

FOREIGN DELINQUENT MINORS
JUDICIAL PROCEEDINGS AND REHABILITATION MEASURES

BULGARIA

- By Mr Roumen Kirov & Mr Rumen Georgiev Georgiev -

A - APPROACH OF THE LEGAL AND JUDICIAL, HISTORICAL AND STATISTICAL CONTEXT OF DISCRIMINATIONS, CONCENTRATED ON FOREIGNERS AND DELINQUENT FOREIGNERS

Difficulty in defining the term “foreigner”

Legal definition¹

In line with prevalent law, every person who is not a citizen of Bulgaria will be considered as a foreigner. In the same way, this holds true for every person who does not possess the effective nationality of any state in line with the nationally prevalent laws and who is holding an official document certifying his quality as stateless person.

In the framework of this report, it is appropriate to define a special category of citizen, distinct from the precedent: that of applicants to asylum (asylum as refuge, protection). Article 7 of the Law on Foreigners provides that the status of foreigner, applicant to asylum or beneficiary of the status of refugee shall be defined by a law or special code. According to the Convention of the United Nations on the status of refugees of 1951, the Protocol on the status of refugees of 1967 and the Acts of the UN High Commissioner for Refugees, those persons are commonly known in Bulgaria as “persons fleeing danger”(refugees).

Bulgaria accords the right to asylum to foreigners persecuted on behalf of their convictions or due to activities they promote in favour of internationally acclaimed rights and liberties, according to dispositions of Art. 27, § 2 and 3 of the Constitution and according to the Code on the right to asylum and of refugees.

Up to 2002, the legal definition to “refugee“ has been as follows: “foreigner fearing to be persecuted for reasons of race, religion, nationality, affiliation to a particular group within society or due to his political convictions, and who is situated outside of the country of which he is a national, or who, being stateless, is situated outside the borders of his country of residence and who, for all these reasons, cannot or does not wish to benefit from the protection offered by his country or does not want to return. Refugees are also the spouses of individuals fleeing their country and their minor children (children having not yet attained legal majority), if particular circumstances do not prevent this.”²

In 2002, the new law on the right to asylum (protection) and on refugees introduced the concept of “applicant to asylum“as follows: “an applicant to asylum is a person who, before an organism of the State, has declared that he wishes to benefit from special protection conferred by this law, up to the end of the procedure and up to the point in time when this decision enters into force.“

A special state agency for foreigners has the function of allowing for that protection (accorded by the Bulgarian State) to come into being.

Bulgarian legislation respects the highest norms in this field, with particular regard to the amendments to this law, having come into effect in 2006.

Protection means: - asylum, - status of refugee; - a status allowing to benefit of humanitarian aid, - temporary protection.

The right to asylum is accorded by the President of the Republic, and it is possible to benefit from interim protection in the case of massive arrivals of foreigners based on decision by the Council of Ministers. Two other forms of protection are provided by the national agency abovementioned. The law determines the procedure to adhere to and the status of individuals concerned. These rights are equally conferred to “family members“ - spouses, young children, if they are not married, as well as the parents of each of the spouses, who are incapable for reasons of age, serious illness or invalidity and have to live at their children's residence. Foreign isolated minors, who are situated on the territory of the Bulgarian Republic and who have no member of the family, in direct line up to the second degree and also collaterally up to the third degree, accompanying them, are particularly taken care of by the authorities.

The refugee shall leave his country if reasonable fears for persecution persist. The person emigrated does not necessarily have to fear for his life; it is rather a situation of seeking a means to get out of misery, better working conditions and increased life conditions.

The fundamental characteristic to the concept of “foreigner“is the absence of Bulgarian citizenship. Naturalisation is obtained by a petition on this behalf addressed to the President of the Republic via the Ministry of Justice. Possessing citizenship of yet another country is no obstacle to the acquisition of Bulgarian nationality. One of the necessary conditions is to have permanently resided in the country for a period of at least 5 years, starting with the day the petition is issued to the Ministry. This condition is not requested for persons of

¹ Article 2 of the Law on Foreigners in the Republic of Bulgaria

² The law (Code) on refugees has been replaced in 2002 by the Code of right to asylum and of refugees.

Bulgarian origin, of whom one parent as well as his/ her spouse is Bulgarian, or also refugees. In accessing Bulgarian citizenship, the individual does not lose his original nationality or his affiliations – may they be ethnical, religious or linguistic affiliations. Freedom of conscience and thought are inalienable rights³; Bulgarian citizens are free to become attached to or adhere to groups of minority.

1. The definition of foreigner and the interdiction to discriminate

Bulgaria is a participating country to the 1953 UN International Pact on Civil and Political Rights, of the Convention for the Protection of Human Rights and Fundamental Freedoms and all other Conventions on Human Rights. The principles to these Conventions - that all men are created equal, with equal dignity and rights, and that every restriction of that right or privilege, based on race, nationality, ethnic identity, gender, origin, religion, education, ethical convictions, political orientations, personal or social status or property status is prohibited, are constitutionally⁴ and also historically persistently defended.⁵

Starting from this basis, the general principles apply: While foreigners being on the territory of the Republic of Bulgaria have all rights and obligations as laid out in the Constitution, there are also rights and obligations for which the Constitution and the laws require Bulgarian citizenship e.g. regarding active political rights (participation in elections) as well as passive electoral rights. There is also a specific law for protection from discrimination, which regulates protection against all forms of discrimination.

Bulgaria is also a tourist destination country and a country with large transit-migration flows. The upcoming EU-membership defines Bulgaria's visa policies.⁶ Permanent residence permits for Bulgaria are issued under the following conditions/ for the following groups of persons:

- Individuals being of Bulgarian origin;
- Individuals married to a Bulgarian citizen or to a foreigner who is permanently residing in the country;
- Children or parents of Bulgarian citizens or of a Foreigner who is permanently residing in the country;
- Persons who have resided without interruption on the territory of the country for the last 10 (6) years;
- Foreigners in possession of a work permit (work visa) from the Ministry of Labour and Social Affairs;
- Foreigners exerting a regular, duly registered business activity.

Permits are issued and withdrawn by the Ministry of Interior and by the Ministry of Foreign Affairs under conditions and rules defined by the law, following a procedure which includes possibilities to appeal to an independent judicial body. Police statistics for 2005 maintain that 54,000 foreigners in Bulgaria are in possession of a permanent residence permit; some other 8,000 persons have permits which allow them to stay for more than 90 days.

2. The Concept of Foreigner and Cases of Violation of the Law

Equality as regards rights between Bulgarian citizens and foreigners means also equality as regards obligations. Foreigners are subject to civil, administrative and penal legal responsibilities just like Bulgarian citizens, unless in a special law or an international treaty to which the Republic of Bulgaria is party, something else has been stipulated.⁷ This principle pertains to all foreigners, including minors/juveniles.

3. The Concepts of “Minor/Juvenile” and “Foreigner” in Cases of Violation of the Law

In Bulgaria, the law stipulates that a person who reaches the age of 18 years is considered to be an adult; this provision is valid for everyone. Individuals younger than 14 years of age are defined as “minors” and those from 14 to 18 years as “juveniles”.⁸ This legal definition, based on the differentiation of natural persons, is an expression of the concept of different degrees of responsibilities in the field of civil and commercial law; it demands that persons are treated differently according to their varying legal responsibilities.

³ Art. 37 of the Constitution

⁴ Art.6 of the Constitution

⁵ In the Constitution of 1879 is proclaimed: “Any slave from whatever sex, faith or nationality, the moment he steps on Bulgarian territory will be freed (art.61, par.2)”. Bulgaria harbored Armenian victims of genocide and also refugees (fugitives) from the Russian Revolution from 1917, and saved Bulgarian Jews from the holocaust.

⁶ A decision of the Council of Ministers of 1997 states that EU-citizens, as well as citizens of Iceland, Liechtenstein, Norway, Switzerland, USA, Japan, Canada and Israel holding legal passports are authorized to reside on the territory of Bulgaria up to 30 days without visa.

⁷ Art.6, Law on Foreigners in Bulgaria

⁸ Law on Persons and Family

The notion “crime”, which includes the aspects of guilt and intent, presupposes the ability to do so. Therefore, an act of a person who is not yet 14 years old cannot be a crime. The citizenship of the person (Bulgarian or foreign) does not matter in such cases. In Bulgaria, a person who is not yet 14 years old cannot be liable for criminal acts. With a view to minors (younger than 14 years) who are perpetrators of antisocial dangerous acts, only educational measures⁹ can be effected, even in the case of a crime (even murder).

Criminal majority of natural persons applies to age 18 and over; those individuals are thus responsible in case of having committed a crime.¹⁰

A juvenile person (aged between 14 to 18 years) is criminally liable if possessing discernment, (able to understand the essence and the meaning of his actions) and has the capacity to control his actions as well. Juveniles who cannot be prosecuted may be placed via court order in an educational or any other appropriate institution, if need be. Whenever the criminal liability of juveniles is examined, special proceedings are imposed¹¹.

The age threshold to penal majority is an important feature in different legal systems. It may be compared to the definition of “child” under international law.¹² A number of factors are taken into account, including a possible definition to “acceleration”. Conditions on behalf of provisions by the law can be influenced by the age and maturity of the delinquent.¹³

Regardless of citizenship, every foreigner is liable for violations of the Bulgarian law in line with these common criteria and with the age criteria. Art. 3 of the Penal Code applies to “all crimes committed on the territory of the Republic of Bulgaria”; no matter which citizenship the perpetrator has, whenever a crime is committed on the territory of Bulgaria, its Penal (Criminal) Code (CC) will be applied, the perpetrators who are not yet 18 years old being treated differently from adults.

B - STATISTICS

1. Preliminary explanation

Statistics in Bulgaria provide data on incriminated foreigners and on incriminated juveniles, separately for each group. This is true as regards national statistics reflected in the reports of the National Statistical Institute (NSI) and also as regards statistics of other relevant organisational bodies/institutions.

The general rules on the treatment of indicted adult defendants and sentenced criminals foresee some specific rules for foreigners. They enjoy additional rights and guarantees, for example that their Embassies and/or Consulate services are notified, or also guarantees to avail themselves of interpretation services in all phases of the criminal procedure, compulsory legal defence services, etc.; cases involving foreigners are separately accounted for in the statistics.

In conclusion, the statistics available in Bulgaria in the field of criminal law provide data on juveniles and also on foreigners, but not on persons who are both at the same time: juvenile foreigners.

2. Statistics of the Prosecutor’s Office: Indictments of Juveniles¹⁴, Sentences and Follow-up Measures

The total of criminal cases against juveniles at the Public Prosecutors' Office amounted to 5410 in the year 2005. Out of the total of resolved cases in the year 2005, 2607 were brought to Court following an indictment; 796 were concluded in line with Art. 61 of the Criminal Code (CC).¹⁵

⁹ Art. 32 of the Penal Code (Criminal Code)

¹⁰ Art.31, par.1 of the Penal Code

¹¹ Art.31, par. 2 and 4 of the Penal Code

¹² See the Convention on the Protection of Children and also the Bulgarian Law, according to which children are persons under 18 years of age

¹³ In Bulgaria, during the 70s there was a case of a juvenile who, just having reached the age of 14, murdered 3 children under the age of 6 years.

¹⁴ Source annual report of the prosecution for 2005 - I-6

¹⁵ Art.61 (1): With respect to an underage person having committed a crime which does not constitute a considerable social danger, and maintaining that the minor was carried away by circumstances or thoughtlessness, the prosecutor may decide to refrain from preliminary proceedings or to terminate proceedings altogether, given the successful application of educative measures, pursuant to the Fight Against Antisocial Acts of Minors and Underage Persons Act. (2) In such case, the Court may impose an educative measure, informing the local Commission against Antisocial Acts of Minors and Underage Persons, or forwarding the court file for imposition of such a measure. (3) If the prosecutor decides not to institute preliminary proceedings or to put an end to proceedings which are already commenced, he shall send the case file to the Commissions who in turn shall impose a measure of education.

Chapter Two of the Criminal Code defines the different crimes committed against individuals: 273 juveniles were summoned to court with indictments (194 in 2004) out of whom:

- 3 sentenced for capital murder (6 in 2004);
- 1 person for murder in the second degree (7 in 2004);
- 5 persons for unintentional homicide (2 in 2004);
- 129 persons for bodily injury (medium level) (73 in 2004);
- 6 persons for kidnapping and unlawful deprivation of liberty (2 in 2004);
- 12 persons for lewd acts with an underage person;
- 9 persons for lewd acts with a juvenile;
- 6 persons for rape of a female minor (5 in 2004);
- 47 persons for rape (33 in 2004).

During 2005, 3474 juveniles were indicted for criminal offences against property (3566 in 2004):

- 494 for theft;
- 1984 for designated thefts, among these 131 recidivist cases;
- 413 for robbery (397 in 2004).
- 111 juveniles were indicted for hooliganism (66 in 2004).

As regards crimes committed in a generally dangerous manner, 419 juveniles were indicted (317 in 2004):

- 108 for vehicle theft (99 in 2004);
- 168 for drug trafficking (94 in 2004).

3. Jurisprudence related to Criminal Cases against Juveniles in 2005¹⁶

The courts have treated 3213 cases against juveniles, including follow-up sessions to proceedings that have started in preceding years; 3883 juveniles were sentenced as follows:

- 488: imprisonment¹⁷;
- 1771: imprisonment with a postponement of the punishment, Art. 66 of the PC (so-called “conditional sentencing”)¹⁸;
- 27: educational measures (placement in an Educational Boarding School (EBS)).

In all other cases of less severe educational measures, they have been imposed in line with the Control of Juvenile Antisocial Behaviour Act (CJABA).

Since 2002, the rule of law stipulates that in case the trial period of a conditional sentencing exceeds 6 months, a probation measure is imposed. As regards conditionally sentenced juveniles (juveniles sentenced on probation), i.e. whenever imprisonment has been postponed, the local commissions (constituted according to the rules foreseen in the CJABA) effect educational measures in the municipality of the juveniles' place of residence.

4. Statistics on Juveniles and Foreigners of the General Directorate in charge of the Execution of Punishments, Ministry of Justice

These statistics provide data on all imprisoned and detained individuals. Included are also indicted individuals and those minors and foreigners ordered to be arrested during the pre-trial phase by the court. Detainees are referred to detention facilities or youth prisons.

¹⁶ Source annual report of the prosecution for 2005

¹⁷ A specialised reformatory

¹⁸ Art.66,Par.1-2 of the Penal Code

Table 1

Year	Juveniles (regardless of nationality)	Foreigners (majors)
1996	135	80
1997	171	70
1998	148	69
1999	148	190
2000	123	156
2001	88	136
2002	104	155
2003	127	191
2004	122	207
2005	140	219
2006	122	247

Data until May 2006

No specific statistics for juvenile foreigners are available; the production of these specific statistics can only be effected via an evaluation on every case - be it an educational or criminal case - by various departments of several ministries; this has come to be regarded as an unrealistic effort due to the project deadlines¹⁹.

5. National Statistics: Summaries founded on data from the Police Department for Registration, Data from the Specialized Administration: Central Commission for Combating Juvenile Delinquency (CCCJD), local Commissions and Child Counselling Services (CCS) at the Ministry of Interior

The national statistics do not provide data for a variable of “foreign juveniles”. The category “children that have passed through CCS” registers juveniles who have committed minor offences. In these cases, the intervention of the social practitioners / inspectors from the CCS is rather prophylactic and incidental. Quite often, the situation is improved and the necessity for additional measures has declined, but there are as well many cases of deterioration due to the persistent delinquency problem; consequently, the children enter the next category of account at the CCS.

The children that have passed through CCS should be differentiated from another group, determined by the law as “children at risk”, which consists of:

- a) Children who do not have parents or who are permanently without their care;
- b) Children who are victims of violence, exploitation or any other inhuman or humiliating attitudes, as well as punishment at the hand of persons who are no members to the family;
- c) Children subjected to impairing behaviour on behalf of their physical, psychical, moral, intellectual and social development;
- d) Children suffering from mental or physical damage or difficulties to access appropriate medical treatment.

The notion “child at risk” employed by the respective administrations has to be differentiated from the group of minors under supervision of the Child Counselling Services.

Antisocial behaviour should be differentiated from violations of administrative rules. In Bulgaria, administrative responsibility (violation of administrative norms²⁰) starts with the age of sixteen²¹. Those above sixteen and under eighteen are administratively responsible only if they do not lack discernment and possess self-control. The incorrect evaluation of this capacity to discernment would result in a revocation of the administrative act by a court appeal.

¹⁹ The authors asked for information regarding the reformatories of Sliven (for girls) and of Boichinovci (for boys) as of 1996.

²⁰ The most common are traffic violations, regulated at the hand of many administrative laws. Jurisdiction imposes sanctions in case of infractions, most often as a fine. Possibilities to appeal exist. Since the 1960ies, hooliganism is punished severely with detention. The few punished juveniles are usually football fans.

²¹ Law on Administrative Violations and Sanctions, Art.26, par. 1 and 3. According to the second text instead of those under sixteen answer their parents or guardians if they have intentionally allowed the breach.

6. Perspective of the national statistics

The differences between the different Commissions mentioned beforehand are no obstacle to a thorough analysis of the problem. CCCJD is an interdepartmental body headed by a vice-president who participates in the function of vice chairman in the prosecution, the investigation and other phases of the judicial proceedings.

In 2002 (after amendments to the Judicial System Act²²) directed by the Ministry of Justice, the investigation services, the Public Prosecution and the Courts, as well as the Ministry of Interior (MI), the Ministry of Defense (MD), and the Ministry of Finance (MF) engaged in a common effort (sustained by a legal obligation) to establish and support a Unified Information System for Combating Criminality (UISCC).

The aim of the system is the creation and support of interdepartmental databases wherein every criminal case will receive a unique number which provides for the possibility to control and follow the cases from department to department. This shall enable the administration to pursue each case for a lifetime. In the National Investigation Service (NIS), the first subsystem of the UISCC was started on 10 May 2006.

C - CONSIDERATION OF VARIOUS AND ALSO DISCRIMINATORY ASPECTS: POLICE TREATMENT IN A SOCIOLOGICAL PERSPECTIVE, RELYING ON THE ANALYSIS OF CRIMINAL CASES, IN CONSIDERATION OF LINGUISTIC AND CULTURAL OBSTACLES AS WELL AS DIFFERENCES IN VALUES

1. Preliminary Comment

In this analysis, we assess the evaluation of the phenomenon relying on empirical data, sustained by research effected in the fields of psychology and criminology, in evaluation of legal regulations and their aims, the level of implementation as well as interaction of the socioeconomic and political factors.

2. Antisocial conduct of minors (juveniles) in the general context of prevailing criminality in Bulgaria

Until the 1980ies, Bulgaria was one of the calmest countries in Europe. The structural changes at the beginning of the nineties were accompanied by a negative impact: a four- to fivefold increase in registered criminality. The problem was of considerable political weight and consequently overexposed by the media. Despite the subsiding of the tidal wave of criminality, public opinion had been radicalised and expressed its unwillingness to accept such an increase in criminality; politicians imposed permanent changes which were aimed at increased penal pressure. For the period 2000-2005, Bulgaria was spearheading the growth in prisoner population within Europe, plus 21% , followed by the Netherlands with 10%, Greece with 9%, Sweden with 8%, Belgium with 5%, Spain with 3%, Great Britain with 1%, Germany and France with 0% and Italy with minus 5%. Bulgaria has 152 prisoners as per 100 000 residents on its territory. The constant increase of legal sentences leads to severe punishments of 3 to 5 years in detention. Bulgaria and Romania take the lead in Europe with a medium punishment of 19 months. During 2004, 25% of the sentences entered into force one year after the crime was committed. Bulgaria continues to be under the medium coefficient for victims of crime for Europe with actual levels of 12,9%, compared to 15,6% in 2004. The comparative study of criminality for 2002 also places Bulgaria well with a coefficient of 1710 criminal cases per 100 000 people (for 2005, numbers were 1541).

In spite of differences in methodology for registration and level of latency to criminality, these statistics show that the increased pressure in penal affairs is off the point and carried way too far²³.

Bulgaria has a demographic problem: since 1997, the group of young men of 15-29 years (assessed as “high-risk” group, attributing as perpetrators to 60-70% of the total of crimes), decreases annually at a level of about 45 000 people (5%). Prognoses have maintained that due to the decline in birth rates, this trend will continue up to 2013²⁴.

The relative share of crimes committed by minors (juveniles) is reflected in the following table:

²² Judicial System Act (JSA)

²³ This is **not the official position** in this context, but the point of view of the authors.

²⁴ Cited in report 29 of the Center for the Study of Democracy

Table 2 - Crimes committed by juveniles²⁵

Year	Number of crimes	% solved crimes	Number of perpetrators	% the established perpetrators	Number of crimes per perpetrator	Number of perpetrators per crime
1996	9597	11.1	11853	15.0	0.81	1.24
1997	11432	10.9	14638	14.4	0.78	1.23
1998	6462	7.6	15475	14.6	0.42	2.39
1999	5685	6.8	5264	8.6	1.08	0.93
2000	9963	13.0	6506	9.4	1.53	0.65
2001	11230	13.9	6776	9.8	1.65	0.60
2002	11453	13.0	7679	10.1	1.49	0.67
2003	11846	14.0	7864	11.1	1.51	0.66
2004	11980	13.8	8437	11.4	1.41	0.70
2005	11038	13.2	7929	10.9	1.39	0.71

As can be seen at the hand of table 2 above, the number of crimes committed by juveniles remains relatively constant at a level of about 11% (taken from the total number of resolved criminal cases).

On this behalf, it is important to note that particular statistics are supplied for children under surveillance of administrative and specialized agencies who manifest anti-social behaviour (encompassing a variety of misdemeanours) and are at risk in particular situations.

Table 3 - Minors registered in CCS– incl. minors under the age of 14

Year	Total number of registered by the CCS	Child Population in Bulgaria (8-17years of age)	Coefficient of registered minors by the CCS / Number per 100 000 (8-17years of age)
1996	25 141	1121486	2240
1997	25 949	1101530	2360
1998	24 975	1081389	2310
1999	20 096	1058743	1900
2000	18 522	1103720	1680
2001	17629	1063299	1660
2002	17817	1025698	1740
2003	17877	900086	1990
2004	18019	859396	2100
2005	17390	918290	1839

3. Basic factors to determine antisocial behaviour and offences committed by Juveniles (minors)²⁶

In a study requested by the CCCJD, criminogenic factors relating to antisocial manifestations of minors are put forward, without considerations of ranking:

- Socio-economic factors: low standard of living, unemployment, poverty;
- Criminological: criminogenic background of family and friends, resulting in negative attitudes with consequent antisocial and criminal conduct; irresponsibility, parent impunity, negative attitude towards legal and social norms;
- Socio-pedagogic: deficits in the upbringing and in certain cases total lack of family up-bringing, low social control, inadequate discipline to keep up with school demands, misdemeanour in class, running away from school, lack of pedagogically adequate provisions of school services, lack of civil education and inability to handle situations of risk;
- Cultural: propaganda of violence, pornography (incl. Child-pornography) and children's uncontrolled and harmful access to these media via internet, etc., thereby destroying their value system and ideals; so-called mass culture with its cynicism and vulgarity; limited possibilities to access activities of leisure;

²⁵ Source – the National Statistical Institute, data from the MI

²⁶ Source Annual Report of the CCCJD for 2003

- Personal: socio-psychic deformation, deficits in moral and emotional values, inadequate self-control, copycat conduct resulting from demonstrations of criminal behaviour by criminal protagonists, trauma due to conflictual relationships in the family or due to a lack of family life, deformations in the value system, a strive for self-confirmation by committing acts of violence, deviant behaviour and lack of tolerance.

CCCJD monitors the dangerous grounds manifesting these factors, which are not only problems in themselves but presuppose an education of children who consequently become even more antisocial in conduct and in acts of criminality than their parents. Most important manifestations of this are:

- Use of narcotics;
- Prostitution;
- Vagrancy, mendicancy and lack in control.

Bulgarian society has grown to be sensitive of these issues, after a period of very limited criminal activities followed by an explosion of similar phenomena in the 1990ies. Stabilization of criminal activity has proceeded on an elevated level. What causes concern and finds expression in each of the annual reports is the absence of progress, despite a multitude of measures and programmes implemented by the State and NGOs.

It is important to note the prevalence of organized international criminal groups in all of the three spheres mentioned above; these groups engage in illegal activities with substantial profits. This angle of the problem increases the urgency of the situation and is a reason to evaluate related victimisation of youths.

In matters of drug trafficking and in the course of the 1990ies, Bulgaria has evolved from a country of transit to a country of destination; in this context, it is noteworthy that the method of effecting payment to drug dealers consists in a distributive system called “fishing”, - inciting youths to participate in the criminal net. Research shows the persistence of the phenomenon – 41,8% of pupils and students in Sofia declare that they can easily buy marijuana or hashish. Recent research shows an increase in use among girls. While experts and practitioners of law maintain that the low effectivity of measures addressed to this situation is a problem, actual legislation stipulates that every purchase of drugs is persecuted.²⁷ The additional problem of child prostitution is merely reflected in part by statistics of the CCS.

Another factor of criminal stabilisation at an unacceptably high level exists on behalf of children without adult protection who have been under supervision of asylums/orphanages and specialized centres. Long-term planning and a variety of measures, differentiated among Bulgarian regions for the adjustment to particular situations, have been effected to alleviate the matter. Evident are the efforts of the newly established State Agency for Child Protection (SACP)²⁸, which has important control, signal and preventive functions.

4. Types of Juvenile Offenders

4.1 Psychological Features²⁹

Adolescence (8-17 years) encompasses the completion of biological maturity of the organism and the first stage of socialisation of the personality. In consideration of this premise to the penal status and the susceptibility to profit from adequate counselling, evaluations have demonstrated that every single case of delinquency among juveniles requires a particular approach of professional care or corrective influence. This is especially relevant on behalf of so-called “difficult children”- with delayed social adaptation and children suffering from nervous and psychic breakdowns.

Research addressed to juvenile offenders has shown that their delinquencies are to be seen in relation to fundamental attitudes and feelings of spite, dissatisfaction, hostility, loneliness, fear and mistrust. If individuals do not develop self-esteem and the capacity to differentiate good and bad, their social activity is effected in

²⁷ During 2004, paragraph 3 of Art. 354a of the PC was revoked, providing non-punishment of addicted individuals given the quantity of drugs acquired, kept or transported was limited to a one-time usage. With its abolition, every purchase became punishable with sentences of up to 15 years of imprisonment. Naturally, real life application of the law did not allow for the imprisonment of all addicts. At the moment, new legislation has been evaluated by the National Assembly. The motivation to the amendment resulted from public opinion and anxiety for decisive action; nevertheless, even before the promulgation of the law it was evidently inappropriate.

²⁸ The Child Protection Act (Law) is in accordance with the UN Convention. In the State Agency for Child Protection (SACP) Report for 2005, the problem is analyzed, showing that 663 mendicant and street-hustling children were registered as in need of special protection. 49 children were spotted more than three times at the same “working place”. Measures of family insertion were predominant. 82 were placed in institutions; two in foster families, 6 were placed with relatives. A measure of weekly social counseling has been applied. 95 cases were closed as resolved. In 25 cases the Public Prosecutor was notified.

²⁹ Sofia State University “Saint Kliment Ohridski”, Law faculty, Course on judicial psychology, division 7.

parameters of negativity, below zero. The inferiority complex acquired at adolescence may result in a behaviour called “retrism” – escaping life by drugs, alcohol, suicide attempts. Very frequently, juveniles enter criminal groups with hierarchic structures, who are imposing distorted and often cruel “inside rules” of conduct. These psychological specifics impose a totally different modus operandi for investigation. In cases against juveniles, a very important factor is the clarification of their life, family and social background, etc. That is why the NIS has realised information leaflets and recommendations.

4.2 Socio-psychological profile of the so-called risk type³⁰

According to statistics, boys constitute 2/3 to 3/4 of the offenders, although recent evolutions change this ratio due to an increase in female criminal activity.

The low educational level is the second marker – 20 % of offenders are illiterate and 72,6 % have merely attended primary school.

50-65 % of the children come from an unfavourable family background (criminogenic, inadequate with acute social and economic problems); 9 % are children of a sentenced parent; 6.7 % do not know their parents; 40-45 % of the offenders had already been registered with the CCS and 10% of them were the object of more than one educational case;

The same percentage (10-12%) relates to children who do not attend school (2004-2006; this percentage was seriously decreased due to measures applied by the Ministry of Education (ME)).

5. Juvenile Offenders – the Ethnical Angle

5.1 Differentiation by ethnical criteria does not mean discrimination. To clarify this assessment is important because of political speculation. In Bulgaria, discrimination is prohibited and punishable in all forms. Scientific analysis looks for an answer to the question why an ethnical group of Bulgarian citizens (non-foreigners), who may for example be called XXX and constitute A % of the population, has a criminal activity of 4-7 x A%. This analysis takes cultural barriers, different ways of life, moral and value systems etc. into account. Relying on these data, a broad range of programmes is planned and realized, aimed at prevention, based on the notion that it is possible to overcome the differences in differentiating social assistance.

The consideration of politics in this context of evaluation would result in faulty conclusions, it would entail the conclusion that ethnical group XXX is “more punished” and thus (faulty conclusion) more “discriminated”. Such views are nevertheless proclaimed on both sides, so-called “defenders of ethnical XXX” and their counterparts - “savers of ethnical Bulgarians”, in considering the offer to assistance as “privileges” to XXX that would belong to another and vice versa.

5.2 Criminal Activity of Juveniles – in consideration of the ethnic perspective

As it has been maintained before, every Bulgarian citizen can freely decide his identical affiliation with one or the other ethnicity. On the basis of the last census (2001), statistically important (more than 0.5%) are Turkish Bulgarians (4%) and Roma (2,5%). Other ethnicities - Jews, Armenians, Russians, etc. - are situated far below the statistical threshold. Birth rates do not remain even and the difference is increasing. In 2001, the ethnical composition of the children's population (8-17 years) was as follows: of 997 572 children, 77,2% were Bulgarian, 12,2% Turkish and 8,4% Roma.³¹

All of the children are Bulgarian citizens, equally subjected to the same jurisdiction. In the same way, foreigners of the same age group were treated for offences for which Bulgarian jurisdiction is applied.

The excessive differences in ethnical symptoms point to different levels of antisocial activity, as becomes obvious in the following table:

³⁰ Researches cited form reports of CCCJD 2000-2004- dually on shown as 40-45% parameters

³¹ Source NSI, data based on an analysis of CCCJD for the year 2005

Table 4: Report on Accounted for in the CCS Juveniles, Differentiated by Ethnic Groups

Years	Total		Ethnical Bulgarians				Ethnical Roma				Ethnical Turks			
	Passed	Accounted	Passed	%	Accounted	%	Passed	%	Accounted	%	Passed	%	Accounted	%
1996	-	25141	-	-	15958	63	-	-	7638	30	-	-	1389	5
1997	-	25949	-	-	16105	62	-	-	8222	32	-	-	1471	6
1998	11788	24975	6609	56	14415	58	4431	37	8822	35	651	5	1510	6
1999	11709	20096	6325	54	10618	53	4545	38	7846	39	714	6	1455	7
2000	10303	18522	4965	48	9295	50	4534	44	7722	40	704	7	1289	7
2001	10322	17627	5277	51	9386	53	4357	42	6846	39	629	6	1318	7
2002	11070	17817	5822	53	9583	54	4380	40	6903	39	803	7	1196	7
2003	13196	17877	7187	54	9545	53	4785	36	6877	38	1117	8	1265	7
2004	13343	18019	7413	56	9433	52	4719	35	7003	39	1077	8	1370	8
2005	12407	17390	6909	56	8677	50	4414	36	7386	42	1016	8	1162	7

The regional study allows for even more categorical conclusions, as in Bulgaria, the disparity between the levels of criminal activity of the Roma population in comparison with the other youths is much stronger in the belt established by the regions³² with compact Roma population. This imposes a criminological analysis of ethnical factors providing information of the antisocial activities of the juveniles:

5.3 Criminological Analysis of Ethnical Factors in relation to the Antisocial Activities of Juveniles

Underage ethnical Turks (Bulgarian citizens) are most numerous of all children (in relation to the number of births) and show a relatively low criminal activity. According to the perception of a large group of researchers, this result is owed to patriarchal values which are prevalent to a large extent, early insertion into the job market, etc.

On the contrary, the criminal activity of the Roma minority is 4 to 7 times more elevated than that of the other groups. This may be due to the specificity of culture, lifestyle, moral values etc. The establishment of early marriages before legal majority, in the case of young girls of 14 years of age or less, results in early pregnancies without the possibility for girls to prepare themselves for the tasks of motherhood and parental responsibility. Quite frequently, young girls have had more than one of these early relationships before the legal age of marriage (18 years of age) and have become mothers more than once. In fact, this deprives them from education and qualification and strongly limits their future chances and their potential insertion into the labour market. Often, this is joined with a nihilistic attitude towards institutions and values of commonly recognized norms³³. Education is less valued as a way of social self-realisation in comparison to other ethnical groups.

These specific factors remain important. The engagement in activities, which are destined to counter such phenomena, signifies a re-enforcement of social defence mechanisms and realising the scope of educational problems. It is a fact that more than 40% of the social budget are directed towards these 4% of the population. Assistance to this ethnical group is among the priorities of numerous NGOs. The social success of many Roma who have become doctors, experts and assembly members is often quoted as an example to these efforts in assistance.

³² For example - Vidin, Montana, Pazardjik, Pleven, Sliven, Haskovo and others.

³³ For example the existence of the so called "meshere" special tribunals by respected persons on behalf of the ethnic groups the ethnic group, which resolves family, civil, labour and other disputes on the basis of specific customs. Cases have been established in which this "justice" is relied on instead of the official one. For this reason, information about severe crimes is hidden or perjury is committed against somebody chosen to be the beast of burden.

Within certain groups the phenomenon of "purchasing" brides has been observed, the price depending not only on her qualities, but also on the results of an "exam" in pick pocketing. Also practices of intentional mutilation of newly born were reported so that they become professional beggars. Sometimes a sort of "training" in activities such as theft/fraud" was encouraged. New phenomenon's are the cases of "selling" babies effected abroad where the "buyer" of the baby usually recognizes it as his own or poses as an adoptive. The price usually depends on the gender of the baby, boys being 2-3 times more expensive.

D - JUDICIAL FRAMEWORK AND RIGHTS OF MINORS (DIFFERENT RIGHTS AND DISCRIMINATORY ASPECTS OF JUDICIAL PROVISIONS)

The principle of equality for all citizens (and foreigners) guaranteed by the Constitution and the prohibition of all kinds of discrimination are successively transposed into legislation and practice.

1. The Legal Framework for the Ban of Discriminations

1.1 The Constitution and the ratified Framework Convention for the Protection of National Minorities (Strasbourg, 1.II.1995) predetermine a multitude of norms which are included in a series of laws that guarantee equal rights to every person, regardless minority group affiliations. For example all procedural laws - the Civil Procedure Law (CPL), Penal Procedure Law (PPL), Administrative Procedure Law (APL) and Tax Procedure Law (TPL) - provide norms that ensure that an interpreter as well as translation services from Bulgarian into other languages are provided (e.g. for blind or deaf-mute persons, etc.). The Criminal (Penal) Code (PC) forbids discrimination. There are also norms with further guarantees in the Higher Education Law (HEL), etc.

1.2 In September 2003, the Law on the Protection against Discriminations was adopted; it entered into force on 01 January 2004. The law provides for the establishment of a Commission for Protection against Discrimination. Detailed information on the Commission's activity and all the information on its establishment can be found in its first annual report.

1.3 A number of institutions are in charge of implementing the Constitution and laws (in full accordance with European standards on human rights and protection against discrimination), the most important ones being:

a) The National Assembly:

- Commission on Human Rights and Ecclesiastical Matters
- Commission on Civil Society Matters

b) The Council of Ministers:

- The National Council on Ethnical and Demographic Matters (NCEDM), - a mixed governmental body established on 04.12.1997. Its purpose is to provide consulting and cooperation services and to coordinate between government bodies and NGOs with the aim of elaborating and implementing a national policy regarding ethnical and demographic matters as well as regarding migration.
- All ministries have concrete tasks in the field of administration in relation with the councils on ethnical and demographic matters.
- There is further a Council on Ethnical and Religious Matters, which is directly attached to the President.

1.4 A number of NGOs also work in the same field.

2. The Legal Framework to the Protection of Children's Rights

The State assists in the education of children up to their majority (18 years) in spite of the fact that this is fundamentally a parental right and obligation. Children are equal in rights, regardless of whether the children are born in or out of wedlock. In cases of children who do not benefit from any kind of familial support, special protection is provided by the state³⁴. In 1991, Bulgaria has ratified the UN Convention of 1989 on Children's Rights. The Child Protection Act (CPA) of 2000 constitutes the most commonly applied legal instrument. It regulates the rights, principles and various child protection measures, defines competent authorities of the State as well as the role of municipalities and their coordination in the application of child protection activities and also regulates the participation of natural and legal persons in the implementation. The State's policy on child protection is defined by the National Strategy on Children, adopted by the National Assembly. The coordination of the policy implementation is effected by a specialised body, the SACP; an Action Plan defines the areas of responsibility for different departments. There is also a Road Map for the Implementation of the UN Convention on Children's Rights (2006 - 2009)³⁵.

3. Legal Framework for the Protection of the Rights of Juvenile Perpetrators of Crimes and Antisocial Activities

Until today, the prevention of and the fight against antisocial conduct and serious offences of juveniles are based on the following policy: the National Strategy of 13.01.2003 and the corresponding Plan of Action for

³⁴ Art 47 par 1, 2 and 4 of the Constitution

³⁵ www.sacp.government.bg/downloads

2003 - 2006, adopted on 28 November 2003 by the Council of Ministers. In order to improve the work of the CJABA-Commissions (Control of Juvenile Antisocial Behaviour Act), a comparative evaluation of laws and best practices was carried out in the Assembly³⁶. Evolving from this inquiry, amendments of the CJABA were undertaken in 2005. Until 2009, a 30% decrease in antisocial conduct is to be effected. Completely reformed legislation is prepared to be developed in the course of 2007. Debates are elaborating on concepts for the implementation of specialised “juvenile courts”, for an improvement in professional skills for magistrates, for a re-evaluation of investigations directed by magistrates in cases of crimes committed by juvenile perpetrators, for improving the educational measures taken for the sake of correction. These are ideas de lege ferenda (what the law ought to be). CJABA (lex specialis) has recently come into force, and the specific regulations in the CCP, CC, Implementation of Penal Sanctions Act (IPSA), and other relevant laws provide measures and guarantees. In practice the accent is in favour of minimizing repression and promoting prevention. The law thus provides disciplinary measures on behalf of parents who do not adhere to their responsibilities and can hence be reprimanded or fined in case of juvenile offences resulting from a situation of abandonment. Participation in seminars as well as consultation services or unpaid labour for the benefit of society are additional measures. Specialised control (surveillance) measures can be applied to situations of risk in case of a juvenile participation even if the offence is minor. In most of the cases, educational and consulting programs are implemented as follow-up measures after proceedings. In cases of increased gravity, a special jurisdiction (a body of the local commission under special law) may impose the educational measure, also provided that the deprivation of liberty is postponed (conditional sentencing). The proceedings in relation to educative measures are carried out “in camera” and in the presence of a trusted representative or advocate³⁷. The participation of a representative of the social services, psychologists, psychiatrists or the child's teacher is possible. Jointly with the advocate of defence, the commission assures judicial control³⁸. The minor or as well his representative have the right to appeal within a period of 14 days.

3.1 Alternative Measures³⁹

Alternative measures take the rights and interests of the child into consideration; they provide for a gradual applicability and can be grouped as follows:

- Measures of moral character: a reprimand (Art.13 P.1 of the CJABA) and a reprimand for possible assignment to a reformatory with a probation term of up to six months (Art. 13 P.12);
- Measures connected to placement under observation – the minor remains in the custody of parents or foster parents with instructions for special care (Art.13 P.4); placement under the supervision of a person taking care of the child's education – up to one year (Art.13 P.5);
- Measures connected to a limitations of rights – prohibitions to access particular locations (Art.13 P.6); to associate with certain individuals (Art.13 P.7) and a prohibition to leave the place of residence of up to one year (Art.13 P.8);
- Measures destined to impose certain obligations on the offender – an obligation of apology to the victim (Art.13 P.2); to repair the damage done (Art.13 P.9); to compensate property damages if the juvenile has means of his/her own and the damage evaluation does not exceed the minimum monthly wage in the country (Art.13 P.10); to effect a community service which is not to exceed 40 hours and which is adjusted to the juvenile's age, education, health status and other factors of importance;
- Measures connected to assignment in a specialized institution – assignment to a Social School Boarding House (SSBH) (Art.13 P.11) or assignment to a reformatory (Art.13 P.13)⁴⁰.

The last group of measures is intended to evoke a rupture between the juvenile and his family in case this contact is damaging to the child. The gradation of these two specialized institutions is effected in accordance with age and the level of the necessary correctional influence. SSBHs are for juveniles with relatively lighter offences, while assignment to a reformatory is for those over 16. Both types provide elementary or secondary school education. The assigned to a reformatory can refuse education, but than have to take a class in a trade⁴¹.

³⁶ Studied are the criminal procedural laws (Australia, Argentina, Estonia, Hungary, Italy, Norway, Sweden, Russia, USA, Albania); special laws: Belgium and Luxembourg – Act on Youth Protection, Canada – Act on the Criminal Statute of Youths, Mexico – Act regulating the responsibility of juveniles for common offences on federal level and in the Republic, Peru – Code for Children and Youths, Spain – Act on Penal Responsibility of Juveniles; CCP and special laws of Germany, France, Great Britain, Finland, Iceland and others.

³⁷ See Art.19 of the CJABA

³⁸ Cf. Art. 23 & 24 of the CJABA

³⁹ See Art. 13 of the CJABA

⁴⁰ Compare with Art.13 of the CJABA

⁴¹ See Art.32 of the CJABA

Physical or psychic violence, deprivation of food, sleep or water; inappropriate garment; limitation of contacts with family and friends, inflicting of punishments in the form of labour are banned. The children are paid for their work in the respective trades and the production is tax-free. The certificates for completed education in SSBH or reformatory are of the same legal value as those issued by the rest. The maximum period of assignment is three years, and in SSBH it is valid up to the age of 16. The explicitly formulated wish of the juvenile for prolongation of the assignment after reaching 18 years of age, for reasons of completing the education, when assisted by the pedagogic council and with participation of the prosecutor and representative of the local commission that has imposed the measure, can be satisfied.

In most of the SSBHs and reformatories it holds true that although regulated by law in line with the principles of humanity, legality and protection of children rights in society, they do not correspond to necessary standards due to lack of funding according to NGOs. Placed in old, unreconstructed buildings in small villages difficult to be accessed, with pedagogic staff on duty and with a miserable wage, they do in practice not fully guarantee for the rights of the child. The pertinent problem of lack of funding is underestimated by both the State and the sponsors who often take different priorities – considering this investment to be a “financing of criminals”. This conclusion does not hold true in such a dramatic extent in case of homes for temporally assignments and centres (formerly called orphanages) for children without adult care. The children assigned to these institutions which are not designed to meet the needs of “criminals” benefit more often from state subsidies.

In practise, it appears that courts use great care when imposing strict measures; according to the statistics, they in only 4,5% of the cases they are applied and this only after failure of the less strict measures. The courts and commissions often interpret the law in a lenient way, generally treating them as “cases of little gravity” so that specific measures do not have to be imposed. The law enforcement services often accuse the competent administration of “liberalism towards juvenile criminals”. However, it is a fact that the approach is a success because in only 12-14% of the cases of implementation of alternative measures the delinquents become recidivists and further judicial action becomes necessary.

3.2. Specifics in Punishing Juveniles

The Bulgarian legislator has shown also in the past an understanding for “under age persons” and today applies and guarantees the relevant UN regulations on minimum standards for the implementation of justice towards juveniles (Beijing regulations). There is an autonomous model of justice, which limits criminal responsibility and aims at the preservation of child and family welfare; proceedings in court are used only as a last resort.

In fact, according to UN conventions, the most important rights for children in a court trial are similar to those for indicted adults.

3.2.1. Implementation of Punishment

As quoted before, the Bulgarian law does not allow for punishment of persons under 14 (neither for administrative punishment of persons under 16) regardless of the committed crime or offence. Criminal (Penal) responsibility is not applied (keeping its subsidiary character) under the following conditions: 1) the criminal offence/crime is not greatly dangerous to society; 2) the crime was committed due to circumstances or because of thoughtlessness and there is a possibility for the juvenile perpetrator to be corrected through disciplinary measures⁴² according to CJABA.

When above mentioned conditions do not apply and a sanction based on the CC should be imposed, this has to be done only for reasons “to re-educate and prepare them for socially useful work” (Art.60 of the CC).

On behalf of juveniles above 16, only four out of ten penalties provided by the CC can be imposed: 1) deprivation of liberty; 2) probation; 3) public censure and 4) deprivation of the right to exercise a certain vocation or activity⁴³; as regards those between 14-16 years of age, only deprivation of liberty and public censure are possible penalties.

⁴² See Art.61 of the CC

⁴³ Compare Art. 62 to Art.36 of the CC – non-imposable punishments on juveniles are: 1) life imprisonment; 2) property confiscation; 3) fine; 4) deprivation of the right to hold a certain state or public office; 5) deprivation of the right to received orders, honorary titles and distinctions; 6) deprivation of military ranks.

3.2.2. Substitution of Punishments

The substitution of punishments is made in accordance with the age of the offender. For young juveniles from 14 to 16 years of age the punishments are substituted as follows:

1. *Life imprisonment* – with deprivation of liberty from 3 to 10 years;
2. *Deprivation of liberty for more than 10 years* – up to 5 years;
3. *Deprivation of liberty for more than five years* – up to 3 years;
4. *Deprivation of liberty up to 5 years incl.* – up to 2 years but not more than by the provided for by law;
5. *Probation and fine* - with public censure.

Replacement for punishments for 16-18-year old is:

- 1) *Life imprisonment and liberty deprivation for more than 15 years* – with liberty deprivation of 5 to 12 years;
- 2) *Liberty deprivation for more than 10 years* – with from 2 to 8 years.

Important and often implemented is the rule of Art.64 of the CC⁴⁴. The cited rights of juvenile perpetrators of crimes are guaranteed throughout the procedure.

3.2.3. Special Procedure Rules

The right to defence, including the help of an interpreter and advocate (bestowed with a number of rights) as well as the rights to certain guarantees are assured without exception. Violation initiated by the investigator, prosecutor or judge invalidates the evidence of proceedings⁴⁵. Special rules exist on behalf of crime cases committed by juveniles. Collaborators of investigative bodies which have attended special training courses should carry out the pre-trial proceedings. Specific measures need to be applied in the following cases: 1) supervision by the parent or guardian; 2) supervision by the administration of the educational establishment in charge of the underage person; 3) supervision by the inspector at the child pedagogical facility (CCS) or by a member of the local Commission for Combating Juvenile Anti-Social Acts (LCCJABA). The following remand measures are not applicable: house arrest and bail. Linked to the age of the juvenile, detention is only possible if imposed by a court. Such detention has to be carried out in appropriate premises, separate from those of adult detainees; it requires an immediate notification of the parents (legal guardians) and of the school's principle. A fine of up to 250 Lev is imposed on persons in charge of supervising such measures if they are found guilty for not fulfilling their legal obligations. Relating to the specific judicial objectives in these cases, the objective of proof is aligned with personal data on the juvenile. The proceedings are specific in view of:

- Participation of a pedagogue or psychologist during interrogation;
- Disclosure of the investigation files to the parents or guardians of the indicted juvenile;
- Only school teachers or educators may take part in the panel;
- Participation of parents/guardians with specific procedural rights;
- Interaction of the court and the prosecutor with the LCCAMUP as regards imposing alternative measures or the replacement of measures for the sake of effecting adequate sanction.

3.2.4. Specifics of liberty deprivation according to the law on implementing penal sanctions

In the rare cases of liberty deprivation of juveniles, perpetrators of crimes, the penalty must be served in separate reformatories. The regime is softer and it cannot be altered. There are specific regulations on disciplinary measures, rights and obligations as well as the educational process. The rights of the juvenile prisoners are independent of nationality. For the sake of this report we requested information from the

⁴⁴ Art.64 of the PC (1) Where the punishment determined consists of the deprivation of liberty for less than one (1) year and its serving has not been suspended pursuant to Article 66, the underage convict shall be exempted from serving it and the court shall assign him to a correctional boarding school or shall impose on him another educational corrections measure provided by the Fighting Against Anti-Social Acts of Minors and Underage Persons Act. (2) Upon the proposal of the prosecutor or the respective local Commission Against Anti-Social Acts of Minors and Underage Persons, the court may also, after pronouncement of the sentence, substitute the commission to a correctional boarding school for another educational corrective measure. (3) The rule of paragraph (1) shall not apply: a) where the underage convict has committed a crime during the serving of punishment by deprivation of liberty, and b) where he has been convicted after completing full age. (4) The rule of paragraph (1) shall not be applied also in cases of second conviction, provided the court finds that for the correction and re- education of the perpetrator it is necessary for him to serve the sentence of deprivation of liberty and where: a) the term is not less than six months, or b) the perpetrator has already served a punishment by deprivation of liberty.

⁴⁵ During the 90s society was shocked by the murder of spouses and their minor son. The indicted juvenile son of the deceased husband was acquitted of triple murder. Implementing the law, the court disallowed from the evidence the confession of the indicted and material proofs. The reason for this was a violation by the investigator – non-participation of a lawyer during the interrogation and the following search.

reformatory for girls in Sliven: they did detain any foreign juvenile girl during the last ten years. Since 1996, in the Boichinovci reformatory only four sentenced juveniles foreigners were detained.

Table 5

Initials	Nationality	Citizenship	Sentenced for:	Term	Results
K.I.S.	Albanian	F.Y.R.M.	Theft	10 months	served
T.I.A.	Georgian	Georgia	Murder	5 years	probation
J.M.K.	Ukrainian	Ukraine	qualified theft	1.5 years	probation
D.M.N.	Pole	Poland	attempted murder	1.5 years	served

At the moment there is not a single juvenile foreigner deprived of liberty. With respect to merely two juveniles the sentence “deprivation of liberty” was recently executed: H.D. from Afghanistan in 2000, and A.B. from Ukraine in 2002 for theft.

E - LEGAL PERSPECTIVES IN THE FIELD OF PROCEDURAL LAW

1. Procedures under the CJABA

This older law does not define specifically its objectives, but Art.1 indicates that it relates to the prevention, suppression and restoration of illegal or antisocial conduct, and that it tries to ensure the normal conduct and education of the perpetrators.

1.1 Proceedings in front of the Local Commissions for Combating Juvenile Delinquency (LCCJDs) for the hearing of educational cases and imposing of measures.

A panel consisting of a chairman and two persons hears the offences of the minors aged from 8 to 18 and can impose educational measures if an administrative offence or crime has been committed for which the perpetrators do not carry responsibility by law or when they are freed of criminal responsibility by a decision of the prosecutor or the court; the same rules apply to antisocial activities of more gravity.⁴⁶

The minimum age at which an educational measure can be imposed is 8 years. The case for hearing the offences is opened following a proposition by pedagogue councils, social workers, public educators, the police, investigators, citizens or by court order. The cases are heard in a month after the opening and a recording clerk is appointed. During the hearing, the presence of the juvenile, his trusted representative or a lawyer, and in case of no representative attendance the participation of the Social Assistance Agency is mandatory. Mandatory is also the participation of the parents or the persons who replace them. The proceeding includes explanations on the character of the case, its consequences and the rights of the juvenile. He/she can give explanations, if he/she wishes also in the absence of the parents. Witnesses and written and material evidence are permitted. Records are taken. The decision can impose more than one measure. The measure “assignment to a reformatory or SSBH” is at the discretion of the court. If the decision is taken that criminal responsibility is in question, the matter is transmitted to the prosecutor, who can open a pre-trial proceeding or decide to do the opposite, i.e. open a secondary hearing or impose an alternative measure. The decisions must be motivated and are under judicial control. The court hears the propositions on the hardest measures and also on complaints against decisions taken, with which lighter measures have been imposed. The case must be heard within a period of fourteen days.

After this procedural phase, during which evidence can be collected, the court takes a decision. Appeals can be made against decisions that include a placement of a person in a reformatory or SSBH (second instance). The hearings of the LCCJD and the court hearings take place in camera, however the participation of experts such as psychologists, psychiatrists, pedagogues and other specialists is permitted.

1.2. Complementary activities of the CCS: Responsibility for and control of measures imposed.

CCSs are established in the larger urban communities (districts as well as certain bigger offices). They are set up to operate and finance records on children who are victims of crimes or left without care, but also on perpetrators of offences, as well as on the reasons and underlining conditions for the behaviour in question. They support the exchange of information between the police and prosecution; control functions are bestowed to CCS as well.

2. Proceedings and Measures under the Child Protection Act (CPA)

⁴⁶ Art.12 of the CJABA

The CPA of 2000 has more general objectives. It aims, in accordance with the UN Convention on Rights of the Child, to guarantee a list of children's rights through a system of organizational bodies at the central and local level that are in charge of organizing and coordinating the state policy in the field of child protection. Besides the general context, the law is of importance for juvenile perpetrators of crime as they are also children at risk⁴⁷. This idea finds its expression in the possibility of taking preventive and protective measures inside and outside of family settings. Within the family, these measures aim at the provision of pedagogic, psychological and legal help to the parents, directing them to centres for social rehabilitation and integration, offering counselling services to the child and the parents, assisting them in improving their social and domestic conditions and resolving conflicts stemming from difficult child-parent relations. Protection measures outside of the family are: placement of the child with relatives or next of kin; placement within a foster family; placement in a specialized institution (only when the abovementioned solutions are impossible).

Placing a child outside of the family is a decision which can only be taken by the district court, which can be asked to do so by the communal service for social assistance, the prosecutor or the parents.

In extreme cases that necessitate the use of force in order to protect the best interest of the child, e.g. when there is an immediate danger for health or life or when the child is a victim of crime, when the child is lost or in a helpless state, or again when the child is left without the needed parental care, the child can be placed under the protection of the police for up to 24 hours, during which the competent social worker should start to engage in activities on behalf of the minor in question.

F – FRAMEWORK TO THE ORGANISATION AND ESTABLISHMENT OF LEGAL AND EDUCATIONAL MEASURES PUT FORWARD BY JURISDICTION AND ORGANISATIONAL BODIES WITH THE GOAL OF PROTECTING YOUTH (NATURE, QUALITY, RECIPIENTS, DIFFERENTIAL AND EVEN DISCRIMINATORY ASPECTS IN THE FIELD OF EDUCATIONAL TREATMENT AND SOCIAL INSERTION)

1. Bodies of the CJABA

1.1 The Central Commission controls the application of politics destined at juvenile offenders. It operates on the level of the Council of Ministers.

1.2 On a local level, local commissions administer education, health care, internal affairs and statistics. The Public Prosecutor cooperates with the LCCJABA, the competent body in matters of prevention, probation, consulting, control and social insertion.

1.3 Child Care Services (CCS) are municipal offices⁴⁸ equipped with inspectors of particular pedagogical and legal authority, appointed by the Minister of the Interior and the police, in line with the provisions of CJABA and regulated by MI Rules. Two fields of application pertain to the inspectors: to apprehend juvenile offenders and juvenile victims of offences as well as children left without care or decent housing who have taken to vagrancy and mendicancy.

The Inspectors collect and distribute information (with the help of volunteers) operate in a network, administer control on behalf of interim measures and cooperate with the authorities of investigation and prosecution. In addition, they constitute a communicative agency, responsive to notices and complaints of citizens, government officials and judicial bodies, assisted by volunteers and public educational staff.

1.4 This public educational staff consists of respected citizens chosen by local commissions. They assist to parents and their representatives in the correction and social insertion of juveniles:

- who are not criminally liable and unassigned to SSBH;
- who are on probation or any other measure but imprisonment,
- who have served a sentence of liberty deprivation or were dispensed in advance, as well as juveniles whose stay at reformatories or SSHBs have been terminated;
- children subjected to educational measures under supervision of a public educator;
- children that need protection from imminent threats to their development and education, if these menaces have been asserted by the Commission.

⁴⁷ See also before part B, Statistical Sources.

⁴⁸ The opening of a CCS depends on the criminal situation in the area of a respective police department, as well as on the size of population and scope of settlements in the region. The scope of authority for one CSS-inspector is around 30,000 people.

The public educator sees to the education, labour and leisure time of the minor at his charge, effecting all parental responsibilities with or without the parents' assistance. If his efforts are considered to be insufficient, he can be released from duties and replaced by the Commission. He receives symbolic remuneration, accounts to local commissions and may be provided with additional incentives by the CC.

1.5 Social workers are specialised communal servants of local social assistance services, subordinated to regional representations of both the Ministry of Labour and the Ministry of Social Care. They apprehend endangered juveniles and provide measures for their social protection. Equipped with municipal budgets for social assistance and donation programmes, these public servants assist in the alleviation of social problems of delinquent juveniles and their families. They identify problems in co-operation with the families, assist in the insertion of juveniles into the job market as well as in their placement in social homes and asylums. The social workers remain in constant interaction with all of the other authorities.

2. Bodies under the Child Protection Act (CPA) of 2000

2.1 State Agency for Child Protection (SACP)

The State Agency for Child Protection (SACP) at the Council of Ministers has been on duty since 01 January 2001. It co-ordinates all policies regarding children among the ministries. The department for child protection within municipal social services constitutes a national network. As regards the work with juvenile perpetrators of crimes,⁴⁹ human rights activists⁵⁰ have not yet assigned any conceivable effectiveness to these new structures. To achieve the objectives of cooperation with ministries and departments related to child care, a National Council for Child Protection has been established; this is a consulting body assisting to the State agency and to the CC, constituted of deputy ministers from different ministries to realise the implementation of state policies. The agency publishes its reports on: <http://www.sacp.government.bg/>

2.2 Departments for Child Protection

They are part of the system of social assistance and are subordinated to the Ministries of Labour and Social Care, controlled by the SACP in terms of method. They implement the measures of protection for children at risk. Their staff is composed of social workers.

3. Organizational Aspects

These bodies organise cooperation with the police, the judiciary (prosecution and investigative structures), the Ministry of the Interior, Ministry of Labour and Social Care, Ministry of Education and Science, Ministry of Healthcare and the government agencies of SACP, the State Agency for Refugees, the Agency for Social Assistance, the Executive Agency "Chief Inspection of Labour" and others.

The Central Commission and The National Council for Child Protection are inter-departmental and socio-governmental bodies. They can interact on a daily basis. The common planning accounts for different competent opinions, thus promoting control. The administration is small-scale in numbers and constantly exchanges information between regional sectors.

The new system of SACP is still lacking in matters of efficiency in the treatment of juvenile perpetrators, although prevention of child delinquencies is effectively organised. In this respect, the competition between the bodies accounting for activity between the SACP and the other bodies should result in public attendance to the standards.

Material concerns - lack of funding, poor logistics, inadequate salaries, result in low qualification of staff and subsequently low motivation. Scandals on abuse, paedophilia or violence against minor offenders - in the specialized institutions do occur and give the impression of a very problematic implementation.

In search of possible solutions, the Government accepted the National Strategy of January 2003 and a Plan of Action in the same year as well as an Integrated National Plan.

Measures are:

(1) Projects *de lege ferenda*

(2) Strengthening of cooperation between the bodies and institutions with clear definition of their functions and powers. For this objective, the Central Committee worked out two directives:

⁴⁹ This is a serious problem - see also before under "organizational aspects"

⁵⁰ See the reports of the Bulgarian Helsinki Watch regarding the situation of children

- (2.1) For cooperation between local commissions, directorates for social assistance and departments for child protection;
- (2.2) For the activity of school commissions of early prevention of deterioration in juvenile conduct;
- (3) PR activities to sensitise society in matters of prevention and for the sake of countering the antisocial conduct of children, as well as involvement of the media.

Most important and numerous are the projects that reflect on educational aspects.

4. Educational Aspects

The educational aspects to the implementation of organisational questions as well as the measures pertaining to perpetrators of juvenile delinquency represent a body divided in three large groups:

4.1 Measures for the training of the specialized staff

Raising qualification standards of all civil servants working with children is an important premise to their effectiveness. The judiciary body has been substantially reorganized after the changes to Bulgarian structures some years ago. The new generation demanded higher qualification of the young magistrates in order to compensate the lack in pedagogical experience.

4.1.1 Along with the Central Commission, a Centre for Staff Qualification was created. In the same way, an interdepartmental body for selection and qualification has been set up. Efforts are likewise made by the corresponding sectors in the ministries, the Judiciary and others.⁵¹

4.1.2 National Institute of Justice (NIJ) in charge of:

- Specialised training for junior judges, prosecutors and investigators (appointed via competitive selection).
- Qualification courses for judges, prosecutors and investigators relating to the work on cases against juveniles.

4.2 Education of parents:

On the basis of community programs for early prevention, especially in big cities - a multitude of psychological social services to families to help for the alleviation of educational problems are provided. Among these are: “schools for parents”, family consultancies and others.

4.3 Measures for child education

It is generally accepted that there is a division into prevention and rehabilitation measures. According to our assessment, delinquent juveniles also have a right to let their formative years not be ineffectively wasted. The fact that they need insertion does not change this reality. When it comes to countering the criminogenic factors (chapt.3), the main approach recommended is education. Labour market insertion and a return to society is impossible without proper education. Special attention is paid to Roma children. For endangered and delinquent juveniles, educational programs are adapted to provide: - eliminating illiteracy; - alternative studies and professional qualifications; - a reduction of the number of drop-outs in school; - the organisation of various leisure activities such as sports, arts and computer training.

⁵¹ For example, in 2005 the National Investigation Service published alongside methodological directives for investigations a book titled “Juveniles as a Subject and Object of Criminal Offences”. It was written by practicing investigators and scholars from the Sofia State University “Saint Climent Ohridski”; it was distributed in sufficient quantities to collaborators within the MI and to CCS inspectors.

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