

Study on the pathway of a juvenile delinquent through the criminal justice system

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BACKGROUND AND SCOPE

The situation of delinquent children in the criminal justice system has always been a concern for the national authorities and the civil society and, therefore, efforts and reforms have been undertaken in Moldova in recent years to protect this sensible actor in the criminal justice system.

Although the outcomes of those efforts have not been as good as expected and some of the challenges have even exacerbated, the professionals working with delinquent children are clearly willing to address the existing systemic and legal gaps.

This study makes an updated detailed inquiry into the legislation and the real situation of children in conflict with the law in Moldova, and highlights the existing gaps in legislation, system shortcomings and also the positive issues that could be taken forward.

The purpose of this study is to provide a clear picture of the pathway of a delinquent child through the criminal justice system. It has been initiated by the representative office of Terre des hommes Foundation – Lausanne in Moldova (TDH) and highlights the forms of interaction between the juvenile delinquent and the criminal justice system under the applicable legislation, which, despite constant amending, still requires revising. The study is part of the regional initiative *Child Protection Hub for South-East Europe* (Childhub - <http://childhub.org/>), which promotes continuous improvement of child protection practices and policies in the South-East Europe through participation.

The study makes an analysis of the existing legal and institutional frameworks, efficiency of the criminal procedure safeguards, intervention policies in juvenile justice sector, performance of professionals, the issue of the street children and children under the age of criminal responsibility, drawing on statistical data, real cases, the views of the actors that deal with the children who were interviewed during investigations. The study goes over the amendments made to the criminal and criminal procedure legislation focusing on the most questionable and common issues faced by practitioners, and spotlights the legislative and systemic gaps, which prevent the justice system actors and social services from undertaking practical and efficient interventions required to meet the best interest of the child.

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The study also provides specific recommendations related to the criminal proceedings and process, and general recommendations to improve prevention of juvenile delinquency both among the children who have and who have not yet reached the age of criminal responsibility.

RESEARCH METHODOLOGY

The following research methods were used:

- Analysis of the national criminal and criminal procedure legislation on juveniles.
- Analysis of the statistical data collected from law enforcement agencies (General Prosecutor's Office, Ministry of Internal Affairs, National Inspectorate of Probation, National Bureau of Statistics and others).
- Analysis and inquiry into the positive and negative practices applied to children who have to deal with the criminal justice system; case studies, performance reports and relevant investigations.
- Questionnaires on the criminal proceedings involving juveniles developed by practitioners (lawyers (4), judges (6), prosecutors (3), criminal investigation officers/ district police officers (3), probation officers (1)).
- Interviews with the representatives of various sector institutions and NGOs: Office for Child's Rights (UNICEF); Ministry of Labor, Social Protection and Family; Municipal Department for Minors; Institute for Penal Reform.

STRUCTURE

Chapter I Insight into the criminal and criminal procedure legislation on juvenile delinquents.

Chapter I inquires into the criminal and criminal procedure legislation on juvenile delinquents, the international standards and the key principles of a child-friendly juvenile justice system and into the latest amendments to the national legislation.

Chapter II. Preventive measures applicable to minors

Chapter II makes a thorough analysis of the procedural measures which limit the juvenile's right to freedom, the way these procedural measures and restrictions are applied, the existing gaps against the 2014 -2015 statistical data.

Chapter III. Delinquent child – subject to criminal liability

- *Children under the age of criminal responsibility*
- *Children who have reached the age of criminal responsibility*

Chapter III includes a differentiated analysis of the juvenile delinquents in Moldova - the ones under the age of criminal responsibility, who often are street children, and the ones who have reached the age of criminal responsibility, in terms of the social influencers and the interventions of the relevant government agencies.

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Chapter IV. Difficult procedural issues in criminal cases involving juvenile delinquents

- *Criminal investigation stage*
- *Trial stage*

Chapter IV goes through the procedures for examination of cases involving juveniles at criminal investigation and trial stages, highlighting the current issues related to compliance with legal procedures, the amendments that are necessary to prevent traumatization of children by the state agents.

Chapter V. Actors of criminal proceedings involving children

Chapter V focuses on the actors of criminal proceedings who interact with the children, the peculiarities of such interaction, the tasks of the involved professionals.

Chapter VI. Criminal and legal issues related to the application and execution of punishments for juvenile offenders

Chapter VI goes over the types of punishments that are applicable to juvenile offenders and when such punishments are applicable; the procedure and the way punishments are applied by state institutions; the possible interventions to improve the juvenile rehabilitation measures.

CONCLUSIONS AND RECOMMENDATIONS (Chapter VII)

Chapter VII contains general conclusions and recommendations as to what measures are required to address the gaps and issues highlighted in the study.

How could the criminal proceedings involving juveniles be improved?

The children of today, including offenders, are the adults of tomorrow.

A society that wants a good future for its citizens has to make the utmost and unconditional efforts to protect children against any abuse or negative external risks.

This study brings to light the uncertain situation of juvenile offenders in the Moldovan justice system, both in terms of safety and protection and of their future within the society.

The lack of clear protection measures for juvenile offenders, insufficiency of social services to prevent juvenile delinquency, lack of a legal mechanism for placement of the juveniles who are in conflict with the law, in need or at risk, lack of continuous rehabilitation and psychosocial counseling services and of a separate specialized justice system for investigation and judicial examination of cases involving juveniles and, last but not least, lack of a national policy and a long term action plan to address juvenile delinquency issues – all these shortcomings reveal a quite alarming picture.

The recommendations relate to the criminal proceedings involving minors and to the work of the institutions responsible for taking appropriate legal measures.

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General recommendations to address juvenile delinquency issues in Moldova

Institutions in charge: Ministry of Justice; Ministry of Labor, Social Protection and Family; Ministry of Education in cooperation with civil society experts.

1. Conduct thorough research to get an understanding of the causes that made the number of serious offences increase among juveniles; formulate recommendations and identify immediate actions to address these causes.
2. Identify and create institutions to design and implement probation and psychological rehabilitation programs.
3. Design a single national long-term policy to coordinate the juvenile delinquency prevention measures and delimitate clearly the tasks and responsibilities of the professionals dealing with juveniles.
4. Conduct thorough criminological research to identify the reasons that made the number of offences surge among the juveniles under the age of criminal responsibility; formulate recommendations and identify immediate measures to prevent them in future.
5. Draft community team intervention plans, indicating the steps that every tutelary authority/district commission for juveniles has to take in relation to the children at risk in order to prevent juvenile delinquency.
6. Create placement centers for street children to offer immediate education, cognitive-behavioral intervention and psychological counseling programs, as well as sector centers to offer specialized services to children and their families.
7. Create a work group of representatives of the authorities involved in prevention of juvenile delinquency, sector NGOs to identify measures to prevent risk situations for vulnerable children and temporary and long term placement measures.
8. Deliver targeted training to the actors in criminal justice system (criminal investigation officers, prosecutors, lawyers, judges etc.) in protection of children's rights.
9. Promote and encourage mediation in the cases involving minors so as to help parties reach amicable settlement of cases, to rehabilitate the victim and help the child become aware of the committed offence and take the consequences in order to never do it again, as well as because amicable settlement could be an additional mitigating circumstance when sentencing the juvenile offender.
10. Deliver ongoing training and monitoring of the quality of professional competence in court proceedings on cases involving minors for judges, prosecutors, lawyers and other practitioners in order to improve the skills required to work with juveniles.
11. Expand the network of lawyers specialized in juvenile delinquency all across the country; to deliver ongoing training to them in a multidisciplinary format together with criminal investigation officers, prosecutors, social workers, educators/psychologists and to identify practical ways to work as a team.
12. Deliver general training to translators/interpreters to acquire the required skills to communicate with the children, given their crucial role in the interaction between the child and the criminal investigation personnel.

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13. Promote and deliver training in compulsory application of educational measures for children by prosecutor/court as a result of the extrajudicial procedures (exemption from criminal liability).
14. Design and implement permanent probation programs for minors (counseling, education) to help establish a mechanism for ongoing supervision and work with the children at risk or juvenile offenders at community level.
15. Train legal experts in juvenile delinquency and psychology issues to improve their expert reports.

Recommendations pertaining to the criminal investigation of cases involving juvenile suspects

Institutions in charge: Ministry of Justice; Ministry of Labor, Social Protection and Family; Ministry of Internal Affairs; General Prosecutor's Office; National Council for State Guaranteed Legal Aid; local governments in cooperation with civil society experts.

1. Establish social services entitled to immediate action, which could replace the interaction of the children under the age of criminal responsibility with the criminal investigation personnel.
2. Identify solutions to encourage the criminal investigation officers to efficiently and immediately apply the procedural safeguards provided by the law for the juvenile suspects; to create teams of professionals available in rotation to intervene in cases of emergency.
3. Deliver ongoing professional and complex training (in legal and psychological issues) to police personnel (district police officers, investigation officers, criminal investigation officers) and ensure their specialization and detachment to handle cases involving minors.
4. Deliver ongoing training to police personnel in application and compliance with the child protection measures and ensuring of the rights and interests of minors during the arrest procedure and other criminal procedural actions.
5. Deliver training on cooperation and coordination of activities in a case involving a minor between the criminal investigation officer and the prosecutor who leads the criminal investigation.
6. Deliver training to police personnel and develop specific skills required to work with juveniles.
7. If detachment of police staff to specialize in working with children is not possible, there have to be prosecutors that are specialized in all types of cases involving minors.
8. Carefully select, based on pre-set performance criteria, the district police officers who are the first level in the criminal justice system to deal with juvenile delinquents, as well as the police personnel who will handle the cases involving minors, to have all the appropriate skills at hand required to adopt an individual communication approach with the minor.
9. Consider creating teams of professionals, psychologists and educators to help police officers act most professionally and carefully when handling minors (e.g., approach should be tailored if the interrogated child is rebel or, on the contrary, reticent).
10. Identify all cases of undocumented arrest of minors and take action against police officers through regular inspections undertaken by prosecutors from the Prosecutor General's Office and through the application and efficient and transparent operation of the e-arrest program launched by the Ministry of Justice as part of the Justice Reform Strategy.

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11. MIA / GPI should have a common position on the orphan suspects or suspects without parental supervision and identify appropriate interventions to avoid the risk environment and place them in relevant institutions (centers, sector NGOs) according to an agreed action plan.
12. Extend the list of lawyers in the National Council for State Guaranteed Legal Aid who are specialized in cases involving minors, and assign a specialized lawyer for emergency legal aid during nighttime according to approved schedules.
13. Make sure there are translators available in police inspectorates during nighttime (one full time position, increasing the number of positions or contracting translation companies etc.).
14. Put in place a viable mechanism to enable the prosecutor who has been notified that a minor has been arrested to check the conditions of arrest.
15. Encourage and enhance the use of the mechanism introduced by art.184/474 of the Criminal Procedure Code – transferring a juvenile under the supervision of parents/legal representatives, management of the education institution. To develop a plan of active and quick cooperation with the tutelary authority to provide information on the persons responsible for supervising the minor.
16. Improve the preventive measure in the form of prohibition to leave locality in order to improve compliance with it, clearly explaining the consequences both to the child and the legal representative.
17. Replace preventive detention and custody of children with electronic monitoring with the help of a bracelet to be worn by juvenile offenders, which will help localize and monitor them.
18. Design and put in place an efficient complaints mechanism for juvenile offenders in detention.
19. Consider reactivating the Shelter for Minors for temporary placement of juveniles arrested and placed in custody instead of placing them in pretrial detention penitentiaries or building a temporary detention center according to international standards with financing from the government and external partners to meet all the needs of the minors and provide psycho-pedagogical and educational counseling services.
20. Redesign the preventive measures for juveniles to standardize and tailor them to the child's needs and to allow for their detention in detention centers which offer intensive educational programs (e.g. Romania, France). Some of the preventive measures that are provided for in the Criminal Procedure Code are not applicable or efficient in the cases involving minors (personal guarantee or bail, provisional release on bail or judicial review and others).
21. Introduce compulsory participation of the psychologist during the meetings for review of prosecutors' requests to apply remand.
22. Make sure the child suspects get clear and accessible information about their rights in a friendly manner.
23. Mandatorily use the rooms fitted out in a child-friendly manner (in inspectorates, prosecution, court) in the proceedings involving juvenile suspects (not just victims and child witnesses) in the institutions where such rooms exist.
24. Inform and explain clearly their rights in the presence of a parent/legal representative.
25. Train and clearly separate the roles and tasks of the legal representative from the tutelary authority, teacher, and psychologist during their work with juveniles in criminal cases.
26. Employ more staff for the Child Safety Bureaus to deal only with the cases involving minors, without having to handle cases involving adults; to draft local training plans for the community/rayon intervention teams (professionals, local doctors etc.) for any emergency involving juvenile delinquents or children at risk.

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27. Identify ways to have the psychologists/educators of the Departments for Protection of Child's Rights join the criminal investigation officers for instance after 5 pm, according to a schedule, similarly to public defenders; to revise the job descriptions of the psychologists of the district Psychological Assistance Services (PAS) to include the assistance tasks of the criminal investigation officers in the proceedings involving minors and, therefore, to ensure proper salaries.
28. To encourage decriminalization of the cases involving children at the criminal investigation stage, for instance through exemption from criminal liability and coercive educational measures (art.483 CPC), conditional suspension of criminal investigation (art. 510-511 CPC), exemption from criminal liability and application of administrative sanctions (art.55 Criminal Code), exemption from criminal liability due to voluntary abandonment of a crime (art. 56 CC), exemption from criminal liability due to active repentance (art.57 CC), exemption from criminal liability due to change of situation (art.58 CC); to draft a law to allow for the application of extrajudicial procedures (art.55-58 CC) as exceptions for minors, their application for serious offences or for twice committed minor or less serious offences which do not pose a significant threat to the society.
29. Revise the job description of police personnel (with more focus on the CSB personnel) and introduce clear provisions on the duties and possible interventions in the cases involving street children, children in conflict with the law.

Recommendations pertaining to the trial stage

Institutions in charge: Ministry of Justice; Superior Council of Magistrates; National Institute of Justice; Supreme Court of Justice; Prosecutor General's Office; National Council for State Guaranteed Legal Aid; Union of Lawyers; local governments in cooperation with civil society experts.

1. Create a working group to review the national regulations and make a comparative analysis with other countries' practices of application of criminal punishments to minors in order to identify a distinct category of criminal punishments for minors in the Criminal Code.
2. Monitor the examination of cases involving minors by courts in order to assess whether they are examined as a priority and without delay.
3. Draft a new concept paper on the designation of experienced judges, with appropriate specialization, through an order of the court's president to examine the cases involving minors.
4. Examine the arrest warrants for minors at the Court of Appeal Chisinau separately from the adults involved in the case and other detainees on remand, who are usually escorted and held in the room of the Court of Appeal.
5. Have the cases involving minors examined on a priority basis and in the shortest time possible; it is recommended to have consecutive meetings for examination of cases, in order to avoid as much as possible postponement of the meetings for a long time (e.g. Norway, NORLAM Moldova already has a ready concept and rules for organization of consecutive meetings for the Moldovan courts).
6. Encourage and clearly recommend to the judge to inform, explain and check if the educator or psychologist knows his/her rights and obligations in court.

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7. Standardize the judicial practice of application of maximum and minimum sentences to minors for particularly serious offences and extremely serious offences involving violence.
8. Encourage as much as possible replacement of imprisonment with placement of sentenced juveniles in special placement centers, where professionals with appropriate and complex qualifications will work with them at different levels and for a longer time in order to reduce the risk of relapse and help the juveniles adopt a pro-social behavior and reintegrate in the society.
9. The trial participants should give up wearing the gown during the examination of cases involving minors.

Recommendations to amend legislation

Institutions in charge: Parliament of Moldova; Ministry of Justice; Superior Council of Magistrates; National Institute of Justice; Supreme Court of Justice; Prosecutor General's Office; National Council for State Guaranteed Legal Aid; Union of Lawyers; local governments in cooperation with civil society experts.

1. Develop and adopt a legislation regulating the status of children under the age of criminal responsibility who committed an offence.
2. Abrogate the provisions on the specialized education institutions from art. 184 CPC, which has not been revised as part of the latest legislative amendments (*LP123 of 02.06.16, MO232-244/29.07.16, art.492*).
3. Amend the Family Code, Criminal Procedure Code and the Civil Procedure Code to provide for the issuance of an emergency ordinance by judge to take the street child at risk/in conflict with the law to a safe place (this could be closed, semi-open or open placement centers for emergencies/or for minors in conflict with the law as in European countries – e.g. Sweden).
4. Amend the Law no.140 of 14.03.2013 on the special protection of children at risk and children separated from parents to allow for immediate interventions in exceptional cases, in the best interest of the child, in the case of minors without parental supervision or at risk, without undermining the right to freedom and safety, as well as the parents' right on children.
5. Review the Law on police and status of policeman no.320 of 05.03.2013 and make the appropriate amendments clearly stating the duties of a policeman in relation to the minors at risk and juvenile delinquents to also include coordination with the interventions by the tutelary authority.
6. Forbid the fact-finding entities to take statements from minors under art.273 par.2) CPC, and interrogate during nighttime, with no exceptions (art.104 CPC), by amending the Criminal Procedure Code,
7. Introduce prohibition to involve minors under the age of criminal responsibility in any legal proceedings and amend CPC to clearly state the duties of the entity responsible to work with minors.
8. Amend the provisions of the Criminal Procedure Code on the mandatory participation of the legal representative and educator/psychologist in all legal proceedings involving minors (art.479-480 CPC). In the best interest of the child, the presence of the educator or psychologist during all the legal proceedings involving a juvenile offender or at least in the case of certain categories of offences should be mandatory: e.g. in case of serious offences, particularly serious and exceptionally serious offences, as well as offences involving elements of violence.

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9. In the best interest of the child, the participation of the legal representative in all criminal proceedings involving juvenile offenders (art.480 par.2 CPC) should be mandatory. Art.480 par.3) CPC should be amended to introduce **the obligation to explain** to the legal representatives their rights and obligations, similarly to art.479 par.3 CPC for educators and psychologists.
10. Entitle the educators and psychologists with appropriate qualifications to intervene actively and on a case by case basis in the criminal proceedings involving minors and allow them to inquire into the criminal case and have a prior discussion with the minor.
11. Introduce compulsory psychological counseling of juveniles during criminal investigation, trial and after a verdict is announced in order to avoid re-victimization of the child and reduce the negative effects of participation in criminal proceedings.
12. Regulate the psychologist's status, role and interventions in the Criminal Procedure Code.
13. Amend art.476 CPC on mandatory splitting of cases involving juveniles from those involving adult offenders.
14. Amend art.511 CPC to introduce the prosecutor's obligation to apply coercive educational measures to the juveniles whose criminal investigation has been conditionally suspended.
15. Mandatorily involve the juvenile who has been applied conditional suspension of the execution of punishment (art.90 CC) in the probation program.
16. Extend through law the right of the probation counselor to use other counseling methods (social, psychological, educational) when handling juveniles (who have been applied educational measures like warning, obligation to not change domicile) in order to rehabilitate and reintegrate them into the society.
17. Amend the Law on probation extending the prerogatives of the probation counselor so as to include the prerogative to submit requests or suggestions to involve juvenile offenders in educational programs if this has not been done by prosecutor or court.
18. Amend the Criminal Procedure Code, Law Enforcement Code and Law on Probation so as to allow the probation officer to prepare a post-sentence report, a psychological assessment of the juvenile to assess the status of his/her psycho-emotional development while serving the sentence and, therefore, to make sure the juvenile has an adequate development status on release from prison.

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