and transfers the child to this shelter.

On the date of 06.10.2003, the police station drafts a memo to the attention of the Child Protection Department advising of the fact that investigations were finalized and proposing that the child be given in custody of his legal representatives.

Action taken by the Child Protection Department:

Following the memo of the placement shelter dated **06.10.2003,** by which the Department is advised of the placement of the child in the shelter, the director of the Department issues on the date of **07.10.2003** the order for emergency placement of the child in this center, for the period **02.10.– 07.10.2003.** For the same period, under the law, the exercise of parental rights is suspended (Art. 15, par.(5) of the Government Emergency Ordinance no. 26/1997, such as republished in conformity with Law no. 108/1998).

Also on the date of 07.10.2003 following the memo from the police that investigations were finalized, the child is discharged from the shelter based on a note and given in charge of his parents.

During his stay at the shelter, the child was included in a literacy group and participated in moral-civic education activities and games.

The case was not monitored by the Department after his discharge from the shelter.

B. Case resolution for the act committed on the date of 19.07.2004

Action taken by the police:

On the date of 19.07.2004, the police draft a report containing the description of the context the offense was committed, the description of the minors as well as the circumstances of their apprehension and how they were brought in to the police station.

The report is signed this time, both by police representatives and a present witness and mentions the statements given by minors in relation to the perpetration of the act.

The same day, the referral is written to the attention of the placement shelter belonging to the structure of the Child Protection Department and the child is transferred to this shelter.

On the date of 21.07.2004 the Child Protection Department is requested in writing to conduct a social inquiry at the domicile of the child, in order to evaluate the family environment the child has been brought up and educated.

On the date of 02.08.2004 the police station writes a memo to the attention of the Child Protection Department advising that the investigations have been finalized and requesting the Department to dispose on giving the child in custody of his legal representatives.

Action taken by the Department of Child Protection:

Following the memo of the placement center dated **20.07.2004** informing the Department of having admitted the child to the shelter, the director of the Department issues on the date of **23**.**07.2004** the order for emergency placement of the child in this shelter for the period **19.07.- 02.08.2004.** For the same period of time in conformity with the law the exercise of parental rights is suspended (Art. 15, par. (5)

of the Government Emergency Ordinance no. 26/1997, such as republished in conformity with Law no. 108/1998).

On the date of **23.07.2004** the mother's application is filed by which she requests the reintegration of the child in the family.

On the date of 27.07.2004 as a consequence of the fact that the child's mother indicates in her application that she resides in another administrative-territorial jurisdiction than the Department in charge with resolving the case, this institution requests the Department covering the actual place of residence of the child's family to make a social inquiry.

The Department requested to conduct the social inquiry does not respond in any way.

On the date of 02.08.2008, following the information received from the police that investigations were finalized, the child is discharged from the shelter and based on a note given in custody of the mother.

During the period of his stay at the shelter a file was opened for the child based on his verbal statements and the specialists of the Department made a psychological evaluation of the child including among other recommendations the need to ensure the child's formal education as well as child and family psychological counseling.

The case was no longer monitored by the Department, estimating that this comes under the competence of the Department covering the actual place of residence of the child's family.

C. Conclusions

- The structure of the reports drafted by the police is not even.

One contains only data referring to the description of the context the act was committed in, the description of the minor and the circumstances of his apprehension and being brought in to the police station, while the other also mentions the verbal statements of the minors in relation to the act committed; one is signed by representatives of the police, the other has also the signature of a present witness.

- The child is admitted to the placement shelter based only on the written request from the police in the absence, at the time, of a disposition of placement issued by the Director of the institution the shelter belongs to.

The disposition for emergency placement is issued retroactively to the admission of the child to the shelter and it is more of a formality to justify the child's presence in the shelter that an effective protection measure.

- In processing the case no social inquiry was made at the domicile of the child.

This situation resulted in the child's reintegration in the family without any guarantees that the family can provide adequate conditions for the child's upbringing, education and care, without knowing anything about the factors which influence or may influence the child's general conduct or about the circumstances which may have been conducive to the child's committing penal offenses.

- The case was no longer monitored by the Department it was referred to for resolution, nor was necessary data communicated to the Department with jurisdiction over the actual domicile of the child's family.

In this situation, the child will not be able to benefit from services appropriate to his needs, provided by specialized institutions, nor will he be included in possible programs to prevent the perpetration in the future of acts of a similar nature.

- The Department of child protection receives very succinct information about the verifications performed by the police.

Incomplete information is conveyed upon finalizing verifications, without specifying what the verifications consisted in, what is the solution decided in the case, if the child's parents were interviewed, informed of the acts committed by their child, etc. More detailed information shared with the Department about the action taken by police might result in avoiding overlaps and in a much more effective cooperation with relation to information about the person of the child.

CHAPTER VII- Efficiency of institutions in processing cases involving minors

7.1 Case study – Braşov

Since the plan is to set up the first child and family court in Brasov city, we thought it would be useful to conduct a study of the efficiency of institutions involved in processing minors' cases or of institutions with duties in the protection of the rights of the child. The reason for the analysis of the efficiency and capacity in human resources of these institutions was primarily to highlight the institutional requirements in view of the new specialized judicial body.

To this effect, we proceeded to analyze the actual way these institutions work, the Police, the Public Prosecutor's Offices, the Courts, the Social Reintegration and Supervision Service of Brasov Tribunal, the Child Protection Department and Codlea Penitentiary, Brasov County, with respect to the resolution and approach of cases of juvenile offenders or of cases involving minor victims.

At the level of reference points, from the discussions with representatives of the above-mentioned institutions, we found the following:

1. Brasov County Police and Brasov City Police:

At the level of Brasov Police Inspectorate, by order of the commander, one officer is assigned to work on cases involving minors. He is part of the 'Miscellaneous' Section of the Criminal Investigations Division, and is in charge effectively only with resolving cases with minor offenders and minor victims, cases of offenses in direct material competence of the Public Prosecutor's Office of Brasov Tribunal (aggravated rape, aggravated robbery, homicide, blows causing death).

The other cases, in material competence of the Public Prosecutor's Office of Brasov Court, are resolved by officers and non-commissioned officers within Brasov City Police, as generally assigned, by sections.

There is no specialized training of police workers with activities involving minors, from a psychological, sociologic or legal point of view, the activities being performed in conformity with the general provisions of the Penal Code and the Code of Penal Procedure.

There is no special room, at the level of County Police Inspectorate or Brasov City Police, with audio-video equipment, designed for interviewing, in specific conditions, minors.

In no situation are minors interviewed in the presence of a psychologist from the Department of Child Protection, but they are only assisted, in conformity with the law, by an appointed or chosen lawyer, by the parents or, in their absence, by a social worker.

As for the cooperation of Police with the Department of Child Protection, it is realized in two areas:

- at the request of criminal investigation bodies, the psychologists of Brasov Department of Child Protection prepare psychological evaluation reports of minors who are victims of sexual offenses;

- joint actions, for education and prevention, in schools, in matters relating to minors with social integration difficulties.

Among the needs of the institution for optimal processing of cases involving minors, we identified the following:

a) Material needs:

- special rooms to be set up at the level of County Police Inspectorate and at the level of Police stations of Brasov City Police, with audio-video equipment and adequate furnishings necessary for the questioning of juvenile offenders and minor victims.
- computers for special records.

b) Human resources needs:

- a Section of a specialized Bureau should be created for cases involving minors;
- specialized police workers should be assigned to work with minors, adequate specialized training courses should be organized for them.

2. Public Prosecutor's Office of Brasov Court:

The Public Prosecutor's Office operates with a staff of 18 prosecutors, out of which, actually, 4 work in the judiciary sector and 6 others in the criminal prosecution sector, each having under supervision one city police station and several rural police stations.

Form the point of view of specialization of prosecutors in working with minors, only two of them (one from the legal sector and the other from the criminal prosecution sector) participated in training courses, organized by the Ministry of Justice in Sovata, in the year 2004.

The cases involving minors are resolved by all prosecutors, in their own offices, since there is no special room, with audio-video recording equipment, or adequate furnishings.

In some cases, particularly in those where minors are in pre-trial detention during the investigations, prosecutors' request, even at the stage of criminal prosecution, psycho-social evaluation reports from the social reintegration and supervision service of Brasov Tribunal.

The statistic data regarding cases of juvenile offenders, for the year 2003, show the following:

-out of the total number of 126 cases, with 190 perpetrators, against 113 perpetrators in 75 cases the resolution was no further criminal prosecution or not to indict, 77 were indicted 51 cases. Out of the number of those indicted, 43 minors were aged between 14 to 16 years (8 in pre-trial detention), 34 were aged between 16 to 18 years (6 in pre-trial detention).

3. Public Prosecutor's Office of Brasov Tribunal:

In broad lines, it is a similar situation.

The cases involving minors are resolved by all prosecutors, there is no professional specialization of prosecutors or specific conditions.

4. Brasov Court:

All the definitive judges who try criminal cases are designated by the court president to hear cases with minors.

Cases are tried every day, there are 10 panels of judges a week. At the end of each session, on the docket of each panel minors' cases appear to be tried in that order. The same panel decides in these cases, in close session. In every situation (including during judicial proceedings concerning adults' cases), the declarations of the parties are audio-video tape recorded, in conformity with the law.

There is no court room dedicated exclusively to the trial of minors' cases. In every situation SRSS of Brasov Tribunal is requested to provide psycho-social evaluation reports of minor defendants.

Concerning the sentences or criminal law sanctions decided in minors' cases, it appears that prevalent are the sentences to imprisonment (conditional suspended sentence, suspended under supervision or to be served in detention), while educational measures are imposed only in a very small number of cases (mainly the provisions of Art. 103 Penal Code).

Brasov Tribunal:

This judicial court has proceeded to an administrative self-organization, in the sense that specialized panels of judges have been designated to try only minors' cases (2 cases a week), the respective judges deciding exclusively on such cases. These magistrates have attended professional training courses, organized by the Ministry of Justice.

The material and human resources needs are common both to courts and to public prosecutor's offices:

-as human resources – the need to designate magistrates who have attended specialized training and who will try exclusively cases with minor offenders and minor victims.

-as material resources – to set up offices supplied with audio-video equipment and adequate furnishings and to supply high performance computers.

5. Social Reintegration and Supervision Service of Brasov Tribunal:

The Service is operating out of an improper space (inadequate lighting and insufficient room), on the ground floor of Brasov Tribunal, and consists of 5 workers – 1 psychologist, 1 social worker, 1 sociologist and 2 legal experts.

The evaluation reports are prepared at the request of the courts, and, less frequently, at the request of Public Prosecutor's Offices, only for cases where the criminal action has been set in motion prior to referral to courts.

During the year 2003, 149 psycho-social evaluations reports were prepared, while in the year 2004, by the month of October, 238 reports of this type were prepared.

From the point of view of the assistance provided to minors, post-conviction, with the application of the provisions of Art. 103 Penal Code or 110 ind. 1 Penal Code, on record with the service are 9 minors, who benefit from social reintegration programs.

Starting with October 2004, SRSS Brasov concluded a protocol with Codlea Penitentiary, for the implementation of two programs:

-"Social revival of the minor – Vitamin", with the following objectives:

-optimal family relations;

-prepare for release;

-draft resumes in view of future possible employment ;

-psychological counseling.

"Social reintegration of minors and youth"

At this time, 36 minors in detention are included in the two programs.

6. Codlea Penitentiary:

This penitentiary establishment serves all the courts in the circuit of Brasov Court of Appeal.

There are two rooms for the custody of minors, each minor in detention at this time has his own bed. Room leaders are appointed from among the minors. Custody of minors together with adults has not been observed, but contact between them is possible, since they are allowed outside, together, in walking grounds, or in the corridors.

In addition to social reinsertion programs developed in partnership with SRSS of Brasov Tribunal, the psychology office, staffed with only one psychologist, implements its own program of specialized counseling.

The program of playing and sports for minors is a daily activity, one hour and a half each day, and they have the right to 4 visits and 4 packages a month.

7. Department of Child Protection:

Within the Assistance and Counseling Service of children with deviant behavior 5 specialized sections have been organized:

-Roma children;

-street children;

-delinquent child;

-abused child;

-drug and alcohol use prevention.

The sections in charge with delinquent and abused minors have duties relating to guidance, supervision and support of children with the view to their social readjustment.

Regarding minors under the age of 14 years, given the inadequate legislative framework, no welfare measures at all are taken for them. At the most, in very rare cases the minor is taken out of a criminal environment and placed in custody of the extended family or of a Placement Center.

This Department implements the following prevention programs:

-"Behavioral Models'' – in partnership with Brasov Transilvania University;

-''Child's House" – Poiana Soarelui, in partnership with several non-governmental foundations.

With respect to the cooperation with the local police, courts and public prosecutor's offices, it is realized in the following areas:

-psychological counseling and evaluation;

-joint interviews of minors, by teams consisting of a psychologist, a social worker and a legal expert.

The Department has a special interviewing room for minors, furnished with: a desk, toys, mirrors, generally creating an intimate, secure environment.

Overall conclusion:

At the present time, public institutions with duties in juvenile justice operate at minimal parameters compared to the requirements in the approach of cases, with emphasis on the acute shortage of staff specialized in working with minors and of adequate material means.

7.2 Case study – Juvenile Court, Iaşi

The Juvenile Court in Iaşi is the first court of this type in the country. It has developed by the exclusive efforts of non-governmental organizations and of the Magistrates Association of Iaşi. We believe that presenting the way this court started, as well as the costs incurred in time, may be relevant information, but also a model for the other courts in the country.

Following the experience acquired by Iasi 'Alternative Sociale' Association by the implementation of the *Pilot Probation Center* project, together with government institutions involved in the system of justice, new needs have been identified. Thus, in the year 2000 the implementation of the Iasi Juvenile Court pilot project began and, in the year 2003, this mechanism was extended to three other towns in the county: Pascani, Harlau and Raducaneni. Due to best practices obtained at the level of Iasi County in the administration of cases with minor victims and offenders, the British Embassy in Bucharest decided in October 2004 to fund the extension of this project to Botosani and Vaslui counties.

The goal of the project consisted in ensuring and complying with the standards set by national and international legal documents with respect to proceedings in criminal trials involving minor offenders and victims.

The objectives of the project consisted in:

I. Ensuring an optimal climate for the hearing and trying of cases with minor offenders and minor victims within the institutions that process these cases, police, public prosecutor's offices and courts in Iasi city and Iasi county.

This is conducive to accurate, judicious and speedy processing of cases involving minors who committed offenses and minor victims of offenses.

II. Forming teams of specialists in Iasi County (police workers, prosecutors, judges, probation counselors, social workers, psychologists) in charge with processing and trying cases of minor offenders and minor victims.

III. Reducing the consequences suffered by minor victims and their families, as well as rehabilitation of minors who committed offenses with the support of services provided by government and non-governmental institutions in Iasi County.

Training sessions:

With the view to implementing this project, 4 seminars were organized with the concerned staff, so that 70 persons (police workers, prosecutors, judges, probation counselors, social workers, psychologists) from Iasi County attended training in:

- Psychology of child development;
- The rights of the child according to the UN Convention and other international conventions;

(United Nations Standard Minimum Rules for the Administration of Juvenile Justice – the Beijing Rules, Carta Africana on the Rights and Well-being of the Child)

- Psycho-social consequences of abuse against a child;
- Child victim and child offender investigation techniques;
- Role and working techniques of the probation counselor;
- Sex offenders (typology, cycle of abuse, evaluation, etc.);
- Models of juvenile delinquency and child abuse prevention ;
- Creation of inter-institutional networks and cooperation.

Costs related to the training of staff amounted to 23,000 Euros.

In order to ensure the optimum climate for the investigation and trial of cases with minor victims and minor offenders in institutions charged with the accuracy of evidence, dispatch in processing cases and avoiding re-traumatizing the child, the following were supplied:

- 9 interviewing rooms within police stations (6 police stations in Iasi, 1 police station in Pascani, 1 police station in Raducaneni, 1 police station in Harlau);

  The police stations were supplied with: one-way looking through glass, video cameras, video recorder, DVD, TV, computers, printers, desks, chairs);
- 4 interviewing rooms within the public prosecutor's offices in Iasi, Pascani, Harlau, Raducaneni (TV, video recorder, video camera, computers, printers);

- 4 court rooms for minors (Iasi Court, Pascani Court, Harlau Court, and Raducaneni Court) supplied with furnishings, TV, video recorder, in Iasi wired for sound too.

  Costs related to supplies for interviewing rooms and court rooms amounted to 26,000 Euros.

The interviewing rooms for minors supplied with audio-video systems are useful to: tape record the statements of the minors – used as evidence, and prove how the child's statements were obtained. It is true that the current legislation requires direct administration of evidence during criminal prosecution and judicial investigation, meaning implicitly the re-examination of the minor-victim before the judge; but the existence of a tape recording obtained during criminal prosecution attests to the lawful method of obtaining the evidence. A complete description of the act may determine the judge not to order a detailed examination of the victim, being sufficient the victim's answer that he/she maintains previous statements, thus avoiding re-traumatizing the victim. Minors' cases are tried by specialized panels of judges.

Rehabilitation of minors who committed offenses and reducing the consequences suffered by minor victims are accomplished with the support of services provided by government and non-governmental institutions in Iasi county, as follows:

Social Reintegration and Supervision Service of Iasi Tribunal

- psycho-social evaluation of minors who committed offenses;
- supervision of conditional suspended sentences or suspended under supervision, the educational measure of release under supervision;
- assistance and counseling to minors who committed offenses and are under supervision of the service or in the penitentiary, provided upon their request.

Alternative Sociale Association, Iasi,

Save the Children Organization, Iasi

Mediation and Community Security

- provide social and psychological evaluation services to children who are victims of abuse and neglect, children who are victims of trafficking in human beings, for police, public prosecutor's offices, courts;
- provide psychological counseling and social assistance services;
- carry on campaigns on the prevention of child abuse and neglect, child trafficking, and juvenile delinquency;
- provide legal counseling and mediation services.

Partnerships:

Partnerships were formed with government and non-governmental institutions in order to implement and sustain the project.

The partnerships were formed around the following key aspects:

- designate specialists from partner institutions to process and manage cases of minor victims and offenders

- police workers
- prosecutors
- judges
- psychologists and social workers from partner NGOs but also from the Department of Social Welfare, Iasi

➢ make available spaces for equipped interviewing rooms, court rooms

➢ ensure the project is sustainable.

Partners:

Iasi Juvenile Court is a project initiated by the Magistrates Association of Iasi and managed by the Alternative Sociale Association, Iasi. For the implementation of this project was obtained the approval of the Romanian Ministry of Justice;

Public Prosecutor's Office of the Court of Appeal - Iasi;

Court of Appeal-Iasi;

Iasi County Police Inspectorate;

Social Reintegration and Supervision Service of Iasi Tribunal.

Collateral projects that supported Iasi Juvenile Court:

➢ *Alternatives to detention for minors*, project managed by Penal Reform International and where Alternative Sociale Association is a partner having the role to implement it in Iasi city, project funded by FDSC through Phare Acces

➢ *Community service*, project managed by Penal Reform International where Alternative Sociale Association is a partner and implemented in Iasi city, project funded by FDSC through Phare Acces

➢ *Youth against delinquency*, project implemented by Iasi County Police Department in partnership with Alternative Sociale Association-Iasi

➢ *Prevention of child sexual exploitation, labor and trafficking*, project implemented by Alternative Sociale Association in partnership with Iasi County School Inspectorate, Iasi County Police Inspectorate and funded by UNICEF Romania.

➢ *Psycho-social services for the prevention of institutionalization and rehabilitation of the child victim of abuse and neglect,* project managed by Alternative Sociale Association-Iasi in partnership with the Mediation and Community Security Center-Iasi, Social Welfare Directorate-Iasi, Social Reintegration and Supervision Service-Iasi, Metropolitan Church of Moldova and Bucovina, Save the Children Organization-Iasi, funded from ChildNet – a partnership between USAID, World Learning and NACPA

Budget and sponsors:

For the implementation of the Juvenile Court project the expenses amounted to 74,200 Euros (the contribution of partner organizations included).

➢ European Union Delegation to Bucharest, Phare Acces

➢ Legal Resource Center

➢ Know How Fund

- UNICEF Romania
- CMSC

Conclusions:

Iasi Juvenile Court project is a local initiative of the institutions involved in the system of juvenile justice, initiative whose starting point was an assessment of the needs of training, logistics and working partnerships to foster the implementation of the UN Convention on the Rights of the Child and of other international conventions ratified by Romania. A proposal of *lege ferenda* would be to introduce close-circuit television for the examination of minor-victims and minor-witnesses to avoid their contact with the aggressor in the court room.

CHAPTER VIII- MEDIA ANALYSIS

An analysis of the phenomenon of juvenile delinquency implies, beyond the analysis of the legislative framework and of institutions involved in the prevention of this phenomenon or in processing cases of minor offenders, also to approach the matter from a social point of view. This also implies an analysis of the way the issue of the child in difficulty or who committed an offense is covered by the media, keeping in mind, at the same time, the influence, the educational role respectively that they should exercise. Last but not least, there is the question of how much knowledge journalists have in the matter of juvenile delinquency and the opinions of specialists on the relations with the media.

8.1 Media analysis – stages and results

The media analysis as regards the phenomenon of juvenile delinquency includes several work stages, as follows:

- analyze written articles and radio-tv productions, published or broadcast in the period October 2003 – October 2004, dealing with child related subjects, with the view to identify juvenile delinquency issues
- analyze articles on the situation of the delinquent child and juvenile delinquency
- meetings with journalists – writers of certain materials, and interview them about the way juvenile delinquency is presented in the press
- organize and moderate a focus group with specialists in the field of juvenile delinquency to analyze their relations with the press
- analyze both the answers and the reactions of the participants
- draft a report concerning the analyzed articles, the interviews with journalists and the focus group with specialists
- conclusions and recommendations for improved cooperation between the institutions involved in the phenomenon of juvenile delinquency, social services and mass media.

For the purposes of this media analysis we reviewed over 21000 materials dealing with child related issues - articles, news, reports, programs, shows, published or broadcast during the period October 2003 – October 2004. We found an approximate average of 1700 – 1750 materials published/broadcast monthly by the 23 media channels taken into consideration. Among reviewed materials only approximately 564 deal with juvenile delinquency.

The following newspapers and radio and television stations were monitored: Adevărul, Cotidianul Cronica Română, Curierul Național, Dimineața, Evenimentul Zilei, Gardianul, Jurnalul Național, Libertatea , Realitatea Românească, România Liberă, Ultima Oră, Ziarul Financiar, Ziua, Europa FM, Radio România Actualități, Radio România Tineret (October 2003 – July 2004), Antena 1, B1 TV, Prima TV, Pro TV, Tele 7 abc, TVR 1.

The approximately 564 materials dealing with the delinquent child and with aspects directly or indirectly related to juvenile delinquency were published in the course of a calendar year (12 months) by the 23 media channels included in the study. To note that the above-mentioned publications and the radio and television stations are the ones actively involved in this matter. The average approximately 47 materials a month published/broadcast by the 23 media channels (newspapers, radio and television stations) is not indicative of a very high interest of the press for the phenomenon of juvenile delinquency.

More interest is shown though from among newspapers by – România Liberă, Adevărul, Ziua, Gardianul, Național, and Libertatea; among radio stations – Radio România Actualități, and among TV stations – Antena 1, Pro TV, Prima, Realitatea.

The covered subjects are: robberies committed by minors, burglaries, thefts, drug use and dealing, racketeering, begging, trafficking in human beings, prostitution, actions to prevent antisocial acts committed by minors, alternatives to pecuniary or custodial sentences, reeducation and social integration centers, development of the system of justice for minors, conditions in penitentiaries, surveys, reports, protocols to prevent children from being used in criminal activities, mediation between victim and aggressor, measures taken by the National Audio-visual Commission (CNA), examples and cases of juvenile justice from other countries, European programs on the penitentiary system.

With regard to the manner these subjects are presented, two tendencies appear : one is the brief, succinct presentation, without detailing the causes or effects of the acts committed by minors, and the other is to emphasize the sensational, with data and details that put at risk the very safety of the minor.

There is also a tendency to generalize, label, and even diagnose facts and phenomena by taking data and statistics and presenting them out of context. Example: on 5 June 2004, we read in 'Azi' newspaper that « robbery is the most often encountered penal offense », and that « robbers are younger and younger » (13 years old) and that they come from « dysfunctional families ». 'Curierul national' of 4 June 2004 had already presented the same information under the title « Gangs of adolescent robbers terrorize capital city », showing that in the period May-June 2004, 30 minors who had committed robberies had been identified by law enforcement officers.

To capture the attention of the public, most articles have shocking titles, or spectacular or extremely critical of the authorities, titles that are not backed by arguments in the respective published material. At the same time, pictures are published thus disclosing the identity of the aggressor or of the victim, as well as their personal data.

Generating more ample articles and generally coverage by televisions are those events or projects which imply the presence of personalities from the political, social, economic life.

We may draw the conclusion that newspapers do not have a coherent policy concerning the phenomenon of juvenile delinquency, they treat it as 'filling', while as for radio and television stations, they broadcast more current events, news, summary comments.

After analyzing the published and broadcast materials we compiled a list of journalists from leading journals, radio and television stations who cover more

frequently the phenomenon of juvenile justice, in order to interview them. The purpose of this action was to identify the problems in covering juvenile delinquency in the press and to raise awareness about the importance of research and investigation in this matter.

In the course of the following 10 days we conducted 8 interviews with journalists from: Adevărul, Jurnalul Național, Ziua, Realitatea Românească, Nine o'clock, Gardianul, Radio România Actualități, Radio Europa FM.

The questions were the following:

a. Where do you collect information about juvenile delinquency?
b. How far do you go in your research, journalistic investigation and to publish the articles?
c. What is your target audience – why and for whom do you write these articles?
d. What do you think about publishing the photo and personal data of the minor delinquent?
e. What do you think about setting up specialized juvenile courts (with staff specialized in the protection of the rights of the child – judges, lawyers, psychologists, etc.)?
f. What barriers do you encounter in publishing articles on juvenile justice?
g. What solutions do you propose for better information of the press, and implicitly of the public at large, with respect to juvenile justice, with the view to stop the proliferation of crime among minors?

Centralization and synopsis of the answers reveal the following:

a. The main sources of information about juvenile delinquency are press offices of county police inspectorates, press agencies, NGOs, the Ministry of Education, the Department of Penitentiaries, the National Institute of Statistics (NIS), the National Anti-Drug Agency (NAA), the National Authority of Child Protection and Adoption (NACPA), DPCs, the Ministry of Justice, the Internet, placement centers.

   The most frequently mentioned sources are the Police and the non-governmental organizations active in the field of child protection, specialized in juvenile delinquency.

   The answers reflect the absence of a developed information network specific to the field and of contact persons as interface between institutions and the media.

b. Some among the respondents state they go with their journalistic investigation as far as necessary, without clearly explaining what that means. They do not feel support in their efforts, claiming there is a lack of continuity in journalistic investigations, due both to editorial policy and to the bureaucracy of state institutions. Some answers are evasive, general and theoretical due to the lack of interest for the topic of the discussion, considered by some chief editors as « filling ». Articles are published having in view primarily « what sells » and sometimes they take the shape of « isolated news ». For some

journalists professional objectivity is confused with non-involvement in pursuing a case.

The answers given by journalists to this question is indicative of the lack of specialization in the field of child protection or, more specifically, of juvenile justice, and even of the lack of research on their part for objective reasons, like the way the editorial staff is organized, or subjective reasons, due to the lack of understanding of the phenomenon in its depth, with its causes and effects.

c. The target audience differs from publication to publication, but, with few exceptions, is formed mainly by parents, grandparents, children, teachers and directly interested institutions.

d. Although most of those interviewed are familiar with CNA regulations regarding the protection of the identity of a minor at risk, only some of them are convinced that publishing the picture and personal data of the minor may affect the respective minor. Some are of the opinion that reporting facts and situations is enough to highlight a case or to offer an example, while others say in an offhand manner that they do not see what the harm is in exposing a bad example, to be a lesson to others, with photo, name, address. To note are also the borderline answers between what is correct from the point of view of professional ethics and what sells, what the public, hungry for the sensational, wants, leading to a compromise on the part of the reporter who states that for him publishing the picture and personal data of the minor delinquent « depends on the gravity of the act » and in terms of that « the individual shall be penalized too ».

e. At this item, we can conclude the opinion in favor is unanimous, all bringing favorable arguments for the project to set up specialized juvenile courts.

f. Among the barriers encountered by journalists in publishing articles or broadcasting materials we can list insufficient information or details about one case or another, the editorial policy – due to lack of interest for the subject on the part of their managers, the bureaucracy of state institutions, insufficient staff to cover the complex range of social issues, the reluctance of sources to share information – generated by unpleasant previous experience with the press, and even the lack of interest of their readers for this type of subjects.

g. For better information of the press, and implicitly of the public, journalists propose:

- Regular reports (monthly, quarterly/biannual, annual) on the phenomenon of juvenile justice, with statistic data, concrete cases, causes, effects, etc.
- News Letters of directly concerned institutions
- INTERNET sites with updated information
- Informal meetings with specialists and representatives of government and non-governmental institutions, « without tape recorders and without pens », as well as meetings with juvenile delinquents, in order to obtain information straight from the source

- Releases drafted in a clearer and more attractive manner to public attention
- Partnerships with editorial staff in order to better publicize the phenomenon and the actions taken in juvenile delinquency prevention

Another stage of this media analysis was the organization, on 29 October 2004, a focus group with experts in the field of juvenile delinquency – persons who are the interface with mass media on behalf of the institutions they represent.

The topic of the focus group was: **Coverage of « juvenile delinquency » by the press**

The action was a success at least from the point of view of participation and involvement of those who confirmed their presence at the focus group. The focus group was held in Unicef's meeting room, in an informal manner, open to free discussions which lasted approximately 90 minutes, the number of persons attending being 10. They were representing APEL Foundation, NACPA, DPC Sector 4, Romanian Police General Inspectorate, Institute of Crime Research and Prevention, Ministry of Justice, Social Reintegration and Supervision Directorate, CRED Foundation, DPC Sector 5, DPC Sector 3, Jean Valjean Association for Juvenile Justice Promotion.

The discussions were recorded on tape and minidisk and had as a support the following questions:

1. What is your opinion about the way juvenile delinquency is covered by the press?
2. How far should journalists go with the research, investigation and publication of facts and information?
3. What is your opinion about the bureaucracy, felt by journalists as a barrier (not necessarily deliberate), of some institutions in releasing information as promptly as possible?
4. What are your relations with the press?
5. How is the image of the juvenile delinquent portrayed in the press?
6. Who should take notice and steps in case of abuse or infringement of the rights of the child (the juvenile delinquent)?
7. What audience is particularly interested in the growing phenomenon of juvenile justice? Who do we target in fact when we give the information for publication?
8. How could relations with the press be improved in view of concrete actions to generate positive changes in the concern and support given to controlling the phenomenon of juvenile justice?

Remarks on discussions and analysis of answers

The discussions started vigorously after the direct statement of participant C. that "the press is highlighting the sensational". As an argument for this diagnosis she gave an example of a child who after an interview given to the press noticed that his statements were presented out of context. As a consequence of this fact, cumulated with other factors, the child felt very guilty and even attempted suicide.

The shocking example given at the very beginning of the discussions set the tone for a series of accusations regarding the lack of professionalism of several journalists. There was mention of the poor research abilities of the journalists the participants had contact with, as well as their disinterest in understanding the phenomenon of juvenile delinquency in its entirety. Experts are many times asked to give figures and data, general diagnostics of causes and effects of the phenomenon, leading to the danger of generating new preconceived ideas. For instance, the public was induced to believe that juvenile offenders come from dysfunctional/broken families as if this was the main cause of juvenile delinquency.

On the one hand, presenting sensational cases or spectacular news lead to a deformed reality with regard to juvenile delinquency, and on the other hand, the superficiality, inconsistency and disinterest of those who write about this phenomenon are transferred to the public opinion. The quality of the final product is affected by the reporters' rush to get the work done. In the case of more ample reports, the participants' conclusion was that they were given more space not because of the motivation of the event but because of the presence of personalities attending the event. For instance [J.: « I have a question: why do you think those people writing about the opening of a center do it? What is the reason? I am very convinced it's about the people attending the opening and not the reasons for opening that center. Is there a need for the center or to build an image for some? »]

As to the right to privacy of the minor at risk, it is often infringed, just so that the « stuff » sells better. The absence of agencies to monitor, control and sanction the abuses in the written press was pointed out. As for the audio-visual media, CNA shows concern and makes efforts to regulate the aspects that may affect or have a negative impact on the target audience or the exposed persons.

To the question referring to the journalists' accusation of bureaucracy, the respondents answered by giving a few examples of their prompt response, refuting, partially at least, this opinion. At the same time, they indicated that it is also a problem of attitude and manner in requesting information or support of the authorities. E.g. [C: about the bureaucracy let's say things don't work as fast as they would like, but for instance I receive a fax and I ask them « when do you need it? » and they answer « yesterday ». (…) We live like in terror, « oh my, the press is coming! »], or, [G: (…) the newspaper guys insisted very much and even actually threatened us that they would write bad things about our institution.]

To the question « What is your relation with the press? » strategically asked around half way into the discussion, after all the negative examples, most participants admitted, more or less directly, a lack of communication strategies, of spokespersons or public relations specialists. There is no very clear conviction, though, that communication strategies, developed by every institution for itself, would solve the problem of the coverage of juvenile delinquency in the press.

It was pointed out that the press also assumes a punitive role on behalf of society, sanctioning every mistake and stigmatizing the minor or the youth who has committed an offense.

There were also a few slightly positive attitudes, admissions to the fact that « we need the press », or understanding for the journalist who has to cover several events in the same day, or who, contrary to his/her convictions, complies with the policy of the publication he/she works for.

With all the reservations about the image the press made for itself in Romania and about the working methods used by some journalists, there were several proposals to improve the relations of the participants in the focus group with the media, among them being : specialized journalists in certain areas of activity, develop direct connections with certain reporters and gain their attachment to the area of juvenile delinquency, select publications that show more professionalism in view of an active collaboration, create web sites, and update existing ones, to supply the necessary information to by the press, communication and PR strategies.

8.2 Conclusions and proposals

1. Although journalists are concerned about the increase of juvenile delinquency, written or radio/TV materials occupy a small proportion of the Romanian media, due primarily to editorial policies.
2. According to interviewed specialists and journalists, it can be said that, in general, the media do not have a coherent policy with regard to the protection of the child at risk, the interest shown in this field being sporadic or dictated by the conclusions of international reports, while with regard to juvenile delinquency, this is a “fill-in subject” as far as chief editors are concerned.
3. The large majority present the subjects in a succinct manner, without an overall approach of the phenomenon (with causes and effects), thus reflecting the disinterest of those who write the material.
4. Often times we encounter details that emphasize, stretching it, the sensational (titles out of context, pictures and personal data of the minor delinquent, etc.)
5. Information sources (press releases, statistics, data bases, web pages, etc.) available to the press do not take the most complete and attractive forms from the point of view of transparency and understanding of the phenomenon of juvenile delinquency.
6. There is, on the part of journalists, a tendency to generalize, label and diagnose the phenomenon which could induce the public to form a false opinion.
7. The right to rebuttal is not granted, even when there are solid grounds for it to be requested and offered.
8. There is no feedback from the public, journalists assuming that their target group should be parents and all those involved in child upbringing, education and protection.
9. The child’s right to privacy is frequently infringed by publishing pictures and personal data.
10. Setting up specialized juvenile courts is a project that journalists appreciate and support in theory, even if it is poorly publicized nationally.
11. Many specialists in juvenile delinquency have had their share of negative experiences in their relations with the press, and are convinced that this is a consequence of deficient research on the part of some journalists and of the fact that they do not approach the phenomenon in its entirety.

12. Institutions and NGOs concerned in controlling juvenile delinquency do not have communication strategies and public relations services or specialized staff in their relation with the media, to allow for a better cooperation with the press.
13. With the exception of CNA there is no other agency to monitor and sanction the abuses in the press.
14. Fighting juvenile delinquency requires the development and exercise of a two-way relation between the press and the specialists in the field.

Proposals

- Develop information networks, dedicated to the field of juvenile delinquency, including internet sites, periodic news letters and reports, case studies, information sources, resource persons
- Training seminars and workshops in public relations offered to the staff of government institutions and non-governmental organizations whose areas of activity is at the interface with the media
- Raise awareness of editorial decision-makers at middle and top management level by concluding media partnerships
- Organize informal meetings with persons directly involved in fighting juvenile delinquency and even with specialists in the field (psychologists, sociologists, social workers, legal experts, etc.) so that journalists may obtain information straight from the source
- Develop media monitoring, analysis and control programs with the view to sanction the press when it is prejudicial to the child at risk
- Organize seminars, workshops and training sessions for the journalists who wish to specialize in the area of child protection
- Develop communication strategies and campaigns specific to each interested institution.

CHAPTER IX- CONCLUSIONS AND RECOMMENDATIONS

9.1 Conclusions

In 2004 Romania there is no coherent juvenile justice system. This statement is confirmed by most of the representatives of institutions that have been interviewed, but above all it is confirmed by the reality of the contact with minors in police custody, in a maximum security penitentiary or in an emergency placement center.

Currently, we have a chapter on minority in the Penal Code, a few special provisions in the Code of penal procedure, as well as the experience of a civil society project initiated in Iasi city, developed at the level of Iasi county courts, and being now replicated in two other counties in Moldova. We also have a few initiatives of some non-governmental organizations involved in juvenile justice. It is obviously too little and this report speaks mainly of what is missing in the field of justice for minor offenders in point of a sociological assessment but also of the penal legislative and penal procedural framework.

A penal system, in this case the one designed for minor offenders, cannot function in the absence of very well organized social services. In other words, sanctioning the minor (either by an educational measure or by imposing a sentence) does not necessarily lead to his/her reform in the absence of specialized services to provide guidance, counseling to the minor, and, not lastly, where necessary, to his/her family.

In the first place, we have to start from available resources in what should be the juvenile justice system. From the point of view of human resources the current situation presents several deficiencies. One of them is the fact that all institutions (except the Bar associations) involved in the processing of matters concerning minors have generally insufficient staff in terms of the number of cases they deal with. Thus, the police officer, the prosecutor, the judge are confronted with a too heavy workload, which affects the dispatch and the quality of their work.

Another problem relating to human resources is the lack workers specialized in cases involving minor offenders, with training in juvenile justice and free of other duties relating to other types of offenses. In this respect, there is also a lack of specialists – psychologists, social workers – who may be called on whenever necessary in a minor offender case. As to knowledge, it has been found that at the level of institutional actors many are not familiar with the way other judicial systems work and are not able to give examples of best practices in the country or in other countries in the field of juvenile justice.

A third category of resources is infrastructure, which however poses a problem not only for juvenile justice but for the entire judicial system in Romania. The available spaces are neither sufficient not adequate for investigating or trying minors, there are no technical means to record the hearing of a minor, there is no computer equipment necessary to keep record of minors cases and, not lastly, the number of cars is insufficient for SRSS workers (who do not enjoy financial autonomy but

depend for funds and logistics on the tribunal they operate under) or for Child Protection Department workers to be able to travel outside the county capital city.

Secondly, we have to look at the way some representatives of the institutions involved in juvenile justice / minor offender protection perform their legal duties. Following the interviews we have conducted, the weak link in the chain of institutions involved in one way or another in cases with minor offenders is the Board of Guardians, whose obligatory social inquiries are useless since they do not contain the necessary information for the judge to get an accurate picture of the social background the minor is coming from.

The opposite is SRSS due to their prompt response to requests made by courts or penal prosecution bodies, but also due to the quality of the psycho-social evaluation reports they prepare. It is also true, however, that because of insufficient staff and the lack of motor vehicles for travel all over the county, the evaluation reports are prepared, mostly, only for the courts or penal prosecution bodies from the capital city of the county. This may result in unequal judicial treatment of the minor prosecuted or tried by a court in another town. On the other hand, the obligations imposed on the minor by the court in case of supervised release or suspended sentence under supervision are very difficult to control because of the same factors: a very low number of social reintegration and supervision counselors in the country and also because of the lack of logistic resources available to them. Not lastly, there are situations where these factors induce the judge to deny certain sentences or educational measures, which in fact are provided in the current Penal Code (such as: suspended sentence under supervision or imposing certain obligations on the minor, in case of supervised liberty or community service).

So, the conclusion may be that one of the few services performing a social and reintegration role for minor criminal offenders, while having trained staff and adequate expertise, finds itself in a position so it cannot fulfill its legal duties. In the absence of appropriate steps, the situation will become acute, when in 2005 the SRSS will be given new duties in the field of victim protection, as well as additional prerogatives, once the new Penal Code comes into force.

Besides, we have to keep in mind the fact that sometimes the procedural rights of the minor are only perfunctorily ensured, meaning they are respected on paper but not in practice. Here a number of examples could be given where the police are the main actor, but they would not be possible without the help of lawyers and prosecutors. Thus, from the discussions we have had it appears that there still situations where: obligatory legal assistance is not provided at the time hearings begin; there is no notification, from the moment a minor is held, of his/her parents or legal guardian to participate in the hearings; minors' statements are coerced through intimidation, threat or various conditions. Moreover, in many instances nobody explains to the minor what is happening to him/her and what will happen during the investigation and the trial. In the same range of aspects relating to the activity of institutions, we should also mention the suffocating bureaucracy that certain procedures imply and the rigidity of hierarchical subordination which does not leave much decision-making up to a worker who is not in a management position.

Apart from respecting the rights of the minor, there is a problem in the way the offenses they commit are sanctioned. In the case of minors without penal responsibility, the protective measures that can be now imposed by child protection departments prove to have little effect on stopping the delinquent behavior in this

category of minors. This situation comes from the fact that child protection departments do not have the power to force minors and their families to participate in counseling programs. The legislative void and the lack of social services designed for this group of children (hat is, those who commit and offense but have not attained the age of penal responsibility, or have been recognized not to be competent to judge) achieved nothing but to create the premise for delinquent behavior, so that, we find many of them, once they have reached the age of penal responsibility, in Romanian penitentiaries as "hardened recidivists". The saying that any minor, no matter how many offenses he committed, has something good in him/her, is valid only if there are specialized institutions and services to deal with him/her from the very first infraction.

Another category of minors, totally devoid of protection, from a legal and institutional point of view (considering the lack of specialized services, as well as the impossibility to refer them to such services) is that of minors on whom the decision 'no further action' is imposed, under art. 19, index 1 of the Penal Code[54], while they have the capacity for penal responsibility.

As to minors with penal responsibility, the alternatives to custodial sanctions are rather limited and, with the exception of social reintegration and supervision services or of projects developed by various non-governmental organizations, there are no community-based institutions to provide the necessary services to this category of youth, namely psychological, occupational counseling, social assistance, including post-penal assistance. Even if at declarative level minors are deprived of liberty and punished with prison only in case of very grievous offenses, in fact it happens that they may be arrested without their posing a real social danger, receive sentences - and not educational measures – uncorrelated with the gravity of their offense, and when the decision calls for a non-custodial measure or suspended sentence in many instances there is no imposition on the minors to comply with certain obligations during probation.

An important issue is that of the forensic expert's examination necessary to establish competence and which is obligatory for minors aged 14 to 16 years. In practice, forensic institutions have a very complicated procedure and they also make errors the forensic examinations. There is a legal provision[55] for the arrested or condemned minor to be examined in the presence of one of the parents or in the presence of an adult family member and in the presence of a representative of the security guards, of the same sex. The practice has shown that the forensic examination is not efficient in the presence of security staff, and the result of the forensic examination cannot be accurate taking into account the fact that the minor might be scared because he/she is under arrest, in handcuffs, and does not understand what is happening to him/her, and the explanations about the situation he/she is in cannot be understood by a child, since the examination is quick, in the presence of a representative of the security staff. On the other hand, insufficient funds allocated for the payment of forensic examinations at police and public prosecutor's office level trigger an obstruction of penal procedures due to non-issuance of forensic expert's reports by forensic institutes, with repercussions on the dispatch of the administration of justice and, not lastly, on the state of preventive arrest.

[54] The act does not pose the social danger of an offense
[55] GO no.1/2000 on the organization and functioning of forensic institutions

With regard to the child who commits a criminal offense and has no penal responsibility, there is an obvious lack of regulation to date of a specific measure that can be imposed on this category of children, as well as of adequate services for the needs of these children, both in the prevention part and the intervention part.

9.2 Recommendations

Adopt special regulations for minors and youth (up to 21 years of age) both in point of material law and of penal procedural one, that focus on the person of the minor who committed a penal offense, on the possibilities for his/her rehabilitation, and less on punishing him/her.

1. Court sessions should be closed to the public, and scheduled on days when matters involving minors are tried exclusively;
2. Appoint special panels of judges to try cases involving minors at the level of all courts and ensure the possibility to further their career in this line of work with minors;
3. Create both at the level of the police and of the public prosecutor's office specialized teams to process cases involving minors;
4. Training of all those who process cases involving minors: police officers, prosecutors, judges, but also social reintegration and supervision counselors and lawyers; an optimal solution would be to create multidisciplinary teams including police officers, psychologists and social workers (social services) to take over a minor from the moment he/she has been identified as the perpetrator and to look after him/her throughout the course implied by the investigation and trial of an offense.

Argument

The new Law no. 304/2004 on judicial organization stipulates the gradual establishment of child and family courts by the year 2008. At that time, these courts will have competency as first stage judicial bodies in minors, civil law, family or penal cases, operating therefore as first courts. As to appeal, the law does not specify the judicial bodies where it can be exercised, therefore, in theory only two possibilities are left: one is the possibility of appeal to the tribunal of common law and final appeal to the court of appeal, and a second possibility of appeal to the court of appeal and final appeal to the High Court of Appeal and Justice (very unlikely). Still, the law stipulates the gradual establishment, by 2008, of these tribunals, having during this time competency over those cases which would be under the competency the tribunal of common law. In other words, in penal matters will be tried only grievous offenses (homicide, rape, etc.), property-related offenses, statistics showing them to be the most frequent, and they will be tried in judicial courts too. Law 304/2004 does not provide for specialized panels at judicial courts, but only at tribunals and courts of appeal. It follows that, until 2008, most minors will be tried by unspecialized judges (at judicial courts, since most minors cases are here), while for the appeal and final appeal they will have specialized panels.

On the other hand, setting up child and family tribunals implies the existence of separate headquarters, logistics, support staff, etc. We appreciate that the priority is to ensure specialized staff in cases involving minors at justice system level rather than to establish formal specialized tribunals. Moreover, statistics do not show a higher number of minors cases at judicial court level, so to establish such structures is not imperative.

In order that a coherent penal policy be developed in juvenile justice, we have the following recommendations:

5. **Introduce diversion measures**, at the beginning, as an alternative to judicial proceedings (it implies penal procedure modifications): mediation, restoration, including by doing work, contracts drawn with minors upon proposal from social services (agreed to by children, parents and penal prosecution bodies) leading to a conditional acquittal by the court;
6. Create specialized social services, under each tribunal, employing psychologists and social workers, who look after the minor starting from the penal prosecution stage or transfer this competence to Child Protection Departments and SRSS.
7. Regardless of the offense committed custodial sentences to be served in special institutions for minors and youth.
8. There is a need to set up community centers designed for juvenile delinquents, where they would come regularly for various activities and where to be provided assistance and counseling services;
9. Set up shelters for minors to replace police custody or the penitentiary when the measure of preventive arrest is imposed, as well as medical-educational institutions and post-penal assistance services.
10. Adopt such procedures as to avoid multiple interviews of minor victims, accept audio-video recorded evidence and statements;
11. Supplement, to this effect, the budgets of the police and of the prosecutor's office for purchasing the equipment for the interviewing room, but also for prompt payment of forensic expert's reports;
12. Introduce the obligation to summon the parents or the legal representative of the minor at the criminal prosecution stage (not leaving it up to criminal prosecution bodies);
13. Establish a medical care specialized service for children, part of which being a forensic section with special competency defined by a special law, with specialized staff in working with minors (psychiatrists and psychologists).
14. Increase the number of social reintegration and supervision counselors and increase the budget of these services;
15. Eliminate social inquiries conducted by the Board of Guardians in favor of those conducted by the SRSS; clearly regulate the duties of the Board of Guardians in the processing of cases involving minors, to avoid overlapping of duties.

Comments: it is necessary to make a judicious correlation of the services provided by Child Protection Departments, and those provided by SRSS in connection with

the duties of the above-mentioned social services, including from the point of view of evaluation reports of the person of the minor.

16. Develop a monitoring system of the progress in time of every juvenile delinquent who enters the justice system or the protection system of the child in difficulty.
17. In order to implement the new law on child protection, it is imperative to implicate all the institutions with duties in the enforcement of the standards set forth in the law, as well as to ensure their cooperation with respect to reviewing current working methodologies, internal norms and procedures to make sure they are consistent with the principles that underlie the respect and guarantee of the child's rights;
18. With regards to the issue of the child who commits penal acts and does not have penal responsibility we consider that it is necessary and timely to make provisions for an **effective processing procedure of these cases** as well as to develop legal standards required for the cooperation between the Department for Child Protection and the Social Reintegration and Supervision Services operating under the tribunal;
19. Establish clear and specific prerogatives to and define the intervention of the two institutions in the sphere of juvenile delinquents with a view to ensuring a speedy solution to their cases, taking the most appropriate decisions and proving specialized services for social reintegration as well as preventing the phenomenon of juvenile delinquency;
20. Develop a strategy for the prevention of juvenile delinquency, by directly involving all competent institutions in the field.
21. It is necessary to expand training in graduate and post-graduate education in juvenile justice, child psychology and criminology; minors issues should be taken much more into consideration when higher education curricula are drafted, not only for law schools, but also for other studies with relevance in this sense, and subjects dealing with children should be considered as rigorous and interesting from an intellectual point of view as the others.
22. Develop practical guidelines manual for police officers, prosecutors, judges and social workers involved in juvenile criminal justice;
23. Take a large number of steps, including recommendations to the media to prevent stigma and marginalization of children whose behavior is not consistent with social standards, since it has been found that if a child is labeled as a delinquent or as having deviant conduct, this label may unintentionally contribute to that child's anti-social behavior.
24. To prevent incidental offenses local committees for crime prevention should be formed, including children, educational and social services, volunteer groups, representatives of the community, of the police and of magistrates. Involving children in such groups is important since very often we forget the fact that they may be victims of crime. The committees are important because they provide means of communication and make sharing of resources possible;
25. Carrying and using weapons by the staff in detention institutions for children should be forbidden: the notion of institution refers also to parts of the

institutions, so that in case children are held in special areas within police stations, their staff shall not be allowed to carry weapons in the respective areas;

26. Engage practitioners in all efforts to initiate reform in the criminal justice system (judges, prosecutors, police officers, social reintegration counselors, social workers, psychologists).

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The study has been made possible thanks to UNICEF Romania technical and financial assistance with funds kindly provided by the Governments of The Netherlands - MATRA Program