INDIVIDUAL ASSESSMENT OF SUSPECTED OR ACCUSED CHILDREN:
insights into good practice in the light of the Directive (EU) 2016/800

Edited by Rūta Vaičiūnienė

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Foreword

We all know that children and young people are the future of our societies and that we should do everything we can to nurture and protect them until they are fully developed. If a child or young person is going off the rails we need to find the best way of helping them back on track. That is why individual assessment of young people involved with the law is so important. We want to find the particular strategy with the best chance of working for that particular young person. An individual assessment also offers the best way of involving the young person in their own future.

It therefore gives me great pleasure to contribute the foreword to this book which is rich in information about individual assessment (IA) in four countries—Lithuania, the lead partner in the project, Croatia, Cyprus and Greece. In detail, the partners are the Law Institute of the Lithuanian Centre for Social Sciences (Lithuania), the Faculty of Education and Rehabilitation Sciences of the University of Zagreb (Croatia), HFC Hope for Children Policy Center (Cyprus) and the Aristotle University of Thessaloniki (Greece),

The project's second workshop was in March 2020, and, as I said in my introductory speech to that workshop:

> *….this Individual Assessment Project is extremely valuable. I know, because as a Youth Court Magistrate of 35 years' standing in Inner London, I can truly say that without the input of the Youth Offending Service (YOS) officers who prepare individual assessments, absolutely tailored for each child, my decisions, the decisions of the bench, would have been less well based and outcomes for each child less focused on good outcomes.*

It has been interesting for me to learn how these four countries approach individual assessment. Each has its own way of aiming for the same objectives of gathering information on personal, family and social factors; offending and

antisocial behaviour; what a child thinks about his behaviour; and what factors are found to suggest how to bring about a change in behaviour. Much of this information is gleaned by the use of various tools and the input of professionals such as psychologists. The book also affords us a channel into academic examination of those tools and how they relate to each other. The authors hope that this book will serve as a handbook for practitioners specialising in the field of individual assessment.

Individual Assessment and Achieving Justice

In addressing the timing of individual assessment, Recital 39 of the Directive states that individual assessment should:

> *take place at the earliest stage of the proceedings and in due time so that information from it can be taken into account by the prosecutor, judge or other competent person before presentation of the indictment for the purposes of the trial.*

It is well known that early assessment can highlight barriers to a young person's participation in the judicial process, barriers such as understanding procedure, communication difficulties and psychological problems, and suggest special measures to overcome them. The use of special measures, can materially improve **participation** by a child and be very helpful in moving a case along in a timely fashion, an aim important to all.

And, of course, as Article 11 of the Directive envisages, authorities will also be looking for possible outcomes that avoid the need for court proceedings altogether. In other words, **diversion**.

Later assessments, at the sentencing stage, relate to finding the most appropriate sanctions and measures and rely heavily on tools designed for the purpose alongside professional expertise. They analyse such crucial issues as the risk to the public posed by a young offender and, significantly, the likely effect of a sanction or measure in preventing further offending and promoting reintegration into family, school and community. Disposals that are understood by a child are more likely to yield positive results in reintegration and possible reparation to victims. And, I would add, this is helpful to a child's family too.

Harmonisation

Much has rightly been made of the need to harmonise standards across the countries of the European Union. Why should there be 'justice by geography'? We would not accept that a child in one region of a country might not be treated as fairly as a child in another part of that same country. Nor should we accept differences between countries. The greater consistency of approach, afforded by this Directive, should bring practices closer together and mean equal treatment for children across the EU.

But individual assessment has to be done well and with proper resources. That is why this book is so welcome – it shows how four EU Member States currently approach individual assessment and how they plan to meet the requirements of Article 7. It offers insights into good practice and warnings of the traps to be avoided, and shows how crucial it is that proper resources are available for the task.

Avril Calder
Immediate Past President,
International Association of Youth and Family Judges and Magistrates (IAYFJM)

1 Procedural Safeguards and Individual Assessment of Accused or Suspected Children in Criminal Proceedings: Introduction

Rūta Vaičiūnienė and Jolanta Apolevič

(Law Institute of Lithuanian Centre for Social Science)

Each year more than one million minors in the European Union face criminal proceedings within and across national borders. However, research shows that achieving understanding of criminal proceedings by suspected or accused minors is a complex and sometimes insurmountable task[1]. Although in recent decades juvenile justice[2] issues have increasingly been on the agendas of international institutions and organizations – still, thirty years after the introduction of the United Nations Convention on the Rights of the Child, safeguarding children's rights in daily practice remains challenging[3].

For a long time, children were considered not as "subjects", but rather as "objects of law": their status was defined and interventions were decided upon by legal professionals (judges, prosecutors, probation officers), who were thought to know what was best for the child. The notion that children are incapable of dealing with certain "adult rights" remains deeply rooted today. It is essential to acknowledge that, on the one hand, various characteristics of children's psychological development and maturity limit their ability to find their way through the

[1] A. Daly and S. Rap, "Children's Participation in Youth Justice and Civil Court Proceedings," in *International Human Rights of Children*, ed. U. Kilkelly and T. Liefaard (Singapore: Springer, 2018), 1–21.

[2] In this book terms juvenile, minor and child are used synonymously.

[3] M. J. Bernuz Beneitez and E. Dumortier, "Why Children Obey the Law: Rethinking Juvenile Justice and Children's Rights in Europe through Procedural Justice," *Youth Justice* 18, no. 1 (2018): 34–51.

judicial process, but that, on the other hand, minors have great potential and are more capable of changing their behaviour.

It is therefore particularly important to create a criminal justice model that increases minors' confidence in the justice system, empowers them and boosts their potential for beneficial change. For this to happen it is necessary to work within a child-friendly justice paradigm, giving children the opportunity to exercise their rights and to have their voices heard, and encouraging children's involvement and participation to the widest extent possible. Equally important is the children's socialization within legal system, which helps children to build confidence in decisions regarding them and to accept the legitimacy of and to trust the institutions that implement them. This is necessary in order to ensure, in practice, child-friendly procedural safeguards and procedural justice that are in the best interests of the child[4].

Several recent legal instruments have focused on ensuring procedural rights in juvenile criminal proceedings. One of the most important European level documents is Directive 2016/800 of the European Parliament and Council[5], which stands out from the rest of the procedural rights Directives in being the first legal instrument concerned exclusively with a single group - suspected and accused minors. The Directive enshrines a package of the most significant rights, such as the right to information; the right to appropriate assistance from a lawyer and to legal aid; the right to individual assessment and to medical examination; the right to protection of privacy; the right to be accompanied by the holder of parental responsibility; the right to be present in person at trial; and, most importantly, it focuses on the *vulnerability* of minors by calling for the individual assessment of their special needs.

For the first time in a legally binding document the Directive provides for an instrument of *individual assessment*, focusing on a number of legal issues and objectives concerning the special needs of minors and trying to identify those areas where young people feel and are most vulnerable. At this point some reservations also need to be mentioned. Although the comprehensive assessment of

[4] Beneitez and Dumortier, "Why Children Obey the Law: Rethinking Juvenile Justice and Children's Rights in Europe through Procedural Justice," 34–51.

[5] Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on Procedural Safeguards for Children who are Suspects or Accused Persons in Criminal Proceedings (OJ L 132, 21. 5. 2016.).

minors' mental states and various social constructs are provided for in the Directive, the purpose of individual assessment is not made entirely clear, nor are the instruments that should be used to make the assessment specified. Accordingly, the aim of this book is to clarify the requirements for individual assessment set out in Directive 2016/800, to analyse existing individual assessment practices and challenges in various Member States, and finally to identify and discuss the tools and practices that would ensure effective implementation of individual assessment across the European Union.

This book aims to satisfy the interests of a wide range of readers, covering both theoretical and practical considerations. In this introductory chapter, international legal developments in the field of children's rights and procedural safeguards are presented. The second chapter is dedicated to in-depth analysis of individual assessments provided for in Directive 2016/800. The authors of the third chapter set out the theoretical approaches to and recent debates about the models and instruments for individual assessment.

Subsequent chapters deal with the implementation of individual assessment in four countries – Lithuania, Croatia, Greece and Cyprus[6]. Finally – since the book aims to identify good practice in the implementation of individual assessment – a comparison between these four countries is carried out, the elements of good practice are identified and relevant recommendations are made.

Overall, this book aims to assist EU member states (or other countries) to recognize the value of individual assessment, to understand its nature, and to grasp the opportunities for the development and improvement of the protection of children's rights and procedural safeguards that it entails. The authors and contributors invite practitioners, other stakeholders, national and international policy makers, researchers and academics to consider the challenges that different countries appear to encounter when implementing systems and carrying out individual assessments, and to follow our practical recommendations which are designed to facilitate successful application of individual assessment in juvenile criminal proceedings.

[6] This book is developed within the framework of the EU co-funded project "Procedural safeguards of accused or suspected children: improving the implementation of the right to individual assessment" (JUST- AG- 2017/JUST- JACC-AG-2017, No. 802059). The research on implementation of individual assessment was conducted in four project partner countries – Lithuania, Croatia, Greece and Cyprus. Therefore in the book these four countries are analysed and compared.

1.1. Children's Rights in Criminal Proceedings: International Legal Developments

United Nations: Beijing and Havana Rules

A sound legal basis for the protection of minors was established following the adoption of a number of United Nations documents. Several steps have been taken towards introducing the UN Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) [7] and the Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules)[8]. The Beijing Rules crystallize the definition of juvenile criminal justice and give due attention not only to the elements of a fair and just trial and basic procedural safeguards, but also to certain relevant social policies. The Rules emphasize the importance of strengthening juvenile welfare and social measures in order to minimize the need for intervention by the criminal justice system and, in turn, to reduce the harm that may be caused by such an intervention. In emphasizing the harm and negative effects of extensive criminal justice intervention, the Rules highlight the importance and wide variety of diversionary measures (involving a removal from criminal justice proceedings).

It is particularly important to note that Beijing Rule 16.1. provides that social inquiry reports (social reports or pre-sentence reports) are an indispensable part of most legal proceedings involving juveniles, and that the social inquiry should cover the gathering of information on the juvenile's social and family background, educational experiences, and other relevant circumstances. The Rules therefore require that adequate social services should be available to deliver social inquiry reports of suitable quality.

Meanwhile the Havana Rules state that detention before trial should be avoided as far as possible and may only be applied after an assessment of the relevant circumstances and after consideration of the feasibility of various alternative measures. In the case of juveniles, pre-trial detention may be used only as a last resort. Furthermore, it cannot be used legitimately as a means to deny the

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[7] UNGA, *Standard Minimum Rules for the Administration of Juvenile Justice*, UN. Doc. A/40/53 (1985).

[8] UNGA, *Rules for the Protection of Juveniles Deprived of their Liberty*, UN Doc. A/Res/45/113 (1990).

civil, economic, political, social or cultural rights to which a juvenile is entitled and which are not compatible with the deprivation of liberty.

Thus, these Rules state that a decision-maker who imposes a sanction on a minor, unlike the adult case, must consider a variety of diversionary or non-criminal measures, and that deprivation of liberty is to be applied only as a last resort. The Beijing Rules emphasize that interventions should be decided upon following consideration not only of the gravity of the offence but also of the individual's circumstances, i.e. having evaluated the juvenile offender's family situation, social and educational conditions and other relevant circumstances.

United Nations Convention on the Rights of the Child

However, the Beijing and Havana Rules are non-binding, soft law. A turning point was reached with the adoption of a binding document, the *Convention on the Rights of the Child,* published by the United Nations in 1989[9]. This Convention is, essentially, a foundation-stone, changing the previous attitude towards children. A child committing a crime or other misdemeanour is no longer to be treated as an "object" but as a real "subject", who, when involved in criminal proceedings, has rights that should be respected and protected.

First, in its framework provision (Article 3) the Convention defines the rights of the child in many areas and imposes an obligation on a range of institutions to consider the best interests of the child and to ensure his/her high-quality representation. Next, it refers to the sphere of criminal proceedings and formulates the key elements required to protect the rights of a child in conflict with the law. The Convention emphasizes the right to be heard in any judicial and administrative proceedings that affect the child (Article 12), the right to information (Article 17), the prerequisites for deprivation (or restriction) of liberty and the need to reduce the negative effects of punishment (Article 37). It also defines the basic principles of juvenile justice, especially the right to a fair pre-trial and trial process (Article 40). As in the Beijing Rules, Article 40 of the Convention emphasizes the pre-eminence of diversionary measures and the individualisation thereof, the need to select the least oppressive interventions and educational measures possible and the option for counselling services. Thus, the main

[9] UN Convention on the Rights of the Child (CRC) GA Res. 44/25 (1989).

intention is to avoid criminal proceedings or to ensure that they have the least possible detrimental impact.

However, although the Convention is considered a focal point for the protection of the rights of the child, it is also said to be the most frequently violated international document in the world due to the lack of implementation control mechanisms[10]. The transposition of the Convention provisions into national legal systems does not guarantee their implementation and application in everyday practice. Furthermore, over the last three decades, the implementation of the provisions has varied significantly across different countries.

United Nations Committee on the Rights of the Child

Responding to changing conditions and addressing current issues, the *United Nations Committee on the Rights of the Child* reviews and revises the Convention by supplementing it with Comments and Explanations. Thus, in 2007, in its General Comment No. 10[11], the Committee considered children's rights in juvenile justice proceedings. This document applied for 12 years until autumn 2019, when it was replaced by General Comment No 24[12].

The 2007 General Comment did not provide detailed guidance on the choice of diversionary and punitive measures or other forms of penalty. The 2019 version defines these points much more clearly. It introduces the concept of evidence-based intervention programmes and emphasizes that such programmes, as with other interventions, must be preceded by a comprehensive and interdisciplinary assessment of the child's needs. The importance of such assessments is emphasized in the case of children who are below the age of criminal responsibility but who are assessed to be in need of support (para. 109). The Comment pays equal attention to the requirements for professionals working with children involved in criminal justice proceedings. In paragraph 39 emphasis is placed on interdisciplinary approaches and broad knowledge, as well as working in multidisciplinary teams.

[10] Beneitez and Dumortier, "Why Children Obey the Law: Rethinking Juvenile Justice and Children's Rights in Europe through Procedural Justice," 34–51.

[11] UN Committee on the rights of the child (CRC), *General comment No. 10 (2007): Children's rights in juvenile justice*, 25 April 2007, CRC/C/GC/10.

[12] UN Committee on the rights of the child (CRC), *General comment No. 24 (2019) on children's rights in the child justice system*, 18 September 2019, CRC/C/GC/24.

Interdisciplinarity and multifaceted expertise in physical, psychological, mental and social development and vulnerability, as well as knowledge of the special needs of the most marginalized children are exactly those prerequisites which lead to effective high-quality cooperation between specialists in various fields and to the achievement of good results.

To summarize, it can be said that, unlike the Convention itself, the most recent Comment focuses not only on highlighting certain rights and procedural safeguards and establishing their importance, but also clarifies the conditions necessary for the exercise of those rights. These include not only diversionary or the least repressive measures, but also evidence-based programmes, the selection of different measures through individual assessment, the interdisciplinary approach, interdisciplinary knowledge of juvenile development, working together in multidisciplinary teams, and finally continuous and diversified specialist training. Thus, more attention is paid to the practical implementation of children's rights, to the conditions conducive to success and to their quality assurance.

In addition to work at the international and governmental levels, valuable input into the preparation of special guidelines on the practical implementation of children's rights has also been made by non-governmental organisations and other bodies (e.g. *Guidelines on Children in Contact with the Justice System* prepared by the International Working Group of the International Association of Youth and Family Judges and Magistrates)[13].

Developments in Europe – Council of Europe

In building the framework for ensuring minors' rights in Europe, general principles of human rights, the *European Convention on Human Rights (ECHR, 1950)* and the case law of the *European Court of Human Rights* have been used for many years. Although these international agreements apply at the European level, they do not specify how children's rights should be protected. They therefore establish only rather basic provisions.

[13] *Guidelines on Children in Contact with the Justice System* prepared by the International Working Group of the International Association of Youth and Family Judges and Magistrates adopted by the Council of IAYFJM in London on October 21, 2016 and presented to UNODC and UNCRC in 2017. See: www.aimjf.org.

One of the most important European documents of the last decade in the field of law enforcement, focusing exclusively on children's rights and protection, is the *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*[14]. These guidelines emphasize that Member States should respond to offences in proportion not only to the circumstances and gravity of the offence, but also to the age, degree of culpability and individual needs of the child. The child's needs are understood particularly broadly. The guidelines emphasize the application of a multidisciplinary approach, since the children's needs, behaviour, development and psychology all have to be assessed and understood.

Several aspects of the guidelines are extremely relevant to this book. They are distinguished by their emphasis on the best interests of the child and by formulating the concept of a child-friendly justice which is responsive to children's participation in formal and informal decision-making concerning them. Although the guidelines are not binding, they have served as a comprehensive and specialized set of practical tools for the forty-seven member states of the Council of Europe, encouraging them to adapt their judicial and non-judicial systems to the specific rights, interests and needs of children and to make those systems work more effectively and intensively[15].

European Union

At the European Union level, considerable steps in addressing juvenile justice and protection of children's rights were made through the introduction of the *Charter of Fundamental Rights of the European Union (EU Charter, 2000)*. Its Article 24 promotes the protection of a child's rights— his well-being – and emphasizes that in all actions relating to children the child's best interests must be a primary consideration and substantive principle[16]. However, the Charter was merely a declaration and was not binding until the Lisbon Treaty (2007) came

[14] Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (Strasbourg: Council of Europe Publishing, 2011).

[15] T. Liefaard, "Child-Friendly Justice: Protection and Participation of Children in the Justice System," *Temple Law Review* 88, no. 4 (2016): 905–927.

[16] S. Rap et al., *White Paper on the EU Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceeding. Key aspects, priorities and challenges for implementation in the EU Member States* (International Juvenile Justice Observatory, 2018), 7–9.

into force. That Treaty ensured that the rights, freedoms and principles set out in the Charter would have the same legal standing as the Treaty itself[17]. As a consequence, the children's rights provisions in the Charter became more visible and legally binding for EU Member States.

1.2. Strengthening Procedural Safeguards in the EU: Directive 2016/800 and Individual Assessment

Directive 2016/800 is part of the 2009 *Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings*[18] and plays an important role in the area of cooperation in criminal matters throughout the European Union. The Roadmap provided for binding mechanisms to be developed and resulted in six directives regulating different aspects of criminal procedures. These Directives, adopted between 2010 and 2016, comprise a so-called procedural rights package and prescribe the right to interpretation and translation (Directive (EU) 2010/64); the right to information (Directive (EU) 2012/13); the right to a lawyer, the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty (Directive (EU) 2013/48); the presumption of innocence and the right to be present at the trial (Directive (EU) 2016/343); the right to free legal aid (Directive (EU) 2016/1919) and, last but not least, the procedural safeguards of accused and suspected children (Directive (EU) 2016/800).

Directive 2016/800, which is the object of interest in this book, stands out from the rest of the procedural rights directives because it is the first to be concerned exclusively with a single group – suspected or accused minors. The Directive underlines and defines a package of the most significant rights for suspected and accused minors, such as the right to information, the right to the appropriate assistance from a lawyer and to legal aid, the right to individual assessment

[17] European Union, *Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community*,13 December 2007, 2007/C 306/01, art. 6 (1).

[18] European Union, "Resolution of the Council of 30 November 2009 on a Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings," *Official Journal of the European Union*, C 295, 4.12.2009.

and to medical examination, the right to protection of privacy, the right to be accompanied by the holder of parental responsibility, and the right to be present in person at trial.

Directive 2016/800 unquestionably aims to contribute to effective protection of a juvenile's rights in criminal proceedings. It is worth noting, however, that the aim of the Directive is twofold. First, it proposes greater protection for children's rights, particularly during the phases when children are most exposed to the risk of harm. Second, the Directive aims to improve mutual recognition of judicial decisions and to promote cooperation between Member States in criminal matters and it proposes a more standardized protection of children's rights[19]. Although, at first sight, these two objectives appear to complement each other and do not present any obstacles to their simultaneous and integrated implementation, a closer look reveals a potential conflict.

As J. Ouwerkerk[20] noted, the conflict is between a '*functional*' approach to providing safeguards which is intended simply to accomplish a specific aim (such as more efficient cross-border judicial cooperation) and a '*self-standing*' approach which derives its provisions from a consideration of the fundamental principles of human rights. Article 82 (2) of the Lisbon Treaty reflects measures intended to improve the functioning of the EU.

Ouwerkerk argues that Directive 2016/800 and the so-called procedural rights package adopted under the heading of Article 82 (2) of the Lisbon Treaty[21] is too limited to move beyond the functional approach reflected in Article 82 (2). The objective of the functional approach is to facilitate the mutual recognition of judicial decisions and cross-border cooperation in criminal matters. This approach concentrates on effective execution of criminal law measures, but sooner or later it will have to respond to the demand for a more self-standing EU policy on procedural safeguards.

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[19] D. De Vocht et al., "Procedural Safeguards for Juvenile Suspects in Interrogations. A Look at the Commission's Proposal in Light of an EU Comparative Study," *New Journal of European Criminal Law* 5, no. 4 (2014): 481.

[20] J. Ouwerkerk, "EU Competence in the Area of Procedural Criminal Law: Functional *vs.* Self-standing Approximation of Procedural Rights and Their Progressive Effect on the Charter's Scope of Application," *European Journal of Crime, Criminal Law and Criminal Justice* 27, no. 2 (2019): 90–94.

[21] Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union. 2012/C 326/01. Retrieved from: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT

The self-standing approach is rooted in the concept of the protection of fundamental rights and values. As can be anticipated, the conflict between the functional and self-standing approaches has already been encountered in the Directives addressing procedural safeguards. To illustrate the point, a functional approach to criminal law with a focus on repressive measures limits the more extensive development of protective measures, - just as questions regarding mutual recognition of judicial decisions and cooperation in criminal matters are pushing aside the problems of safeguarding and protecting defendants' rights. Directive 2016/800, which aims to promote close cooperation between Member States and trust in each other's criminal justice systems, likewise limits the parties' ability to develop a methodology for securing procedural safeguards for suspected or accused children in criminal proceedings that are adequate and appropriate in the national context. As a consequence, as Ouwerkerk emphasizes, as soon as possible and before taking any further steps, reconciliation between the functional and self-standing approaches should be undertaken.

The procedural rights package embodied in the Directives has also been criticised because of the absence of procedural sanctions on Member States if they fail to comply with the Directives' requirements. M. Caianiello states that although every EU Directive on procedural rights requires Member States to ensure its effective implementation, '*because there is no provision on the negative consequences deriving from the violation of the rights protected by the EU directives, nothing really changes*'[22]. We may add here that the Directive provides for the possibility of derogation from certain obligations depending upon the circumstances of the case. In particular, it stipulates in its preamble that '*Member States should be able to derogate from the obligation to carry out an individual assessment where such a derogation is warranted in the circumstances of the case*'[23].

Also, as Rap (2018) and colleagues have noted[24], certain rights are made contingent upon the proportionality clause that is part of the Directive. For example, the right to assistance from a lawyer is itself dependent upon the circumstances of the

[22] M. Caianiello, "To Sanction (or not to Sanction) Procedural Flaws at EU Level? A Step Forward in the Creation of an EU Criminal Process," *European Journal of Crime and Criminal Law and Criminal Justice* 22, no. 4 (2014): 321.

[23] Directive (EU) 2016/800, 11 May 2016, the preamble (40).

[24] Rap et al., *White Paper on the EU Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceeding. Key aspects, priorities and challenges for implementation in the EU Member States,* 30.

case, taking into account the seriousness of the alleged offence, the complexity of the case and the measures that could be taken against the child. This means that some rights cannot be granted for all suspected or accused children in criminal proceedings. It could be argued that national jurisdictions are left with too much room for interpretation and that that could lead to a rather formal implementation of the Directive. Moreover, violations of the relevant children's rights by the State would most probably lead only to very slight consequences[25]. Hence, questions about the practical outcomes of the Directive's implementation remain open.

Despite these criticisms, the Directive's definition of procedural safeguards can be seen as an important means of strengthening the legal position of accused or suspected children. In this context Directive 2016/800 differs in the fact that it concentrates on meeting children's specific needs and rights in those stages of criminal proceedings where they are the most vulnerable. The Directive also concentrates on children's vulnerability in general[26]. As some researchers[27] have pointed out, the most notable and valuable feature of Directive 2016/800 is its attention to the concept of the vulnerability of each juvenile.

Alhough this may sound promising, the definition of vulnerability is not expanded or clarified. It is, of course, very difficult to specify the parameters of vulnerability, since the concept may involve many different factors, such as mental health, learning disabilities or social deprivation. As Vocht (2016) and her colleagues point out: *'This certainly is a very complex matter, strongly connected to developmental psychology – a discipline with which the average lawyer will probably be not (too) familiar. Nevertheless, an explicit discussion on the different aspects of the vulnerability of juveniles might help identify and shape the specific safeguards needed to provide them with sufficient protection during the various stages of criminal proceedings'*[28]. The authors stress that, because of the complexity of the concept, it is very impor-

[25] Caianiello, „To Sanction (or not to Sanction) Procedural Flaws at EU Level? A Step Forward in the Creation of an EU Criminal Process," 329; S. Rap and D. Zlotnik, "The Right to Legal and Other Appropriate Assistance for Child Suspects and Accused," *European Journal of Crime and Criminal Law and Criminal Justice* 26, no. 2 (2018): 115.

[26] Rap and Zlotnik „The Right to Legal and Other Appropriate Assistance for Child Suspects and Accused," 129.

[27] De Vocht et al., "Procedural Safeguards for Juvenile Suspects in Interrogations. A Look at the Commission's Proposal in Light of an EU Comparative Study," 488–490; Rap and Zlotnik, "The Right to Legal and Other Appropriate Assistance for Child Suspects and Accused," 110–131.

[28] De Vocht et al., "Procedural Safeguards for Juvenile Suspects in Interrogations. A Look at the Commission's Proposal in Light of an EU Comparative Study," 489.

tant to acknowledge, reflect on and evaluate the specific needs of minors and to identify the areas of their vulnerability. The Directive supports this aim by establishing provisions on the individual assessment of suspected and accused minors.

The Directive provides that *'the individual assessment shall, in particular, take into account the child's personality and maturity, the child's economic, social and family background, and any specific vulnerabilities that the child may have. Member States shall ensure that the specific needs of children concerning protection, education, training and social integration are taken into account'*[29]. Thus, the Directive not only emphasizes the importance of identifying the special needs of young people and their vulnerabilities in various fields, but also provides for a thorough and comprehensive assessment of the child's social environment and personality. This is the first appearance of such an assessment in a legally binding document.

In highlighting the need for individual assessment, the Directive undoubtedly sets an essential and, at the same time, extremely ambitious aim, the implementation of which requires clear instructions and explanations. However, although the comprehensive assessment of minors' mental states and various associated social constructs is embodied in the Directive, the purpose of the individual assessment is not made entirely clear, nor are the instruments that should be used in the assessment procedure specified. To illustrate the point, on the one hand, the individual assessment is intended to contribute to decisions on procedure or steps in criminal proceedings. On the other hand, the assessment is to be taken into account when making decisions that concern the sentencing of the child. It seems that the Directive strives to pursue both aims, i.e. it prescribes using the individual assessment tool both for procedural purposes and for decision-making concerning sanctioning. However, implementation of both could lead to confusion for Member States. Such a situation is extremely unfortunate. It has already been observed that due to alleged confusion Member States implement some of their obligations inconsistently and inadequately[30]. Moreover, there is a risk that Member States will opt to achieve only one (the second) of the aims, concentrating on decisions to do with sentencing[31].

[29] Directive (EU) 2016/800, 11 May 2016, article 7.

[30] Rap and Zlotnik, „The Right to Legal and Other Appropriate Assistance for Child Suspects and Accused," 115.

[31] De Vocht et al., "Procedural Safeguards for Juvenile Suspects in Interrogations. A Look at the Commission's Proposal in Light of an EU Comparative Study," 501.

As has already been mentioned, the Directive does not specify the instruments to be used for individual assessment and does not directly require implementation of specific, evidence-based individual assessment measures. Article 7 merely states that the assessment shall be carried out by qualified personnel, following, as far as possible, a multidisciplinary approach. Such phraseology may seem to express confidence in professionals and their qualifications, but it can also be seen as a kind of loophole enabling a very minimal implementation of Article 7. The Directive promotes a truly ambitious goal: to set an obligation to carry out an individual assessment of minor defendants at the earliest possible stage of criminal proceedings. However, it provides no framework for its implementation. Hence, although the multiple and ambitious goals of the Directive are very welcome, there is too much room left for differing interpretations of these goals, procedures and assessment instruments.

The Directive may also be criticized because it does not apply to young adults or to the proceedings that domestic law does not formally label as criminal. It is widely known that many countries do not follow a purely criminal approach. According to Dünkel (2014), youth justice legislation in a majority of European countries combines so-called 'justice' and 'welfare' models, incorporating and prioritizing various education and / or protection measures. Here the synergy between criminal and non-criminal proceedings is crucial[32]. Unfortunately, the Directive does not apply to non-criminal forms of proceedings and its provisions would therefore have no impact on any proceedings which are not formally labelled by the domestic law as criminal[33].

Overall, these arguments invite us to a further consideration and analysis of individual assessment, its legal implications, goals and procedure, and of the instruments that could be used, followed by a discussion of the challenges, opportunities and recommendations for its implementation. These questions are addressed in the following chapters of the book.

[32] F. Dünkel, "Juvenile Justice Systems in Europe – Reform developments between justice, welfare and 'new punitiveness'1," *Kriminologijos studijos* 1, (2014): 31–76.

[33] De Vocht et al., "Procedural Safeguards for Juvenile Suspects in Interrogations. A Look at the Commission's Proposal in Light of an EU Comparative Study," 485.

1.3. In Conclusion: the Importance of Procedural Justice in Juvenile Criminal Proceedings

Over the last fifty years or more the protection of children's rights and juvenile justice have been widely discussed, examined and addressed. Much has been done to promulgate and implement improved protection and safeguards for children involved at any stage of the criminal justice system. Discussion and debate must and will continue at all levels. That continuing debate needs to be informed by research into whether, and how well, changes have been implemented – looking closely at the experience both of the experts who administer juvenile justice and – crucially – of the children themselves who are affected by it.

Juvenile justice needs to be examined in action as a dynamic process. To promote fruitful discussion leading to positive, beneficial change, a core question to consider is *how children feel when exercising their rights at any stage of the criminal justice process* – is the young person's need to be heard satisfied; is their voice important; do they actively and effectively participate in the proceedings; are they involved in the decision-making; do they have confidence in the justice system; and do they consider the decisions reached in their proceedings to be fair and just ?

The most important element in the enforcement of rights is the personal interaction of all those people involved. In order for minors to feel fully involved in this interaction, it is necessary to ensure their autonomy and to harmonize their representation. How institutions, and judicial institutions in particular, treat people in general can influence a minor's image of justice, a minor's categorisation of what is legitimate or not, and as a consequence it can promote or reduce spontaneous obedience to judicial decisions and compliance with the existing rules in society.

Interactions with institutions play a particularly important role in the transition from childhood to adulthood. During this period, it is very important for young people to be treated 'as adults'. They increasingly expect to have a voice in decisions that affect their lives and to be treated with dignity and respect as fully-fledged participants in the proceedings - and not as objects for which competent adults take decisions[34].

[34] Beneitez and Dumortier, "Why Children Obey the Law: Rethinking Juvenile Justice and Children's Rights in Europe through Procedural Justice," 40.

We observe that the need to ensure procedural justice and procedural safeguards for minors is steadily increasing; and that the quality-oriented implementation of procedural safeguards contributes to a minor's legal socialization and can have a significant impact on their future behaviour. It is therefore crucial that professionals implementing procedural safeguards recognise the importance of the interaction between minors and institutions and have specialist knowledge on how to build a positive relationship that best serves the interests of children / young people. The individual assessment of suspected or accused juveniles provided for in Directive 2016/800 should be considered not only as an evidence-based decision-making tool, but also as an instrument which enables us to hear the juvenile, to represent and interact with him or her, and to consider his or her specific situation; an instrument which assists in reaching decisions that are as child-friendly as possible and that create favourable conditions for the improvement of a minor's behaviour in future.

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2 Towards the Effective Implementation of the Directive: Review and Recommendations for the Individual Assessment of the Child

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2.1. Introduction: Ensuring the Needs of the Child as a Precondition for Individual Assessment

International and European Union legislation regulating various aspects of juvenile justice enshrines the principle of safeguarding the best interests and needs of the child. This principle implies that measures of criminal justice must be selected and applied according to the individual needs of the child. The need for special protection of juveniles involved in criminal proceedings (as suspects, victims or witnesses) and its individualization arises from the specific psychological and social characteristics of the juvenile personality. Minors differ from adults in their cognitive processes, emotional response patterns, and social needs. Research also reveals that a large proportion of juvenile offenders are characterized by either mental, emotional or behavioural disorders[35]. The specific personality

[35] D. Rijo et al., "Mental health problems in male young offenders in custodial versus community based-programmes: Implications for juvenile justice interventions," *Child and Adolescent Psychiatry and Mental Health* 10, (2016); R. D. Hoge, "Assessment in Juvenile Justice systems," in *Treating the Juvenile Offender*, ed. R. D. Hoge, N. G. Guerra and P. Boxer (New York/London: The Guilford press, 2008), 54–75; E. S. Scott, "Criminal responsibility in adolescence: Lessons from developmental psychology," in *Youth on trial: A developmental perspective on juvenile justice*, ed. T. Grisso and R. G. Schwartz (Chicago: University of Chicago Press, 2000), 291–323.

traits of juvenile offenders[36] imply the need to implement measures, in addition to formal legal protection, to take account of the child's distinctive mental health and social security needs. That calls for individual assessment of the relevant characteristics and for tailored interventions in criminal proceedings.

A child's needs are, of course, not self-evident. To determine them requires the help of qualified professionals and the application of special psycho-social and legal instruments to enable decision-makers in criminal proceedings to base their decisions on the child's interests and personality traits. Criminal proceedings have traditionally involved psychiatric or psychological examination, but this is usually limited to specific purposes, e.g. to the identification of the awareness of committing a criminal offence, criminal responsibility and to the identification of appropriate interventions[37]. Expertise is also required in those cases where there are doubts about a person's ability to comprehend the proceedings and his or her criminal responsibility. This is definitely not a means to identify all the needs of children who are suspects or accused in criminal proceedings. That instrument is the *individual assessment* of the child, which is described in international and EU documents. For example, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (also known as the "Beijing Rules") recommend that

> *in all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority*[38].

The recommendation to assess the individual needs of the child is endorsed by the UN Committee on the Rights of the Child in General Comment No. 24

[36] Here *formal legal protection* is understood solely as ensuring the proper procedures under the law, without assessing the impact of those procedures or criminal proceedings on the individual's personality.

[37] The legal purpose of a *forensic* examination is usually to determine whether a person can be found legally responsible. From a *mental health* perspective, the purpose of such an assessment is to identify whether the juvenile has a mental disorder that requires treatment and, if so, what measures are the most appropriate for him or her (e.g. treatment within the community or in a medical institution, correctional programmes, etc.).

[38] Recommendation 16.1.

(2019), *On children's rights in juvenile justice*. Another relevant international document, the *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, emphasizes the need to respect the child's right to private and family life and recommends that

> *close co-operation between different professionals should be encouraged in order to obtain a comprehensive understanding of the child, and an assessment of his or her legal, psychological, social, emotional, physical and cognitive situation.*

The most detailed definition of *individual assessment* is provided in Article 7 of Directive 2016/800[39]:

EU Directive 2016/800—Article 7

1. Member States shall ensure that the specific needs of children concerning protection, education, training and social integration are taken into account.
2. For that purpose children who are suspects or accused persons in criminal proceedings shall be individually assessed. The individual assessment shall, in particular, take into account the child's personality and maturity, the child's economic, social and family background, and any specific vulnerabilities that the child may have.
3. The extent and detail of the individual assessment may vary depending on the circumstances of the case, the measures that can be taken if the child is found guilty of the alleged criminal offence, and whether the child has, in the recent past, been the subject of an individual assessment.
4. The individual assessment shall serve to establish and to note, in accordance with the recording procedure in the Member State concerned, such information about the individual characteristics and circumstances of the child as might be of use to the competent authorities when:
   a) determining whether any specific measure to the benefit of the child is to be taken;

[39] For the first time, Directive 2016/800 formally established a term for the individual assessment of a child, which was previously used only in the regulation and practice of some member states.

   b) assessing the appropriateness and effectiveness of any precautionary measures in respect of the child;
   c) taking any decision or course of action in the criminal proceedings, including when sentencing.
5. The individual assessment shall be carried out at the earliest appropriate stage of the proceedings and, subject to paragraph 6, before indictment.
6. In the absence of an individual assessment, an indictment may nevertheless be presented provided that this is in the child's best interests and that the individual assessment is in any event available at the beginning of the trial hearings before a court.
7. Individual assessments shall be carried out with the close involvement of the child. They shall be carried out by qualified personnel, following, as far as possible, a multidisciplinary approach and involving, where appropriate, the holder of parental responsibility, or another appropriate adult as referred to in Articles 5 and 15, and / or a specialised professional.
8. If the elements that form the basis of the individual assessment change significantly, Member States shall ensure that the individual assessment is updated throughout the criminal proceedings.
9. Member States may derogate from the obligation to carry out an individual assessment where such a derogation is warranted in the circumstances of the case, provided that it is compatible with the child's best interests.

Unlike the UN and Council of Europe guidance documents referred to above, the Directive is binding upon EU Member States. They must introduce individual assessment of the child into their national systems in accordance with the criteria set out in the Directive. After getting acquainted with the individual implementation practices in various EU Member States during this project, we noticed that both the content of the individual assessments and the way in which the Directive is to be implemented are perceived differently. As the Directive is not a directly applicable act, it is natural that Member States should choose their own ways of implementing it, taking into account their domestic legal framework, the resources available, existing systems and infrastructure. On the other hand, it is important that Member States should implement it in a way that will achieve its objectives, so that the Directive becomes effective. We have also noticed a lack of

scientific literature, not only on the interpretation of Article 7, but also on the legal regulation and application of individual assessments of children in general[40].

The absence of a commonly-held perception of individual assessment and the lack of scientific literature prompted the writing of this Chapter. It focuses on explaining the definition of individual assessment set out in Article 7 and on crystallizing its features. We will try to answer the following six questions:

- what are the goals of individual assessment?
- what is or should be the content of an individual assessment?
- how should an individual assessment be carried out?
- who should carry out an individual assessment?
- who is entitled to an individual assessment? and
- when should an individual assessment be performed?

2.2. The Goals of Individual Assessment

Whether any given measure is effective or not must be judged by the extent to which the objectives set for it have been achieved. It is therefore crucial to understand the *purpose* of individual assessment set out in the Directive. This will serve as a point of reference in interpreting and assessing the implementation of individual assessment in Member States.

The overall purpose of the Directive is to establish procedural safeguards to ensure that children, meaning persons under the age of 18 who are suspects or accused persons in criminal proceedings, are able (1) **to understand and follow those proceedings** and (2) **to exercise their right to a fair trial.** The Directive also aims (3) **to prevent children from re-offending** and (4) to **foster their social integration**[41]. These are the four objectives of the Directive.

The first two objectives may be thought of as legal-procedural. They aim to ensure the rights of the child as a fully-fledged participant in any criminal

[40] The existing scientific literature deals mainly with the psychological aspects of a child's individual assessment (e.g. Hoge, 1999, 2008). Meanwhile, the legal issues arising out of the implementation of the Article 7 of the Directive have not been widely analysed (see: D. De Vocht et al., "Procedural Safeguards for Juvenile Suspects in Interrogations. A Look at the Commission's Proposal in Light of an EU Comparative Study," *New Journal of European Criminal Law* 5, no. 4 (2014).

[41] Explanatory Article 1 of the Directive.

proceedings. The third and fourth objectives are the Directive's ultimate goals that will be pursued through criminal procedures. It should be noted that the goals are not necessarily characteristic of criminal proceedings. In many states criminal proceedings have traditionally been associated with the prompt and comprehensive detection of a criminal act and the imposition of a fair penalty on the offender. The objectives of preventing recidivism and promoting social integration are delivered through sentencing and the criminal law. Thus, it can be argued that the Directive complements the purpose of criminal proceedings involving children with the additional goals of social integration and preventing recidivism. This is logical and follows a criminological principle: interventions concerned with criminal behaviour must commence at the very first stages of criminal justice. It is not only sentencing that needs to be invididualized, but also other aspects of criminal procedure. These impact on individuals in various ways and often differ from the effect of the final sentence (compare, e.g. pre-trial detention and imprisonment, or intensive supervision with electronic monitoring, etc.).

As mentioned above, the goals (objectives) are indicators of the effectiveness of measures. Depending on whether the goal set has been achieved, we can evaluate whether a particular measure is effective. The question arises, what if after the application of individual assessment having identified the child's needs, and having individualized the punishment, the child re-offends and his/her social integration fails? Can we say that in this case, the individual assessment was not effective, because the ultimate goal of recidivism prevention and social inclusion has not been achieved? In our opinion, the goals of social integration and recidivism prevention are broad, in the sense that their achievement requires complex measures and the involvement of various actors. We will not achieve this goal by the means of criminal proceedings alone, since we need much more diverse measures aimed at the child's personality, his social environment, and so on. Therefore, individual assessment and the Directive in general should be seen as one (and not the only) measure to achieve the aforementioned objectives. We believe that individual assessment should be judged on its immediate goals, i.e. whether the child's needs have been properly identified and also appropriate measures aimed at recidivism prevention have been chosen to address his or her needs, whether these measures help mitigate the risks of his or her criminal behaviour or facilitate his or her social integration.

The wording of Article 7. 1 of the Directive shows that the primary and overriding purpose of individual assessment is to contribute to the protection of the child's needs when involved in criminal proceedings:

> *Member States shall ensure that the specific needs of children concerning protection, education, training and social integration are taken into account.*

The Directive places Member States under an obligation, when meeting this aim, to apply the procedures of individual assessment. Individual assessment is primarily to be understood as a tool for identifying the psycho-social and educational needs of a child and the means to provide for them. Accordingly, Article 7. 4 establishes legal-instrumental goals for the individual assessment of a child; these goals specify the decisions and courses of action in criminal proceedings where individual assessment must be used. These are:

a) determining whether any specific measure for the benefit of the child is to be taken;
b) assessing the appropriateness and effectiveness of any precautionary measure in respect of the child;
c) taking any decision or course of action in criminal proceedings, including sentencing.

Thus, an individual assessment can be characterized as an **instrument for identifying the needs of a child who is a suspect or an accused person in criminal proceedings; and also as a means of ensuring that those needs are met**.

The objectives of individual assessment can be set out as follows: first, individual assessment aims to identify the child's needs, then according to those identified needs, the decisions and measures taken in criminal proceedings are individualized, thus contributing to meeting the child's needs. Finally, these components contribute to the overall purpose of the Directive, namely prevention of recidivism and social inclusion (see **Figure no. 1**).

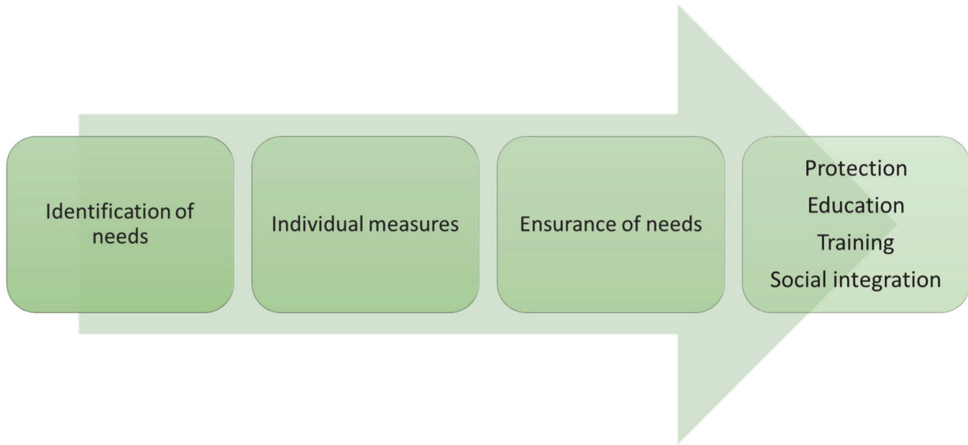

Figure no. 1: The interaction between the assessment goals

Interaction Between the Psycho-social and Legal Goals of Individual Assessment

Individual assessment is not, by nature, a legal instrument. It is primarily a psycho-social tool used by professionals to assess a child's personality and needs. There are a lot of special methodologies used by psychologists or other qualified professionals to conduct an individual assessment of a child. Each instrument has its own purpose and is designed to evaluate one characteristic or another. Typically, mental health professionals diagnose a child's disorder or other problems and identify treatment using a variety of child assessment tools. An important challenge for a child assessment specialist is to diagnose the problem and choose the appropriate tools to deal with it.

Once individual assessment becomes an instrument in criminal procedure, it takes on a legal aspect. This means that the instrument should now focus on those characteristics of the child that are relevant to achieving the legal goals of individual assessment, i.e. to tailor the measures in the criminal proceedings to the identified needs of the child.

An example of such psycho-social and legal interactions is the existing practice in which risk assessment tools are combined with a social inquiry report. Social inquiry reports (also called pre-sentence reports) are used in many European

countries to individualize a sentence and / or probation conditions[42]. For example, in Lithuania the social inquiry report is an official document, prepared using OASys methodology, for the risk assessment of the likelihood of the offender re-offending[43]. The content of the social inquiry report has been aligned with the structure of the OASys assessment methodology. It can be said that Article 7 of the Directive indicates a similar interaction between socio-psychological and legal instruments: individual assessment should be carried out using psycho-social instruments by professionals who understand them, and the results of this assessment are then embodied in an official document, the structure of which not only corresponds to the structure and content of the evaluation tools, but also meets the legal-procedural requirements.

It is important to note that the psycho-social and legal goals of individual assessment may not mesh with each other. To illustrate the point, in some cases the imposition of certain pre-trial measures or penalties under existing legal regulations is unavoidable (e.g. pre-trial detention or imprisonment for very serious crimes). However, the child's assessment may show that, given his or her individual characteristics and vulnerabilities, imprisonment does not meet his or her socio-psychological needs. In these circumstances, however, legal objectives must take priority. In such a case, the individual assessment should focus on identifying and meeting the child's needs under conditions of imprisonment.

This interaction of psychosocial and legal goals must be taken into consideration when pursuing the effective implementation of individual assessment under the Directive. Performing an individual assessment requires specialist knowledge and tools, whereas reaching a decision requires correct interpretation of the content of the individual assessment. The information provided in the assessment report may be evidence-based and objectively reflect the minor's psycho-social characteristics, but accurate decision-making depends on the competence of the decision-maker (e.g. judge, prosecutor, pre-trial investigation officer) to interpret and apply the information provided. As research on

[42] A. M. Van Kalmthout and I. Durnescu,*Probation in Europe*: https://www.cep-probation.org/knowledgebases/probation-in-europe/

[43] OASys is the abbreviated term for the Offender Assessment System. This instrument was developed and used in England and Wales to measure the risks and needs of criminal offenders, but it has also been adapted in other European countries e.g. Lithuania, Estonia, Croatia, Bulgaria. See: Van Kalmthout A M and Durnescu I Probation in Europe: https://www.cep-probation.org/knowledgebases/probation-in-europe/

psychological individual assessment in juvenile justice in the US reveals, decision makers in criminal proceedings tend to misinterpret individual assessment data and use assessment and decision procedures conducive to the formation of irrational judgments[44].

One example of an inadequate use of individual assessment is when decision-makers use the data provided in the assessment report to justify imprisonment. As Hoge notes, in some cases US judges consider the child disorders described (particularly those related to possibly violent behaviour) to be dangerous to society and, based on this argument, impose imprisonment[45]. It cannot be ruled out that similar misinterpretation of a child's individual assessment data could also occur in EU States implementing the Directive[46].

In our view, the practice of using individual assessment to justify the application of measures restricting a child's liberty (especially by imprisonment) would manifestly deny the principle of giving priority to safeguarding the best interests of the child. An individual assessment may reveal certain characteristics that would indeed indicate certain risks to public safety, etc., but it should be borne in mind here that the purpose of an individual assessment is to meet the needs of the child and not those of other entities (e.g, society). It would be difficult to find research studies indicating that imprisonment has any positive effect on minors, while there are many studies confirming that imprisonment has negative implications for both a minor's personality (e.g. causing mental, emotional disorders and illness) and behaviour (e.g. encouraging re-offending)[47]. Accordingly, there

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[44] R. D. Hoge, "An expanded role for psychological assessments in juvenile justice systems," *Criminal Justice and Behaviour* 26, no. 2 (1999): 253.

[45] *Ibidem*, 252.

[46] For example, Lithuanian researchers note that national courts are not well acquainted with risk assessment tools, the results of which are used as an argument in parole decisions (see: I. Michailovič and I. Jarutienė, "Problems of password application in Lithuania," *Criminology studies* 4, (2016). This suggests that decision-makers in criminal proceedings also lack knowledge about the individual assessment of the child.

[47] U. Gatti, R. E. Tremblay and F. Vitaro, "Iatrogenic effect of juvenile justice," *Journal of Child Psychology and Psychiatry* 50, (2009): 991–998; The Effects of Imprisonment: Specific Deterrence and Collateral Effects. Research Summaries. University of Toronto: (2013); A. Liebling and M. Shadd, *The effects of imprisonment* (Routledge, 2013); J. Murray and D. P. Farrington, "Parental imprisonment: effects on boys' antisocial behaviour and delinquency through the life-course," *Journal of Child Psychology and psychiatry* 46, no. 12 (2005): 1269–1278; L. H. Bukstel and P. R. Kilmann, "Psychological effects of imprisonment on confined individuals," *Psychological Bulletin* 88, no. 2 (1980): 469; J. Murray and D. P. Farrington, "Parental imprisonment: Long-lasting effects on boys' internalizing problems through the life course," *Development and psychopathology* 20, no. 1 (2008): 273–290; T. R. Clear, "The

is a risk in some cases, especially if certain safeguards are not established, that the child's individual assessment may become an instrument for the violation of his or her rights rather than protecting them. In order to avoid such flawed practice, we recommend that national regulations (1) prohibit the use of individual child assessment data to justify the imposition of imprisonment; and (2) ensure (e.g. through training) the competence of decision-makers in criminal proceedings, so they are able to interpret and apply individual assessment data in an appropriate manner.

To summarize, it can be stated that individual assessment is a hybrid instrument that pursues (1) the aim of social integration and protection of the child's needs and (2) the legal objectives of effective criminal justice. Qualified professionals (e.g psychologists, psychiatrists, etc.) and the psycho-social instruments they use play a key role in achieving the first aim. In order to achieve the second aim, the function of decision-makers in criminal proceedings (judges, prosecutors, pre-trial investigation officers) is important, as they have to make decisions based on the child's identified needs. In terms of the implementation process, individual assessment includes: 1) assessment of the child's needs by applying special tools by qualified professionals; 2) summarizing the evaluation data and 'wrapping' it into the form of a legal document (e.g. social inquiry report).

Figure no. 2: The process of individual assessment

effects of high imprisonment rates on communities," *Crime and Justice* 37, no. 1 (2008): 97–132; R. L. Lippke, "Crime Reduction and the Length of Prison Sentences," *Law & Policy* 24, (2002): 17–35; J. Cid, "Is imprisonment criminogenic? A comparative study of recidivism rates between prison and suspended prison sanctions," *European Journal of Criminology* 6, no. 6 (2009): 459–480; S. J. Listwan et al., "The pains of imprisonment revisited: The impact of strain on inmate recidivism," *Justice Quarterly* 30, no. 1 (2013): 144–168; C. Spohn and D. Holleran, "The effect of imprisonment on recidivism rates of felony offenders: A focus on drug offenders," *Criminology* 40, no. 2 (2002): 329–358; P. Gendreau, F. T. Cullen and C. Goggin, *The effects of prison sentences on recidivism* (Ottawa: Solicitor General Canada, 1999); R. H. DeFina and T. M. Arvanites, "The weak effect of imprisonment on crime: 1971–1998," *Social Science Quarterly* 83, no. 3 (2002): 635–653.

2.3. What Instruments Should be used for Conducting Individual Assessment?

According to psychology researchers, reliable and valid assessments are crucial for effective decision-making at all levels of the juvenile justice process[48]. Most of us would agree that the goals of a child's individual assessment should be achieved by applying an evidence-based approach. However, the Directive does not specify the instruments to be used for the assessment, nor does it specify that the means of individual assessment should be evidence-based and / or effective. The Directive merely states that the assessment shall be carried out by qualified personnel, following, as far as possible, a multidisciplinary approach.

Such wording expresses trust in professionals and their qualifications, but in our view it could also be treated as a loophole allowing a broad interpretation of the regulation's wording which could lead to a rather formal and, possibly, ineffective implementation of the Directive.

This thought is reinforced by examples of the implementation of the Directive in countries where the individual assessment of a child is equated with the process of information collection and provision[49]. This practice deserves critical consideration, because in most national systems, before the Directive was adopted the prosecutor and / or the judge had been collecting information about a child from other authorities. However, the Directive encourages something more than just sharing of information. It requires an in-depth, evidence-based assessment of a child's characteristics and needs, leading to effective decisions in criminal proceedings[50]. It is also difficult to imagine how the goals of the Directive, (i.e. the child's social integration, and prevention of recidivism or the adaptation of criminal proceedings according to the needs of the child) can be achieved without the use of evidence-based assessment tools. Nevertheless, as research shows[51], even with evidence-based individual assessment tools there is still a risk that the decision-makers will misinterpret assessment data.

[48] Hoge, "Assessment in Juvenile Justice systems," 54.

[49] For example, such a practice is implemented in Lithuania and Greece: the individual assessment process includes the collection of information about the child by the Child Rights Protection and Adoption Service (for more information see the chapter No. 4 and No. 5).

[50] It is important to emphasize here that the Directive uses the concept of assessment as a process and not as information collection.

[51] Hoge, "Assessment in Juvenile Justice systems."

The requirement for assessments to be undertaken with the help of certain instruments occurs in other international documents. For example, the Beijing rules recommend applying the findings from the social inquiry report. In essence, the social inquiry report[52] is a document that provides evaluation information. However, in many countries social inquiry reports are inseparable from the application of evidence-based risk assessment methodologies. Another document, the UN General Comment *On Children's Rights in Juvenile Justice* suggests that States should implement evidence-based intervention programmes to address not only the various psycho-social causes of such behaviour, but also the protective factors that enhance resistance to criminal behaviour, and where interventions are preceded by a thorough, interdisciplinary assessment of the child's needs[53].

Hence, in order to implement the Directive effectively within a national system, it would be reasonable to require that individual assessments are carried out using evidence-based instruments. That position is supported by the following arguments:

1) it is in line with the purpose of the Directive: both the prevention of recidivism and social inclusion require the application of effective (evidence-based) measures;
2) a requirement that places States under an obligation to apply evidence-based approaches prevents a merely formal and ineffective implementation of the Directive;
3) the use of evidence-based assessment tools reduces the risk of manipulation of assessment data, because the data collected by evidence-based assessment tools are standardized according to specific instructions, and the specialists are trained to apply and interpret those tools;
4) the use of standardized, evidence-based tools helps to ensure uniform assessment practice, leading to a unified practice of individual evaluation, thus ensuring equally fair treatment of all children as suspects and accused persons;

[52] In some countries known as „pre-sentence reports".

[53] UN Committee on the rights of the child (CRC), General comment No. 24 (2019) on children's rights in the child justice system, 18 September 2019, CRC/C/GC/24.General Comment No. 24 (2019), replacing General Comment No. 10 (2007) Children's rights in juvenile justice. United Nations.Retrieved from: http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc= 6QkG1d%2FPPRiCAqhKb7yhsqIkirKQZLK2M58RF%2F5F0vEnG3QGKUxFivhToQfjGxYjV05tUAIgpOwHQJsFPdJXCiixFSrDRwow8HeKLLh8cgOw1SN6vJ%2Bf0RPR9UMtGkA4

5) feedback is provided: – in evidence-based systems, performance evaluation is conducted, which allows decisions on: (1) whether the instruments used have achieved the goals set; and (2) what further measures need to be taken to improve the system.

A question remains to be answered: **precisely which tools are the most appropriate for individual assessment under the Directive?** There e numerous evidence-based tools for individual assessment[54]. The choice depends on the goals of the assessment, the child's personality traits, behavioural problems, and so on. In this situation, the main criteria to be used when selecting particular measures should be the objectives of the Directive and the individual needs of the child. According to Article 7, these should be the tools for assessing a child's needs concerning protection, education, training and social integration (Article 7. 1), and a child's personality and maturity, a child's economic, social and family background, and any specific vulnerabilities (Article 7. 2). Hence, individual assessment specialists should use exactly those tools that are appropriate to identify the characteristics of the minor.

It would be difficult to find a single universal instrument to assess all the needs and characteristics of the child. For example, some countries use risk assessment

[54] According to professionals, a non-exhaustive list of standardised assessment tools could include:
a) For general and justice settings application: personality tests such as:
- The Minnesota Multiphasic Personality Inventory – Adolescent MMPI-A;
- Reynolds Adolescent Depression Scale (RADS);
- Psychopathy Checklist: Youth Version (PCL:YV);
- Behavioural and emotional disturbances or pathology measuring instruments: The Diagnostic Interview Schedule for Children (DISC); Child and Adolescent Functional Assessment Scale (CAFAS); parent, teacher and youth forms of Child Behaviour Checklist (CBCL); The Massachusetts Youth Screening Instrument (MAYSI-2), and cognitive functioning measuring tools: The Wechsler Intelligence Scale for Children –IV (WISC-IV).

b) For forensic application:
- risk of dangerousness, sophistication – maturity, and treatment amenability measuring tool: Risk – Sophistication Treatment Inventory (RSTI); antisocial attitudes, criminal reasoning, self-serving cognitive distortion measuring tools (HIT) and the Criminal Sentiments Scale Modified (CSS-M); risk assessment tools – risk of reoffending/needs/strengths measuring tool – Youth Level of Service/Case Management Inventory (YLS/CMI), risk reoffending/needs measuring tool ASSET; violence risk in adolescents measuring tool: structured Assessment of Violence Risk in Youth (SAVRY); strength/vulnerabilities/multiple risk (harm to others and violence, substance abuse) and harm to the adolescent (suicide, self-injury etc.): the Short Term Assessment of Risk and Treatability: Adolescent Version (START:AV); R. D. Hoge, "Assessment in Juvenile Justice Systems: An overview," in *Handbook of Juvenile Forensic Psychology and Psychiatry,* ed. E. L. Grigorenko (2012).

methodologies as the main tool for individual assessment. These are considered to be appropriate given the legal objectives of individual assessment in Article 7 (i.e. individualisation of criminal proceedings and assessment of criminal liability). The fact, unfortunately, is that these tools may not be sufficient to assess other necessary aspects, such as a child's educational needs and so on. In such cases, it would be reasonable to combine several instruments and to involve a wider range of qualified professionals in order to ensure that all the personality traits and needs of the child covered by the Directive are properly assessed.

2.4. Who is Entitled to Carry out the Individual Assessment?

As mentioned above, Article 7 states that individual assessment must be carried out by qualified professionals. The Directive does not specify either the titles of those professions nor their areas of specialization, leaving discretion for Member States to delegate this function, taking the specificities of their domestic systems into account. We consider it important to pay attention to the following aspects when setting requirements for the individuals who will conduct assessments:

First, the concept of *qualified professional* in Article 7 is already recognized in the concept of individual assessment. Thus, a qualified professional should be understood as a professional who has the knowledge and ability to apply precisely the individual assessment. The urgent need for professionals' participation is also supported by research showing that, in too many cases, individual assessments are inappropriately administered, scored and interpreted, due to lack of expertise and qualifications[55]. Thus, in our view, the **Directive cannot be considered to be properly implemented, if there is a national practice of delegating individual assessment to professionals without appropriate qualifications[56].**

Second, both the qualification requirements for professionals and also the need for specific specialists are dictated by the goals of individual assessment (which

[55] Hoge, "Assessment in Juvenile Justice systems."

[56] For example, in those cases when the conducting of the individual assessment is delegated to those professionals who work in the field of legal or social protection of a child, but who lack the special knowledge and ability to conduct the individual assessment or to professionally summarize the assessment data (read more about this problem in Chapter 4). Such professionals may indeed be involved in the process by providing information about the child, but should not be the key assessors.

include ensuring the child's various needs—psychological, educational, social, etc.). Accordingly, **States should ensure the availability of professionals who have the competence to assess the relevant needs of the child**.

Third, in the scientific literature, evidence-based individual assessment is associated with activities performed by mental health professionals and the tools they use[57]. Some standardized methodologies can be used by certain specialists who have undergone additional training but are not qualified as psychologists or psychiatrists[58]. In some cases their competencies may not be sufficient to conduct a deeper psychological assessment – for example, when a minor may need treatment. It is advisable that: **1) mental health professionals are involved in the individual assessment process; and 2) mechanisms are provided that allow the specialist to identify the need for a deeper psychological assessment**[59].

To meet the needs of the child in criminal proceedings, not only is the quality of the assessment important, but so is the proper interpretation of the data (results) and their application when taking any decision or course of action in the proceedings. In order to achieve an effective system of individual assessment, **special training of decision-makers in interpretation of assessment data is vital**.

The Directive does not specify **which authorities** should apply or coordinate the individual assessment. Each State will choose a particular institutional model taking into account its juvenile justice traditions, the characteristics of the existing national systems, and the resources available.

Hoge identifies two structural models of individual assessment:

1) *Adjunctive model*: where psychologists are employees within a judicial authority, its special unit or other judicial structure and act under judges' instructions to conduct individual assessment. The adjunctive model is most common in the United States[60], although a similar model also applies in

[57] Hoge, "Assessment in Juvenile Justice systems."

[58] In practice, these are usually probation officers, social workers, pedagogists (depending on the institutional system to which the individual assessment is delegated).

[59] For example, when certain mental or other disorders are observed, the specialist should know what steps to take, who to turn to, and so on.

[60] Hoge, "An expanded role for psychological assessments in juvenile justice systems," 259–260.

those countries where individual risk assessments are carried out by the probation services that form part of the courts' structure (e.g. Poland)[61].

2) *Delivery model*: based on institutional cooperation: the service is provided by independent (non-judicial) institutions and / or organizations. The latter model is common in most European countries[62].

When analysing the practice of EU Member States, we can discern two institutional models of justice and social welfare. In the justice model, the individual assessment function is delegated to the institutions within the justice system, usually probation services, which carry out risk assessments of minors and prepare social inquiry (pre-sentence) reports. This model is typical for risk-management-oriented systems, where assessment is primarily aimed at the appropriate individualisation of criminal measures. In countries following the justice model, the majority of juvenile offenders find themselves in the criminal justice system and become subject to the criminal law.

The social welfare model is generally typical in States where juveniles who have committed a criminal offence are placed under the care of social welfare institutions. They are not subject to criminal liability measures. Accordingly, the institutions of the social security system conduct the individual assessment[63]. In these systems, the Directive will apply to only a small proportion of juvenile offenders (usually only those accused of serious crimes and therefore subject to criminal proceedings)[64].

2.5. Who has the Right to an Individual Assessment?

The main criteria defining the subjects of the Directive are: age, status of a participant in criminal proceedings, seriousness of the offence and severity of the intervention. We will discuss them in more detail.

[61] Probation measures and alternative sanctions in EU: https://www.euprobationproject.eu/national_detail.php?c=PL

[62] Hoge, "An expanded role for psychological assessments in juvenile justice systems," 260.

[63] For example, in Lithuania it would be the Child Rights Protection and Adoption Service under the Ministry of Social Security and Labour of the Republic of Lithuania.

[64] In the following chapters, we will discuss in more detail the examples of Croatia, Lithuania and Greece, which represent the named models.

Age

The Directive establishes a general rule that its provisions apply to children (persons under the age of 18) and young persons under the age of 21 who are suspects and accused persons in criminal proceedings or who are subject to European arrest warrant proceedings (requested persons). The Directive also applies to persons (1) who were children when they became subject to the proceedings but who have subsequently reached the age of 18 and (2) who have reached the age of 18 at the time when criminal proceedings were initiated but the criminal offence was committed when the person was a child. The Directive leaves discretion to Member States to decide whether in these cases the application of this Directive is appropriate in the light of all the circumstances of the case, including the maturity and vulnerability of the person concerned[65].

Status of the Participant in Criminal Proceedings (Suspect or Accused)

It is important to emphasize that the scope of the Directive is limited to criminal proceedings. The Directive does not apply to other non-criminal measures taken in relation to the child for his criminal behaviour, although those measures (described in the Directive as protective, corrective or educative measures) differ very little from their criminal equivalent. De Vocht et al. identify this as a shortcoming of the Directive, as the Directive's provisions would in fact have no impact in those countries where juvenile punitive justice is formally placed outside the realm of criminal justice[66].

According to these authors, the limited scope of the Directive will lead to a variety of practices in Member States; consequently, the legal protection of children who have committed criminal offences will differ in different countries[67].

On the other hand, without denying the importance of ensuring equality, we also see arguments in support of this particular approach. First, the Directive establishes minimum requirements for Member States (explanatory Article 2)[68].

[65] Directive, Explanatory Article 11.

[66] De Vocht et al., "Procedural Safeguards for Juvenile Suspects in Interrogations," 481.

[67] *Ibidem*

[68] It is also important to note here that the minimum requirements of the Directive are also enshrined in Article 23 of the Directive (article on non-regression), which provides that "nothing in this Direc-

It is therefore logical that its regulation should focus on the group of juvenile offenders facing the greatest risk of adverse legal consequences. In terms of ensuring minimum standards, the protection of children is paramount, specifically in criminal proceedings, which in most countries involve stricter legal restrictions – e.g. pre-trial measures, especially detention – in comparison to alternative juvenile justice systems. Secondly, the application of the Directive's provisions only to suspects and accused persons in criminal proceedings finds support in criminological research which shows the negative effects of both criminal proceedings and alternative measures (e.g. diversion) on the juvenile's personality (these negative effects cover not only recidivism, but also stigmatization, ('labelling')[69]. The results of this research reveal the appropriateness of minimal intervention in cases of juvenile delinquency (especially if the offence is minor). It is important to emphasize here that, despite its positive objectives, individual assessment of a child—like other measures provided for in the Directive—must nevertheless be considered as a criminal justice intervention.

Seriousness (Type) of the Offence

Explanatory Article 14 states that the Directive should not apply to suspected children who have committed minor offences. States retain the right to define the range of criminal offences to which the provisions of the Directive apply. In any case, it must be an offence (1) defined by the criminal law; and (2) where the prosecution is conducted under the laws of criminal procedure. This provision of the Directive could be criticized for limiting the scope of legal protection. However, in our opinion, such a proviso is to be welcomed in the light of the criminological studies mentioned above, which find unanimously that it is best to have as little intervention as possible for children who have committed non-serious offences.

tive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter, the ECHR, or other relevant provisions of international law, in particular the UN Convention on the Rights of the Child, or the law of any Member State which provides a higher level of protection".

[69] A. R. Mahoney, "The Effect of Labeling upon Youths in the Juvenile Justice System: A Review of the Evidence," *Law & Society Review* 8, no. 4 (Summer 1974): 583–614; D. B. Anderson and D. F. Schoen, "Diversion Programmes: Effect of Stigmatization on Juvenile/Status Offenders," *Juvenile & Family Court Journal* 36, no. 2 (1985): 13–26.

The criterion of the severity of the sanction (measure) in the Directive is linked to the deprivation of liberty. As stated in Explanatory Article 14, the Directive applies to suspected or accused children already (or likely to be) deprived of their liberty. This implies that individual assessment should be conducted in all cases where a minor is to be remanded in custody or to children who have already been deprived of their liberty (either by being arrested or imprisoned).

In our view, the general rule of linking the mandatory nature of the child protection measures provided by the Directive exclusively to the deprivation of liberty may be too narrow. Ensuring a minor's protection is equally important when we consider other measures of procedural coercion (such as pre-trial detention), especially those related to the restriction of liberty – e.g. intensive supervision, electronic surveillance, house arrest, injunctions against visiting certain places, etc.

By laying down general criteria, the Directive also leaves room for certain specific situations in which, although all the above criteria are met, individual assessment may not be considered appropriate. Article 7. 9 provides that

"Member States may derogate from the obligation to carry out an individual assessment where such a derogation is warranted in the circumstances of the case, provided that it is compatible with the child's best interests".

For example, such a provision could apply in those cases where an individual assessment would worsen the child's legal position, such as prolonging pre-trial detention or other measures related to the deprivation of liberty.

It is also important to note that the Directive states that the child *has the right* to an individual assessment. Thus, individual assessment is not considered to be the right of a prosecutor or a judge, but the right of the child in question. In other words, participating in an individual assessment should not be a mandatory obligation on the child. The Directive does not go into the details of how Member States should ensure that individual assessment is applied not as an obligation but as a right. In our view, **Member States should ensure that there are mechanisms and preconditions allowing for the child's participation and hearing of his/her opinion, along with the child's right to opt out of individual assessment.** Having said that, there should be certain exceptions when the situation described above is contrary to the best interests of the child and / or when there is intervention of by the people who are opposed to such an assessment[70].

[70] For example, those family members who had influenced the juvenile's delinquent behaviour.

2.6. When Should an Individual Assessment be Carried out?

The Directive lays down a general rule that the individual assessment should take place at the earliest appropriate stage of proceedings and no later than the presentation of the indictment for the purposes of the trial[71]. The phrase at the earliest appropriate stage indicates, on the one hand, that the individual assessment must be carried out at the beginning of the pre-trial investigation process. On the other hand, given the individual assessment goals (which relate to the individualisation of appropriate procedural measures) the phrase implies that the assessment must be conducted before adoption of coercive procedural measures. It is clear, however, that in some cases coercive procedural measures must be applied immediately, so it is not always possible to wait for the results of an individual assessment. We believe that in these circumstances **it should be possible to change the decisions that have been taken if, according to the individual assessment received, they appear to be contrary to the best interests of the child and would hamper the fulfilment of his or her needs**.

The Directive also allows Member States to grant exceptions and bring an indictment without a prior individual assessment, but only if that is consistent with the best interests of the child. For example, when carrying out an individual assessment a Member State may prolong the application of certain measures restricting the child's liberty (especially imprisonment). However, even in those cases the Directive clearly states that the individual assessment must be carried out before the hearing.

To summarize this chapter, the Directive lays down general principles for the implementation of individual assessment, leaving Member States a relatively wide margin of discretion as to how to implement and apply individual assessment of children in their national systems. A wide margin of discretion potentially opens the door to a rather formal and / or inadequate implementation of certain provisions of the Directive. The key indicators and milestones for the implementation of Article 7 are the objectives of individual assessment, which are aimed at meeting the needs of the child whenever possible when reaching sentencing decisions. Therefore, when establishing legal regulation or taking

[71] Directive explanatory Article 39.

individual decisions in "grey areas" where there is no clear requirement or prohibition imposed by the Directive, the principle of protecting the best interests, and meeting the needs of the child, must be paramount.

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3 Conceptualizing Forensic Juvenile Assessment: Main Concepts, Theoretical Approaches and Debates

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"Predicting the weather is easy compared with predicting violence".
(Monahan and Steadman (1996, p. 932), in Jay P. Singh, p. 215, 2012)

Over the past 50 years, the field of forensic evaluation has developed significantly, introducing the term of forensic mental health assessment (FMHA), as well as the concepts of evidence-based practice and better-informed legal decisions making[72]. *Forensic mental health assessment* or *forensic assessment*[73] has now become a well-known and accepted phrase, which refers to the assessments employed to inform forensic decision making at various stages of legal

[72] K. Heilbrun et al. *Forensic Mental Health Assessment: A Casebook 2nd edition* (Oxford: Oxford University Press, 2014), 1.

[73] In psychology or psychiatry literature, the terms "forensic assessment", "forensic mental health assessment" and "psychological assessment" are used synonymously referring to the assessments employed to support forensic decisions. The authors of this chapter mainly use the term "forensic assessment".

proceedings[74]. In developed contemporary justice systems, forensic assessment constitutes a significant and inseparable part of legal decision making. Therefore, this chapter aims to set out the main concepts, approaches, and debates arising both in the academic field and amongst practitioners. The goals, principles, and instruments of forensic assessment and juvenile forensic assessment are the focal point of the chapter and the main theoretical paradigms, such as the Risk-Need-Responsivity Model (RNR) and the Good Life Model (GLM), are presented and analysed. Finally, the challenges and future perspectives presented by the implementation of juvenile forensic assessment are addressed and considered.

3.1. Forensic Assessment: Main Concepts and Approaches

Forensic assessment aims to facilitate better-informed legal decision-making and to convey common aspects of the assessment process shared by all professionals who conduct it regardless of discipline[75]. Historically, forensic assessment has been closely associated with the assessment of individuals involved in the criminal justice system; in the beginning it concentrated on competency to stand trial and subsequently it encompassed more varied questions related to sentencing, treatment and reoffending. Contemporary forensic assessment provides guidance on decisions about diversion from the system, pretrial detention, referrals to a criminal court, adjudicative competence, sentencing, and post-sentence dispositions[76]. It also addresses an assessed person's mental health and behavioural state, his risk of re-offending and his potential for rehabilitation. Furthermore, nowadays, forensic psychology not only assists legal actors within the justice system, but also advocates making application of the law more therapeutic, thereby helping the legal system to achieve its aims[77]. Forensic assessment should be

[74] K. Heilbrun and D. DeMatteo, "Toward Establishing Standards of Practice in Juvenile Forensic Mental Health Assessment," in *Handbook of Juvenile Forensic Psychology and Psychiatry*, ed. E. L. Grigorenko (Boston: Springer, 2012), 145–156; R. D. Hoge, "Forensic Assessments of Juveniles Practice and Legal considerations," *Criminal justice and behaviour* 39, no. 9 (September 2012): 1255–1270.

[75] Heilbrun et al., *Forensic Mental Health Assessment: A Casebook 2nd edition,* 1.

[76] R. D. Hoge, "Forensic Assessments of Juveniles Practice and Legal Considerations," *Criminal justice and behavior* 39, no. 9 (September 2012): 1267.

[77] J. Rebecca and R. Roesch, *Learning Forensic Assessment Research and Practice, 2nd Edition* (New York: Routledge, 2015).

considered as a good example of the implementation of multidisciplinary and systemic approaches, combining the development of legal and mental health systems in synergy and collaboration.
Heilbrun, Grisso, Goldstein and Laduke (2012) note that

> *"the inclusion of 'mental health' as a modifier nowadays does not restrict forensic mental health assessment to the assessment of the presence or absence of mental disorders"*[78].

The term "mental health" refers to various mental states, psychological phenomena and behavioural predispositions which are very important in legal decision making. Hence, the main featur,es of forensic assessments are worthy of discussion. Although forensic assessments are carried out by various professionals, usually mental health professionals, such as psychologists or psychiatrists, in some cases probation officers or other professionals within the justice or correctional system are also involved. When conducting forensic assessment, it is not enough to follow standard methodological guidelines for clinical assessment, such as the selection of the most appropriate model to guide data gathering, interpretation and communication, or to use multiple sources of information and assess its consistency across sources. Knowledge of the general principles of clinical assessment must be complemented by appropriate knowledge of forensic specialization, as well as familiarity with specific aspects of the legal system, legal regulation and case law[79].

One of the most important practices of forensic assessment is not to answer a specific legal question, but to help to answer it by raising related skills and behaviour assessment questions. For example, in order to answer a legal question about a defendant's competence to stand trial, during the assessment procedure, the specialist formulates such questions as whether the person understands the charges against him, would be able to understand the trial and its procedures and communicate with his advocate. Although legal professionals often expect assessment findings to provide a very specific and precise answer to a legal question, the assessor – who relies on the data available and comprehends clearly the limitations of the assessment – tends to answer not that specific question but

[78] K. Heilbrun et al. "Foundations of Forensic Mental Health Assessment," in *Forensic Assessments in Criminal and Civil Law – A Handbook for Lawyers,* ed. R. Roesch and P. A. Zaft (Oxford: Oxford University Press, 2012), 3.

[79] Heilbrun et al., *Forensic Mental Health Assessment: A Casebook 2nd edition.*

rather questions related to it. In any case, the conclusions of a forensic assessment are of paramount importance and, in consequence, they must be presented in an impartial, balanced and reasoned manner. They must disclose their limitations and be formulated in a way that is comprehensible to professionals from different fields[80]. The quality of the information and conclusions provided by forensic assessments is critical to ensuring that fair and effective decisions are made[81].

However, it is not only specific knowledge or familiarity with a legal system that allows forensic assessment to meet the requirements imposed on it, understanding of one's role and position as an assessor is of no less importance. An assessor certainly experiences some tension while carrying out the forensic assessment because he finds himself between different actors who usually have different expectations. This would be the case, for example, when a lawyer representing a client seeks to steer the assessor in a direction favourable to his client, while the court, having ordered the assessment procedure, may presuppose that the expert opinion, while being accurate and objective, will substantiate its decisions. Therefore, it is important for an assessor to maintain a balance between the trusted power of the expert, differing and sometimes excessive expectations, his impartial position, and finally the assessment's objectives and limitations[82].

Other important aspects that require separate discussion are assessment methods, tools and procedure of which there is a wide variety. For example, personality tests, structured or semi-structured interview formats, various checklists etc. However, as mentioned in later chapters of this book[83], there are two basic approaches: clinical and standardized. Clinical assessment is usually performed through informal, unstructured interviews, where the final assessment or diagnosis is based on the training and experience of the professional conducting the assessment. Those assessments are often criticized for their subjectivity while, at the same time, proactive involvement of professionals and their ability to make contact and focus on qualitative, positive aspects such as a client's strengths and empowerment, are seen as advantages of clinical assessment[84].

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[80] *Ibidem*

[81] Hoge, "Forensic Assessments of Juveniles Practice and Legal Considerations."

[82] Rebecca and Roesch, *Learning Forensic Assessment Research and Practice, 2nd Edition.*

[83] See chapter no. 5 of this book.

[84] A. White and P. Walsh, *Risk assessment in Child Welfare* (Centre for Parenting & Research. Research, Funding & Business Analysis Division. NSW Department of Community Services: Ashfield NSW, 2006).

Standardized assessment, characterised as a science-based approach, involves structured formats or procedures and standardized scoring rules. It aims to assess various aspects and dimensions of personality, emotions, behaviour, criminogenic risk, etc. Research and scientific literature recognize that, under most circumstances, proposed solutions based on standardized assessment provide greater reliability and validity. In other words, decisions based on standardized measures are superior to those based on clinical assessments[85]. It is worth stating that these two models should not be in opposition; rather, in practice, they should be combined and integrated. For example, standardized assessment should be used for the assessment of the risk of reoffending, but does not indicate which clinical factors are the most important for any intervention or which interventions are best suited to achieving positive effects for a specific person[86].

Different standardized instruments and procedures may also be divided into screening and assessment instruments. Screening instruments are short and easy to administer and provide preliminary information about a person's functioning and mental health. When mental health or functioning issues are identified, a more comprehensive assessment may be conducted later on. Mental health professionals generally use standardized assessment instruments that involve more extensive information gathering and in-depth exploration of an individual's characteristics and circumstances. Thus, screening instruments can be used as a preliminary source of information helping to identify whether further assessment is needed and to what extent and purpose[87].

To sum up, the analysis of a variety of procedures and instruments available in forensic assessment implies that the selection of instruments should be carried out carefully, acknowledging the importance of reliability and validity in relation to the forensic decisions to be taken in the light of an assessed person's characteristics and his or her situation[88]. Hawkes (2005)[89] warns that a particular assessment approach / model should be moved away from the automatic and often

[85] Hoge, "Forensic Assessments of Juveniles Practice and Legal Considerations," 1256.

[86] C. Schwalbe, "Strengthening the Integration of Actuarial Risk Assessment with Clinical Judgment in an Evidence-based Practice Framework," *Children and Youth Services Review* 30, (2008): 1458–1464.

[87] Hoge, "Forensic Assessments of Juveniles Practice and Legal Considerations," 1256.

[88] *Ibidem*

[89] S. Hawkes, *The Assessment of Need and the Assessment of Risk: The Challenges for Child Protection* (The University of Sheffield, 2005).

rigid "experts' mode". Therefore, during assessment, an expert must take into account all the inequalities and characteristics of an individual such as age, gender, race and ethnic or cultural background. In forensic psychology not only the effectiveness of decision-making within the justice system, but also the provision of assistance for individuals with special needs, mental health or behavioural problems, deprivation and inequalities should be acknowledged and reflected.

3.2. Juvenile Forensic Assessment

Today, both forensic professionals and researchers agree that one of the most vulnerable groups, whose special needs are crucial during decision-making, are minors. Adolescence as a developmental stage on the road to adulthood was recognised at the beginning of the 20th century when it was realized that different aspects of a child's cognitive and emotional functioning develop at different stages[90]. Following recognition that youth competencies are dynamic and unstable and that neurological changes take place throughout adolescence, justice systems looked for reports on the maturity and mental health of young offenders. Therefore, in the late 20th century mental health professionals proposed multidisciplinary, holistic evaluations of youths which were mainly focused on rehabilitation. As the need for such assessments grew, the areas of assessment and the range of questions raised expanded to include more and more aspects such as the rights of minors, their protection, and the identification of their differing needs. In recent decades, the scope of juvenile assessment has expanded to include proposals for legal remedies based on the assessment of a juvenile's mental health, maturity, risk of (re)offending, judgement, competence, and the likely effectiveness of treatment[91].

In any case, as already mentioned, a major impetus has been the recognition that the assessment of a minor's maturity is an essential element in decision-making. Despite this fact and although the importance of maturity assessment is emphasized in many research papers and international documents, there is

[90] T. Grisso, „Three Opportunities for the Future of Juvenile Forensic Assessment," *Criminal Justice and behaviour* 46, no. 12 (December 2019): 1671–1677.

[91] K. Heilbrun et al. *Evaluating Juvenile Transfer and Disposition: International Perspectives on Forensic Mental Health, 1st Edition* (New York: Routledge, 2017), 4.

still a lack of a uniform definition of maturity from both a psychological and legal point of view. In practice, judgement is often arrived at by examining diverse information about a minor's cognitive and emotional abilities and providing a clinical conclusion about his or her maturity level. The latter, in turn, requires establishing the link between maturity level and the legal issue under consideration. In other words, the assessment of maturity may vary depending on the specific case or the issue in question, regarding which a legal decision has to be taken. The assessment of maturity is particularly relevant to decisions on the capacity to stand trial, the transfer of a minor to an adult court, and an offender's mental status at the time of the offence[92]. Grisso and Kavanaugh emphasize that a minor's assessment consists of a number of factors, related both to the minor's maturity and abilities, and other, equally important ones, related to the minor's social environment and / or other significant circumstances. The authors divide those factors into:

1. decisional immaturity, which is described as an undeveloped sense of responsibility leading to recklessness, impulsivity, mindless risk taking, and inability to assess consequences;
2. dependency factors, which include dependence on a youth's family and surrounding environment (having in mind that young people's capacity to avoid harmful circumstances is limited);
3. offence context factors, which include analysis of the circumstances of an offence, questions as to how planned or impulsive a youth's participation was and to what extent it was related to past abuses or other influences;
4. the prospect for rehabilitation factors related to a youth's potential to change through rehabilitation, treatment and maturation; and
5. legal competency factors, consisting of the ability to deal with legal procedures and processes[93].

All these factors reveal that forensic assessment can be very extensive, yet, in seeking the most effective decisions, assessment is bound to be focused on certain relevant areas.

[92] Hoge, "Forensic Assessments of Juveniles Practice and Legal Considerations."

[93] A. Kavanaugh and T. Grisso, *Evaluations for Sentencing of Juveniles in Criminal Court* (Oxford: Oxford University Press, 2021), 9.

Assessments occur at various stages of legal proceedings - ranging from the first encounter with the legal system to the end of the sentence[94] - and can be classified based on the task, the phase or on a particular decision-point in the juvenile justice decision-making process. Grisso (2019) categorizes the relevant decision-points as follows:

1) probation or juvenile court intake (where diversion often takes place),
2) pre-adjudication detention,
3) adjudication,
4) disposition,
5) juvenile correction(s), and
6) community re-entry[95].

These decision points are closely related to different legal and forensic assessment questions. For example, at a pre-trial stage or detention, the legal decision maker has to decide whether a juvenile can be released or has to be detained while waiting for adjudication proceedings. The questions to be answered in order to reach this decision are the following: what is the juvenile's level of risk of not appearing in or returning to the court, and what is the level of risk of harming himself / herself and others. Accordingly, at the hearing or disposal stage, the judge or the court considers the appropriate placement (probation or detention) for the juvenile and the security level and interventions needed to ensure the best potential for reducing the likelihood of reoffending. At this stage questions related to the decisions to be made are the factors driving a juvenile's delinquent behaviour, his/her risk to public safety and the best target areas for intervention to reduce the likelihood of reoffending or delinquent activity, etc.[96].

A phase-based classification, on the other hand, divides juvenile forensic assessments into three categories focused on different time periods. The first category focuses on discovering the mental state, motivation, attitudes, and behaviours of an individual during past events that are relevant to the legal issue under con-

[94] L. M. Grossi, A. Brereton and R. A. Prentky, "Forensic Assessment of Juvenile Offenders," in *The Safer Society Handbook of Assessment and Treatment of Adolescents who have Sexually Offended*, ed. S. Righthand and W. Murphy (Brandon, VT: Safer Society Press, 2016).

[95] Grisso, „Three Opportunities for the Future of Juvenile Forensic Assessment," 1671–1677.

[96] G. M. Vincent, L. S. Guy and T. Grisso, "Risk Assessment in Juvenile Justice: A Guidebook for Implementation," *Implementation Science and Practice Advances Research Center Publications* (2012).

sideration (e.g. criminal responsibility, validity of confession etc.). The second task-based category includes assessments in which the objective is to describe the current mental state of an individual and his ability to function in the current specific context (e.g. competence to stand trial, competence to plead, etc.). The third category involves assessments in which the task is to estimate future behaviour and likely mental state (e.g. sentencing, risk of further offending for pretrial secure placement, or for placement after adjudication, or for release, etc.)[97].

The above classification of the different tasks and questions posed by forensic assessment and legal domains and procedures indicates that an assessor must not only have knowledge of legal procedures but also be able to select the most appropriate tools to address a particular legal issue and relate the results of the assessment to those legal issues or procedures.

In order for assessment to achieve its goals, it is necessary to ensure the **quality of evaluation** and to adhere to certain quality assurance principles. Firstly, all forensic mental health professionals are expected to follow their respective codes of ethical conduct and to strive to meet specialism guidelines, supplementing professional Ethics codes. In Europe these are: the European Federation of Psychologists' Associations (EFPA) *Meta Code of Ethics* (EFPA, 1995, revised 2005); the *EFPA Standards for Psychological Assessment* (EFPA, 2013); *the European psychologist in forensic work and as expert witness Recommendations for an ethical practice* (EFPA, 2001). But, none of these documents specify standards of practice in juvenile forensic assessments. For guidance on informed, appropriate, sufficient and credible juvenile assessments in the justice domain, these EFPA best-practice standards may be supplemented by the principles of juvenile forensic assessments, established and discussed in academic research. For example, Kirk Heilbrun and David DeMatteo (2012) described seven general principles and thirty-one principles organized around four steps of forensic assessment: preparation, data collection, data interpretation and communication of results. Among those thirty-eight principles, some are identical to the foundational principles of adult forensic assessments and others are juvenile-specific. Heilbrun and DeMatteo (2012) comment on juvenile specific principles of forensic assessments in detail. They are presented in the **table no. 1** below:

[97] K. Heilbrun, T. Grisso and A. M. Goldstein, "The Nature and Evolution of Forensic Mental Health Assessment," in *Foundations of forensic mental health assessment,* ed. K. Heilbrun, T. Grisso and A. M. Goldstein (New York, NY, US: Oxford University Press, 2009), 5–40; Heilbrun et al., "Foundations of Forensic Mental Health Assessment."

Table no. 1: Juvenile-specific principles of forensic assessment[98].

General principles:

- Be aware of the important differences between the clinical and forensic domains, which may be less emphasized because of the prioritization of rehabilitation in the juvenile system.
- Obtain appropriate education, training, and experience in one's area of forensic specialization and human development.
- Be familiar with specific aspects of the legal system, including communication, discovery, deposition, and testimony – particularly those which apply distinctively to the juvenile system.

Preparation principles:

- Identify relevant forensic issues, focusing particularly on the recurring issues of risk and rehabilitation (needs and amenability).
- Accept referrals only within the area of one's expertise, which should include human development as well as clinical and forensic expertise.
- Decline the referral when evaluator's impartiality is unlikely, including strong beliefs that would impair the balancing of public safety and rehabilitation for adolescents.
- Obtain appropriate authorization, which is somewhat more complex for adolescents who are younger than 18.

Data collection principles:

- Obtain relevant historical information, with particular emphasis on the distinctive domains of family, school, and peers.
- Assess clinical characteristics in relevant, reliable, and valid ways, accounting for less stability in personal characteristics because of developmental changes.
- Assess legally relevant behaviour while compensating for developmental influences of instability of capacities.

[98] Heilbrun and DeMatteo, "Toward Establishing Standards of Practice in Juvenile Forensic Mental Health Assessment."

Table no. 1: Juvenile-specific principles of forensic assessment (*continuation*).

- Provide appropriate notification of purpose and / or obtain appropriate authorization before beginning, accounting for additional complexities when youths are not yet 18.
- Determine whether the individual understands the purpose of the evaluation and the associated limits on confidentiality, gauging impact of developmental immaturity as well as clinical and cognitive deficits.

Data interpretation principles:

- Use case-specific (idiographic) evidence in assessing clinical condition, functional abilities, and causal connection. "Clinical condition" includes developmental immaturity.
- Use nomothetic evidence in assessing clinical condition, functional abilities, and causal connection. "Clinical condition" includes developmental immaturity.

Communication principles:

- Control the message. Strive to obtain, retain, and regain control over the meaning and impact of what is presented in expert testimony. The judge may be more active in questioning the expert, adding questions that are not adversarial.

When aiming for high-quality assessment in juvenile justice settings, developmentally sensitive assessment of juvenile offenders must be ensured. Beyer (2000)[99] provides examples and a list of questions that should be put and answered when deciding how to intervene when applying this developmentally sensitive approach[100]. The list can also serve as a guideline for the assessment process and the writing of reports in addition to the ones listed above (**Table no. 2**).

[99] M. Beyer, (1999), in *Kids are Different: How Knowledge of Adolescent Development Theory Can Aid Decision-Making in Courting,* ed. L. M. Rosado (Understanding adolescents. A Juvenile Court Training Curriculum, 2000).

[100] See Appendix E for a full list of questions on page 177, in L. M. Rosado, *Kids are Different: How Knowledge of Adolescent Development Theory Can Aid Decision-Making in Courting* (Understanding adolescents. A Juvenile Court Training Curriculum, 2000).

Table no. 2: List of questions (Beyer, 2000) that a developmentally sensitive assessment of juveniles should cover[101]

Maturity of thought

- At the time of the offence, to what extent was this young person anticipating outcomes? Reacting to threat? Minimizing consequences? Seeing only one choice?
- Could this young person foresee the consequences of his/her actions?
- Was this young person able to plan like an adult, and under stress, did he/she react similarly to or differently from an adult if things did not occur as planned?

Moral values

- What are this young person's understandings of fairness, rights, and responsibility?
- Does this young person consider loyalty a higher moral principle than conventional views of right and wrong?

Empathy

- Is this young person capable of empathy? Are this young person's adolescent bravado and / or his/her view of the offence as accidental being interpreted as a lack of remorse?

Prior trauma

- Is there evidence of prior trauma? Of serious child abuse or neglect? What connection, if any, exists between his/her trauma and the offence?
- How does this young person's past trauma impact his/her cognitive processes, if at all? His/her perception of threat?

Learning issues

- Does this young person have a history of school problems or learning disabilities? If yes, what connections, if any, exist between this young person's history of school problems or learning disability, and the offence?

[101] M. Beyer, (1999), in *Kids are Different: How Knowledge of Adolescent Development Theory Can Aid Decision-Making in Courting,* ed. L. M. Rosado (Understanding adolescents. A Juvenile Court Training Curriculum, 2000).

Table no. 2: List of questions (Beyer, 2000) that a developmentally sensitive assessment of juveniles should cover (*continuation*)

- What connections, if any, exists between this young person's learning problems and his/her cognitive processes? His/her perception of threat?

Purposes served by lawbreaking behaviour

- To what extent is this young person's offensive behaviour driven by a need for approval?

Responsivity and amenability to treatment

- Does the young person want to change? Does the young person have a desire for approval that could lead to change?

To ensure high quality of assessment and, most importantly, its validity and reliability, bare knowledge of general principles is not enough. To create an effective assessment process, valid, reliable assessment instruments and procedures are essential. One of the most important principles of best practice indicates the use of standardized assessment tools[102]. Standardized assessment instruments and procedures are

> *"instruments or procedures with*
> *(a) a fixed stimulus, response, and scoring formats;*
> *(b) quantitative scores; and*
> *(c) have available normative and psychometric data"*[103].

Standardized assessment instruments and procedures, developed for general application that are also relevant for use in juvenile justice settings, as well as instruments and procedures specifically developed for forensic application can be found in the professional literature on mental health. Typically, standardized instruments are used to assess cognitive, academic, emotional and behavioural competencies as well as amenability to treatment, totality of circumstances, risk of reoffending, and criminogenic needs[104].

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[102] Hoge, "Forensic Assessments of Juveniles Practice and Legal Considerations."; Heilbrun and DeMatteo, "Toward Establishing Standards of Practice in Juvenile Forensic Mental Health Assessment."; Heilbrun et al., "Foundations of Forensic Mental Health Assessment."

[103] R. D. Hoge, "Assessment in Juvenile Justice Systems: An Overview," in *Handbook of Juvenile Forensic Psychology and Psychiatry,* ed. E. L. Grigorenko (Springer, Boston, 2012), 159.

[104] Hoge, "Forensic Assessments of Juveniles Practice and Legal Considerations."

When measuring cognitive functioning, valid and reliable tests, IQ tests), which estimate a youth's comprehension, reasoning, memory, and other cognitive abilities, may be used. For example, the WISC-4[105] is widely used in forensic and therapeutic assessments. In order to make decisions related to mental status at the time of an offence or transfer to a criminal court, emotional or behavioural functioning are measured. Standardized measures in the form of structured interview schedules, personality tests, and standardized rating scales are used; for example the Minnesota Multiphasic Personality Inventory—Adolescent test (MMPI-A); the terminology of the *Diagnostic and Statistical Manual of Mental Disorders* (proposed by the American Psychiatric Association), the Reynolds Adolescent Depression Scale (RADS); the Psychopathy Checklist: Youth Version (PCL:YV) and more. However, in order for the identification and definition of pathologies to make a useful contribution to decision-making, it is necessary to estimate the significance of the identified pathologies in relation to one or other decision.

Another important construct that arises in connection with forensic assessment decisions is amenability to treatment, which is particularly relevant when deciding on disposal. For example, a custody sentence could be avoided by demonstrating that the criminogenic needs of a youth can be met by a community-based treatment. Usually, conclusions are drawn from examination of the information on file along with the results of the standardized cognitive and personality tests mentioned above.

Finally, a very common domain of evaluations within juvenile justice systems is the assessment of the risk of reoffending. Informal, non-standardized assessments by police officers, prosecutors or other actors, as well as various standardized tools, are widely used for risk assessment. There are a number of well-validated risk assessment tools: a risk of reoffending/needs/ strengths measuring tool; Youth Level of Service / Case Management Inventory (YLS/CMI); risk of reoffending / needs measuring tool ASSET; violence risk in adolescents measuring tool Structured Assessment of Violence Risk in Youth (SAVRY); strength / vulnerabilities / multiple risk [harm to others and rule violations (violence, non-violent offences, substance abuse, unauthorized absences), and harm to the adolescent (suicide, non-suicidal self-injury, victimization, health neglect)]

[105] D. Wechsler, *Wechsler Intelligence Scale for Children –IV (WISC-IV),* 2004.

measuring tool, the Short-Term Assessment of Risk and Treatability: Adolescent Version (START:AV)[106]. Many of these instruments are based on the evaluation of both static (age, criminal history) and dynamic (antisocial or aggressive behaviour) factors and are seen as risk/need instruments. Risk factors that are subject to change and reduce the probability of future offending are described as criminogenic needs[107]. The conceptualization of criminogenic needs is inseparable from the risk /need/ responsibility model, which is one of the most relevant globally applied models, especially when it comes to juvenile offenders[108]. The valuable contribution of this model in the development of scientific research and the practical use of forensic assessment requires more detailed analysis.

3.3. Risk Assessment Paradigms

The Risk-Need-Responsivity Model

The Risk-Need-Responsivity Model (hereinafter: RNR model) results from a series of studies conducted in the last twenty years within the paradigm "What works?"

[106] Hoge, "Assessment in Juvenile Justice Systems: An Overview."; M. T. Huss, *Forensic psychology: research, practice, and applications* (Malden (Mass.): Blackwell Publishing, 2009); V. Klimukienė et. al. "Examination of Convergent Validity of Start: AV Ratings among Male Juveniles on Probation," *International journal of psychology: a biopsychosocial approach* 22, (2018): 31–54; J. Savignac, *Tools to Identify and Assess the Risk of Offending Among Youth* (Ottawa, Canada: National Crime Prevention Centre, 2010).

[107] Hoge, "Forensic Assessments of Juveniles Practice and Legal Considerations."

[108] D. A. Andrews, J. Bonta and J. S. Wormith, "The Recent Past and Near Future of Risk and / or Need Assessment," *Crime & Delinquency* 52, no. 1 (2006): 7–27.; J. Bonta and D. A. Andrews, "Risk-need-responsivity model for offender assessment and rehabilitation," *Rehabilitation* 6, (2007): 1–22.; T. Ward, J. Melser and P. M. Yates, "Reconstructing the Risk—Need—Responsivity model: A theoretical elaboration and evaluation," *Aggression and Violent Behaviour* 12, no. 2 (2007): 208–228; D. D. Andrews, J. Bonta and J. S. Wormith, "The risk-need-responsivity (RNR) model: Does adding the good lives model contribute to effective crime prevention," *Criminal Justice and Behaviour* 38, no. 7 (2011): 735–755; J. Bonta and D. A. Andrews, "Viewing offender assessment and rehabilitation through the lens of the risk-needs-responsivity model," in *Offender Supervision: New Directions in Theory, Research and Practice,* ed. F. McNeill, P. Raynor and C. Trotter (Taylor & Francis Group, 2012), 19–40; N. Ricijaš, *Assessment, Planning and Reporting for Juvenile Alternative Sanctions* (Zagreb: Ministry of Social Policy and Youth,2012); N. Koller-Trbović, A. Mirosavljević and I. Jeđud Borić, *Needs Assessment of Children and Youth with Behaviour Disorders - Conceptual and Methodical Guidelines* (Zagreb: UNICEF Office for Croatia, 2017).

This paradigm was created as a reaction to Martinson's 1974 claim that "Nothing works in the rehabilitation of offenders"[109]. Martinson found that aspects of the application of a behavioural correction programme do not create a positive impact on preventing re-offending, and inferred that rehabilitation ideology should step down from its dominant position in criminal policy practice. Martinson's statements have begun to be questioned by reformulating his essential points; that is, instead of the question "what is effective and appropriate for all offenders", the new question is: "which methods are the most appropriate for different groups of offenders, including minors"[110]. Canadian researchers, Andrews and Bonta, played a significant role in reviving rehabilitation ideas. They described risk factors in detail and developed a methodology for managing those factors while simultaneously contributing to changes in the behaviour and attitudes of offenders. Although the RNR model was developed for use with adult offenders[111], its ability to match effective treatments to criminogenic needs indicates that it can also be successfully applied to juveniles[112] especially given the fact that juvenile justice systems aim to rehabilitate juvenile offenders and build in them capacity for change[113]. The appropriateness of using the RNR model for juveniles has been demonstrated in many studies. For instance, the results of one such empirical study suggest that adherence towards needs and responsivity principles (not towards the risk principle) were related to positive outcomes[114].

This concept is not only essential for explaining delinquent behaviour, but also for analysing its "causality", **selecting, planning, and implementing interven-**

[109] L. E. Marshall, "The Risk/Needs/Responsivity Model: The Crucial Features of General Responsivity," *Advances in Programme Evaluation* 13, (2012): 29–45; S. Maloić, "Dominant principles and models of treatment work with adult offenders in the community," *Criminology & Social Integration* 24, no. 2 (2016): 140–165.

[110] T. Francis, "Cullen The Twelve people who saved Rehabilitation: How the Science of Criminology made a Difference," *Criminology* 43, no. 1 (2005): 10.

[111] R. E. Redding, N. E. S. Goldstein and K. Heilbrun, "Juvenile delinquency past and present," in *Juvenile delinquency: Prevention, assessment, and intervention,* ed. K. Heilbrun, N. E. S. Goldstein and R. E. Redding (Oxford University Press, 2005), 3–18; F. S. Taxman and D. Marlowe, "Risk, needs, responsivity: In action or inaction?," *Crime and Delinquency* 52, no. 1 (2006): 3–6.

[112] L. Brogan et. al. "Applying the risk-needs-responsivity (RNR) model to juvenile justice," *Criminal Justice Review* 40, no. 3 (2015): 277–302.

[113] Koller-Trbović, Mirosavljević and Jeđud Borić, *Needs Assessment of Children and Youth with Behaviour Disorders - Conceptual and Methodical Guidelines*.

[114] J. P. Singh, S. L. Desmarais, B. G. Sellers, T. Hylton, M. Tirotti, & R. A. Van Dorn, "From risk assessment to risk management: Matching interventions to adolescent offenders' strengths and vulnerabilities," *Children and Youth Services Review* 47, (2014): 1–9.

tions[115]**.** The central premise of the modern view of intervention with juvenile offenders is based, among other things, on an understanding of the "causes" of delinquent behaviour[116]. As encoded in the title of the RNR model, the main ideas are based on three principles: risk, need and responsivity.

Risk consists of two propositions: prediction and matching. To decide on the most appropriate intervention, it is necessary to assess and predict an individual's level of risk of re-offending. The degree of intensity of intervention must then be matched to this level of risk, which is evaluated by identifying and predicting risk factors. Risk factors can be defined as all characteristics that contribute to delinquent behaviour[117]. These factors can be classified using two sets of criteria: *individual and environmental risk factors* and *static and dynamic risk factors*. Certain personality traits of an individual (such as difficult temperament or attention deficit hyperactivity disorder), as well as environmental (characteristics of the family, peers and the community) are predictive of delinquent behaviour[118]. Individual and environmental risk factors can also be related to static and dynamic risk factors. Static and dynamic risk factors distinguish the immediacy of an intervention's impact in relation to identified risks. *Static risk factors* are characteristics and circumstances that are not subject to change. They are historical in nature and as such tend to remain fixed, or, they may indicate greater risk over time. These factors may be various life events that have occurred in the past, marked a young person's growth and influenced the development of his/her delinquent behaviour but are immutable in the present. In this context, special attention should be paid to – age at first offence, the nature and seriousness of the crime, the number and nature of previous crimes, the interventions that have been made so far and their effects (such as supervision of parental care or placement

[115] Ricijaš, *Assessment, Planning and Reporting for Juvenile Alternative Sanctions*.

[116] N. G. Guerra et al. "Theoretical and Research Advances in Understanding the Causes of Juvenile Offending," in *Treating the Juvenile Offender,* ed. R. D. Hoge, N. G. Guerra and P. Boxer (The Guilford Press, 2008), 33–53.

[117] J. B. Sprott, J. M. Jenkins and A. N. Doob, *Early Offending: Understanding the Risk and Protective Factors of Delinquency* (Applied Research Branch, Strategic Policy - Human Resources Development Canada, 2000); J. R. P. Ogloff and M. R. Davis, "Advances in offender assessment and rehabilitation: Contributions of the risk—needs—responsivity approach," *Psychology, Crime & Law* 10, no. 3 (2004): 229–242; M. Shader, *Risk Factors for Delinquency: An Overview* (Office of Juvenile Justice and Delinquency Prevention (OJJDP), US Department of Justice, 2004); Bonta and Andrews, "Risk-need-responsivity model for offender assessment and rehabilitation."; Ricijaš, *Assessment, Planning and Reporting for Juvenile Alternative Sanctions*.

[118] Ricijaš, *Assessment, Planning and Reporting for Juvenile Alternative Sanctions*.

in an institution for children with behavioural disorders)[119]. On the other hand, *dynamic risk factors* represent predictive characteristics and circumstances that are subject to change and that can change with changing circumstances. They can be observed at both the individual and the environmental levels. The intersection among risk factors is presented in the table (**Table no. 3**) below:

Table no. 3: Example of criminogenic risk factors in relation to static/dynamic and individual/environmental characteristics.

	STATIC RISK FACTOR	DYNAMIC RISK FACTOR
INDIVIDUAL RISK FACTOR	age when committing the first offence	aggressive behaviour
ENVIRONMENTAL RISK FACTOR	frequent change of residence	insufficient parental involvement in the supervision of the child

However, it is apparent to every practitioner that it is impossible to act on all factors simultaneously, just as not all identified factors are equally susceptible to influence and thus to change. Therefore, some authors[120] state that "strengths" need to be directed first to the "closest" factors that directly affect delinquent behaviour and those that are more susceptible to change[121].

On the other side of the continuum are the *Protective factors*. These are characteristics and circumstances that reduce the likelihood of delinquent behaviour

[119] Sprott, Jenkins and Doob, *Early Offending: Understanding the Risk and Protective Factors of Delinquency;* Ogloff and Davis, "Advances in offender assessment and rehabilitation: Contributions of the risk—needs—responsivity approach"; Andrews, Bonta and Wormith, "The Recent Past and Near Future of Risk and / or Need Assessment."; Andrews, Bonta and Wormith, "The risk-need-responsivity (RNR) model: Does adding the good lives model contribute to effective crime prevention."; Ricijaš, *Assessment, planning and reporting for juvenile alternative sanctions*; Koller-Trbović, Mirosavljević and Jeđud Borić, *Needs Assessment of Children and Youth with Behaviour Disorders - Conceptual and Methodical Guidelines*.

[120] Guerra et al., "Theoretical and Research Advances in Understanding the Causes of Juvenile Offending."

[121] Ogloff and Davis, "Advances in offender assessment and rehabilitation: Contributions of the risk—needs—responsivity approach."; Ricijaš, *Assessment, planning and reporting for juvenile alternative sanctions*; T. Ward, "Detection of dynamic risk factors and correctional practice," *Criminology & Public Policy* 14, no. 1 (2015): 105–112; Koller-Trbović, Mirosavljević and Jeđud Borić, *Needs Assessment of Children and Youth with Behaviour Disorders - Conceptual and Methodical Guidelines*.

or reduce the impact of risk factors[122]. Shader cites two understandings of protective factors. According to the first, risk and protective factors are viewed as opposite poles of a continuum. For example, a high level of parental control and appropriate parenting styles could be a protective factor; low parental control level and inappropriate parenting methods could be a risk factor. The latter understanding views protective factors as different features that may or may not act protectively in interaction with risk factors, so, it is necessary to observe each factor separately and then how they interact with others[123]. For example, a high IQ and good cognitive abilities are commonly defined as protective factors. But, if a juvenile has declared antisocial attitudes and lacks empathy, good cognitive abilities can present an additional challenge for treatment and may indicate a higher risk level. Protective factors should be assessed during all treatment planning. They are the so-called "strong forces" or strengths of the young person or his/her environment that represent potential for change and are the basis for implementing interventions[124].

Based on identified dynamic risk and protective factors, *Criminogenic (treatment) needs* are defined. These are the characteristics on which treatment is based and the areas that need to be changed. This is why it is essential to include and consider those variables that are subject to change. Consequently, treatment goals arise from criminogenic needs. There is general agreement in the literature that the primary goal of treatment programmes is to help offenders learn to manage their behaviour in a specific context, rather than change the context[125].

In their work, Andrews and Bonta (2007)[126] often point out two types of criminogenic needs based on which it is possible to define treatment goals. They are:

[122] Sprott, Jenkins and Doob, *Early Offending: Understanding the Risk and Protective Factors of Delinquency;* Ogloff and Davis, "Advances in offender assessment and rehabilitation: Contributions of the risk—needs—responsivity approach"; Shader, *Risk Factors for Delinquency: An Overview*; Bonta and Andrews, "Risk-need-responsivity model for offender assessment and rehabilitation."; Andrews, Bonta and Wormith, "The risk-need-responsivity (RNR) model: Does adding the good lives model contribute to effective crime prevention."; Ricijaš, *Assessment, planning and reporting for juvenile alternative sanctions.*

[123] Shader, *Risk Factors for Delinquency: An Overview.*

[124] Bonta and Andrews, "Risk-need-responsivity model for offender assessment and rehabilitation."; Ricijaš, *Assessment, planning and reporting for juvenile alternative sanctions*; Koller-Trbović, Mirosavljević and Jeđud Borić, *Needs Assessment of Children and Youth with Behaviour Disorders – Conceptual and Methodical Guidelines*.

[125] Guerra et al., "Theoretical and Research Advances in Understanding the Causes of Juvenile Offending."

[126] Bonta and Andrews, "Risk-need-responsivity model for offender assessment and rehabilitation."

promising indirect goals, and, less promising indirect goals. This concept's basic thesis is that it is necessary to direct interventions clearly and in a structured manner towards those risk factors that best predict delinquent behaviour. When they are addressed through identified criminogenic needs, the most significant impact on reducing recidivism ought to follow[127]. **Table no. 4** shows the set of (dynamic) criminogenic needs that are most important for the treatment of offenders because they predict recidivism. These criminogenic needs were identified by a meta-analysis of the most significant risk factors[128].

Table no. 4: Most important criminogenic needs (Andrews, Bonta & Wortmith, 2006).

1. Development of non-criminal, alternative behaviour in risky situations;
2. Enhancing problem-solving skills, self-control skills, anger control, and coping with risky situations;
3. Reducing antisocial cognition, recognizing risky thinking and feelings, building an alternative, less risky way of thinking and feeling, accepting and changing criminal identity;
4. Reducing relationships with criminal friends, maintaining ties with prosocial people;
5. Reducing family conflicts, building positive family relationships, encouraging parental supervision
6. Encouraging academic/work success, giving realistic rewards, and providing a sense of satisfaction;
7. Involvement in structured leisure activities. Encouraging success, rewards, and satisfaction in free time activities;
8. Reducing the consumption of psychoactive substances and the behaviours and attitudes that support it.

[127] Ogloff and M. R. Davis, "Advances in offender assessment and rehabilitation: Contributions of the risk—needs—responsivity approach."; Bonta and Andrews, "Risk-need-responsivity model for offender assessment and rehabilitation."; Andrews, Bonta and Wormith, "The risk-need-responsivity (RNR) model: Does adding the good lives model contribute to effective crime prevention."; Maloić, "Dominant principles and models of treatment work with adult offenders in the community."

[128] Andrews, Bonta and Wormith, "The Recent Past and Near Future of Risk and / or Need Assessment."

The third principle of the model is *responsivity*, which considers factors that may affect or impede an individual's response to interventions. *Responsivity factors* are the characteristics or circumstances that affect how a person will respond to intervention procedures, although they do not necessarily have to be directly related to negative consequences[129]. Cognitive style, reading skills and academic skills, motivation for change, positive parent-child relationships or relationships with peers, as well as prosocial attitudes and beliefs and involvement in positive activities in the community are all examples of factors not directly related to criminal behaviour but which should be considered when choosing an intervention (these factors can significantly facilitate or complicate the treatment goals)[130]. Cognitive/interpersonal factors such as the level of empathy, interpersonal maturity, self-regulation, and verbal intelligence are particularly emphasized by Andrews and Bonta[131], starting from the thesis that treatment should be harmonized with these factors, regardless of the environment (community interventions or institutional treatment).

The total "equation" of all risk and protective factors, as well as responsivity factors, represents the level of *criminogenic risk*[132]. This information is most often obtained by using criminogenic risk and needs assessment instruments, where the total score on the instrument is a measure of criminogenic risk (such as the Washington State Juvenile Court Pre-Screen Assessment or risk of reoffending / needs measuring tool ASSET).

Despite many positive and useful aspects of the RNR model, professionals need to be aware of its possible shortcomings too. Vincent (2012) states that practitioners often misunderstand and mechanically (technocratically) and prescriptively use risk and need assessment instruments based on the RNR

[129] R. D. Hoge, *The Juvenile Offender: Theory, Research, and Applications* (Kluwer Academic Publishers, 2001); Ogloff and M. R. Davis, "Advances in offender assessment and rehabilitation: Contributions of the risk—needs—responsivity approach."; Andrews, Bonta and Wormith, "The risk-need-responsivity (RNR) model: Does adding the good lives model contribute to effective crime prevention."; Ricijaš, *Assessment, Planning and Reporting for Juvenile Alternative Sanctions*; G. Bourgon and J. Bonta, "Reconsidering the Responsivity Principle: A Way to Move Forward," *Federal Probation* 78, no. 2 (2014): 3–10; Koller-Trbović, Mirosavljević and Jeđud Borić, *Needs Assessment of Children and Youth with Behaviour Disorders - Conceptual and Methodical Guidelines*.

[130] Hoge, *The Juvenile Offender: Theory, Research, and Applications*, 86; Ogloff and Davis, "Advances in offender assessment and rehabilitation: Contributions of the risk—needs—responsivity approach."

[131] Bonta and Andrews, "Risk-need-responsivity model for offender assessment and rehabilitation."

[132] Ricijaš, *Assessment, Planning and Reporting for Juvenile Alternative Sanctions.*

model[133]. However, such instruments are not prescriptive. For example, they may indicate a level of high risk suggesting that a young person needs to be referred to an institution. But they do not determine (do not prejudge) the final or any specific decision on further interventions. The discretion of the expert and his/her expert opinion, despite the score/risk level on the instrument, remains **crucial**. Those instruments do not assess all the needs of a child or young person, but rather assess the risk level and criminogenic needs; while assessing other needs, various instruments and methods, techniques, or approaches should be employed.

Nowadays RNR is criticized as an element of neoliberal youth justice policy and practice, focusing on quantified assessment of risk, a scaled approach and making children take responsibility for their offending behaviour. This retrospective, deficit-focused, reductionist view of children and their behaviour disengages them from constructive youth justice interventions. The disengagement of youth is largely produced by using enforced, adult-centric and practitioner-rated quantified factors through dichotomous (yes/no) responses and rating scales. The risk factors are interpreted only from a practitioner's perspective departing from a child's self-assessment of risk factors and a child's perspective of other important elements of his life. In such a situation children are unable to acknowledge the benefits of assessment and intervention and do not became positively and actively engaged with youth justice processes[134].

Good Lives Model (GLM)

Alongside the RNR model, the *Good Lives Model (GLM)***,** in which the user is at the centre, and not the intervention, has recently received considerable attention. According to this model, interventions towards juvenile offenders aim to improve their ability to live meaningful, constructive, and quality lives so that they can withdraw from further offending. The authors of the model start from the assumption that most offenders commit crimes when they lack internal and external resources to achieve their goals in a prosocial way. Thus, committing

[133] G. M. Vincent, *Screening and Assessment in Juvenile Justice Systems: Identifying Mental Health Needs and Risk of Reoffending* (Technical Assistance Partnership for Child and Family Mental Health, 2012).

[134] S. Case and K. Haines, „Children First, Offenders Second: The Centrality of Engagement in Positive Youth Justice," The Howard Journal 54, no. 2 (May 2015): 158–161.

criminal offences reflects an inadequate way of meeting their needs. The model emphasizes the importance of the "professional-user" relationship, but also relationships with people who are important to the young person, developing and maintaining motivation, active participation in planning and implementing interventions, and strengthening the social network, and social capital of offenders[135]. It is based on the assumption that a crime occurs due to difficulties in how a person seeks to achieve fundamental human values and needs (human goods), which relate, for example, to feelings of happiness, good interpersonal relationships, the experience of success at work, and free-time activities. Criminogenic needs are defined as barriers that block or limit the realization of prosocial core values[136]. Focus on the user and his/her strengths are also essential elements of this model. Accordingly, interventions must be aimed at increasing users' awareness of their core values and implementing those values in concrete plans and behaviours. In addition to interventions aimed at developing personal life management skills, i.e., strengthening personal capital, it is necessary to strengthen the capacity for change and to strengthen the social network of users and community resources in general[137].

When it comes to the purpose of reducing criminal victimization, research evidence suggests that adherence to RNR is the primary tool used. GLM-based interventions may not differ from soundly implemented RNR interventions if the former address the offender's dynamic risk factors. Moreover, addressing non-criminogenic needs may facilitate an offender's engagement in treatment[138]. According to Yates and Ward (2008), GLM underestimates the strong possibility of criminogenic effects when the pursuit of well-being does not address an individualized understanding of the significant causes of crime.

As stated earlier, an apparent overlap between RNR and GLM is confirmed, but the review of the literature shows specific differences deriving from an analysis

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[135] Shapland et al. (2012), in S. Maloić, "Dominant principles and models of treatment work with adult offenders in the community," *Criminology & Social Integration* 24, no. 2 (2016): 140–165.

[136] F. McNeill and B. Weaver, *Changing Lives? Desistance Research and Offender Management* (SCCJR Project Report no. 03/2010, 2010).

[137] Maloić, "Dominant principles and models of treatment work with adult offenders in the community."; Koller-Trbović, Mirosavljević and Jeđud Borić, *Needs Assessment of Children and Youth with Behaviour Disorders - Conceptual and Methodical Guideline*s.

[138] Yates and Ward, (2008), in Andrews, Bonta and Wormith, "The risk-need-responsivity (RNR) model: Does adding the good lives model contribute to effective crime prevention."

of these models. The RNR Model designs its interventions based on the predictors of criminal behaviour, while the GLM primarily relies on factors that lead to resistance to offending.

- GLM focuses on the offender's motivation and strengths and on taking an active role in the design of a life plan that is meaningful and constructive to them, within legal norms. In the RNR model, the emphasis is more on the risk factors and criminogenic needs and the interventions necessary to reduce potential risk.
- The RNR model fundamentally relies on actuarial assessment, while the GLM puts a far greater emphasis on practitioners' clinical ability to develop individualized interventions according to each offender's specifics.
- The significant difference is in the orientation. RNR is said to emphasize deficits (i.e., criminogenic needs), and GLM emphasizes strengths (i.e. primary positives)[139].

While considering these differences, it should be noted that there is no general agreement that these differences actually exist. For example, although the GLM is partly promoted as an alternative, and partly as a possible improvement of the RNR Model, Andrews, Bonta, and Wormith (2012)[140] conclude in their paper that the GLM can add little to the RNR model. They confirm that one can learn from the practitioners' plea, accepted by the GLM, of putting the emphasis on the offender and his/her strengths. Hence, the contemporary approach identifies a shift in emphasis from a risk avoidance focus, as in the RNR, to a dual concentration on enhancing offender well-being as well as strengthening their active engagement and acknowledgement of the benefits of assessments and interventions.

Thus, while useful and important, the RNR model should be combined with other models (such as the GLM described) with an expert's clear focus on assessing the needs and strengths of a young person and his environment, developing

[139] Andrews, Bonta and Wormith, "The risk-need-responsivity (RNR) model: Does adding the good lives model contribute to effective crime prevention."; F. T. Cullen, "Taking rehabilitation seriously: creativity, science, and the challenge of offender change," *Punishment & Society* 14, no. 1 (2012): 94–114; F. McNeill, "Four forms of "offender" rehabilitation: Towards an interdisciplinary perspective," *Legal and Criminological Psychology* 17, no. 1 (2012): 18–36; Bourgon and Bonta, "Reconsidering the Responsivity Principle: A Way to Move Forward."

[140] Andrews, Bonta and Wormith, "The risk-need-responsivity (RNR) model: Does adding the good lives model contribute to effective crime prevention."

resilience, and, understanding his/her overall functioning and behaviour. The above models are significant because they exhibit pluralism and demonstrate the need for complementarity and integration of different assessment approaches and models both in theory and practice. In this context, it is not so important which approach / model should (or could) be followed, but how to make individual assessment of as high quality as possible so that it responds to the goals set and justifies its purpose.

To sum up, the standardized risk assessment tools are important, and must be based on scientific evidence and analysis, but they should inform rather than replace professional judgement. Practitioners should also be aware that risk can be a 'scientific fact' but is also socially constructed or context specific and therefore subject to critical analysis. Therefore, we agree with Barry (2007) who notes that the focus of a criminal justice system must remain the management of risk but also the alleviation of other problems in the lives of offenders which might influence their behaviour. It is important to be aware that risk may be correlated with outcomes but not necessarily their direct cause. Practitioners are often under pressure to focus on a snapshot in time, to focus on negative rather than positive outcomes and to think of targeting services rather than needs. They tend to concentrate more on the issue of "why" with regard to intervention rather than on "how". However, both are equally important. For humans, children and adolescents, risk does not necessarily manifest itself at the same stage, in the same context and in the same way. Equally, as Barry emphasises, different combinations of risk will have different impacts on people, depending not only on the age and the person's course in life, but also on environmental and social factors extraneous to the individual[141]. Hence, there is a need to rethink the aforementioned models and the alternative models being proposed, to be able to respond to and match the needs of a child-friendly, child— appropriate and child focused approach[142].

[141] M. Barry, *Effective Approaches to Risk Assessment in Social Work: An International Literature Review Final report* (Scottish Executive Social Research, 2007).

[142] Case and Haines, "Children First, Offenders Second: The Centrality of Engagement in Positive Youth Justice," 157–175.

Concluding Remarks and Future Direction of Juvenile Forensic Assessment

Today, forensic assessment is an integral part of legal decision-making, an indispensable tool to make decisions reliable, balanced and effective. Although the purpose of forensic assessment and its implementation is related primarily to the resolution of legal questions, the scope of assessment is particularly broad and certainly interdisciplinary. This scope is characterized by a variety of assessment categories, legal questions and assessment goals. This chapter book has sought to reveal and present such diversity. First of all, it was done by demonstrating the tremendous added value of the assessment of mental health, behavioural and other cognitive, emotional, or academic competencies of an offender; and also by revealing the significance of the involvement of mental health professionals, and, finally, by highlighting the benefits and importance of collaboration between mental health and legal sciences. In addition, not only mental health, but also other significant social constructs are equally important in conducting assessments, especially when it comes to risk identification or amenability to treatment. Diversity also exists in formulating assessment objectives or raising specific legal questions. Forensic assessment is performed by addressing the questions of diversion from the system, pre-trial detention, referrals to a criminal court, the competence of decision makers, sentencing, and post-sentence dispositions and other legally significant issues. Thus, it can be seen that the potential for assessment in decision-making is enormous, but the essential task remains that of answering the legal questions raised by selecting the most appropriate assessment methods and tools as well as by formulating specific conclusions that are understandable to offenders, their families and professionals from all interested parties.

An assessment process gains particular importance when it comes to the participation of minors in the justice system, especially in criminal justice. Both the scientific literature and practice acknowledge that the developmental immaturity of minors reduces their culpability and increases their potential for rehabilitation and reintegration. Therefore forensic assessment is of the utmost significance. Recognizing that youth competencies are dynamic and that neurological changes take place throughout adolescence, there is agreement that juvenile forensic assessment should be conducted with particular sensitivity and within a devel-

opmental approach. To ensure the quality and reliability of juvenile assessments and the effectiveness of the decisions that follow – a variety of standardized, science-based instruments are increasingly being adopted by different legal systems and applied in practice. Risk assessment tools are used particularly widely today, helping to identify criminogenic needs and plan further interventions. However, when it comes to the assessment of minors, new trends can be seen. First, we discussed standardized risk assessment, which is criticized for preventing active, positive involvement of young people and their legal representation. However, standardized assessments are conducted by experts and their interpretation is based on an assessor's perspective. It is the latter criticism that increases the need to include new approaches that would not only encourage more intensive and motivated involvement and representation of the assessed children but also, as Grisso argues, would allow adaptation of juvenile forensic assessments to cultural diversity[143]. Consequently, there is no doubt, that in relation to a child, we must apply the most personalized approach possible, and provide a sensitive response to all the psychosocial circumstances that contribute to a juvenile's criminal behaviour. Only solutions based on such a comprehensive assessment that promotes a child's involvement and understanding of the importance of assessment can help reduce the harm caused by involvement in criminal justice. Hence, we should not forget that many things cannot be measured in numbers or scales, that the main goal is not to make the most effective decisions possible, but to promote the well-being of youth and assist them in becoming mature and well-adjusted adults.

[143] Grisso, „Three Opportunities for the Future of Juvenile Forensic Assessment."

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4 Implementation of Individual Assessment In Lithuania

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4.1. Legal Background and Regulation of the Juvenile Justice System in Lithuania

4.1.1. A System of Measures for Offending Behaviour by Children

The Lithuanian juvenile justice system is characterized by a wide range of criminal and other legal measures aimed at responding to children's criminal behaviour[144]. In Lithuania, when dealing with a juvenile offender's conduct, we may apply:

1) criminal penalties and reformative measures—solely for criminal offences;
2) administrative liability measures (administrative penalties and administrative measures) – for administrative misdemeanours [145]; and

[144] S. Nikartas et al. *The measures of minimal care of the child in Lithuania: assumptions, situation and problems of implementation* (Vilnius: Law Institute of Lithuania, 2013).

[145] It is important to note that Lithuania has a dual system of legal liability for violations of the law, consisting of criminal liability for *more serious* offences and administrative liability for *minor* offences (administrative misdemeanours), such as minor theft, minor fraud (up to 150 Eur), minor hooliganism, minor drink-driving, prostitution and a wide range of other violations of state-established rules (e.g. ecological, transport and traffic, trade, storing of dangerous material and other rule violations).

3) minimum and moderate supervision measures—for those offences where the child is under the age of criminal responsibility or has not complied with a legal duty where the breach does not constitute a criminal or administrative misdemeanour eg. to attend school[146].

Lithuanian researchers describe such a juvenile justice system as a *wide-intervention* system, in which legal measures are used to respond to socially undesirable behaviour in a child of any age[147]. Thus a variety of reformative measures can be legally applied to children of any age not only for a violation of the law, but also for failing to attend school or some other dangerous or harmful conduct[148]. Below, we discuss in more detail various aspects of the criminal and administrative law concerned with minors, and also the regulation of measures of *minimum* and *moderate supervision*.

Criminal Liability

The criminal liability of minors is regulated by the Criminal Code of the Republic of Lithuania (CC)[149]. Generally, a person can be held responsible for a criminal offence only if he or she has attained the age of 16, although a person aged 14 or older can be found guilty of a number of specific *serious* offences, listed in Article 13 of the CC[150].

Administrative liability has more lenient legal consequences compared with criminal liability. For example, there is no criminal record and there are no penalties related to the restriction of liberty.

[146] See the description of the Lithuanian juvenile justice system below in Table no. 1.

[147] Nikartas et al., *The measures of minimal care of the child in Lithuania: assumptions, situation and problems of implementation*, 24.

[148] *Ibidem*

[149] There are no specific laws regarding criminal liability of juveniles. However, the CC does contain a special chapter on juvenile liability.

[150] These *serious offences* include murder; serious injury; rape; sexual harassment; theft; robbery; extortion of property; destruction of or damage to property; seizure of a firearm, ammunition, explosives or explosive material; theft, racketeering or other illicit seizure of narcotic or psychotropic substances; damage to vehicles, roads and associated facilities (Art. 13, CC). The age of liability for *administrative misdemeanours* is 16 (Art. 6, AMC).

Table 1. The Juvenile Justice System in Lithuania[151]

(i) Nature of offence and type of penalty or measure

Legal basis of the application of penalty or measure	Penalty or measure	Column in (ii) below
Criminal offence	Criminal penalties	1
Criminal offence when minor: is released from criminal liability; probation is applied (suspension of sentence and conditional release from prison)	Reformative measures	2
Administrative misdemeanour	Administrative penalties and administrative measures	3
1) Criminal offence/administrative misdemeanour when the person is under the age of criminal or administrative responsibility 2) An administrative misdemeanour, but no administrative penalty or administrative measure was imposed; 3) Failure to fulfil the obligation of a minor (under 16 years of age) to study	Child minimal supervision measures	4
1) Criminal offence/administrative misdemeanour when the person is under the age of criminal or administrative responsibility and child's behaviour danger to his or other person's life, health or property. 2) Cases where no positive change in child's behaviour has been achieved during the period of minimum supervision (except violation of the obligation to study).	Child moderate supervision measures	5

[151] Nikartas et al., *The measures of minimal care of the child in Lithuania: assumptions, situation and problems of implementation*, 23–24 (with minor changes).

(ii) Administration of penalties and measures

	(1) Criminal penalties	(2) Reformative measures	(3) Administrative penalties and administrative measures	(4) Child minimal supervision measures	(5) Child moderate supervision measures
Institution which imposes the penalty or measure	Court		Court	Municipal Administration Child Welfare Commission	Municipal Administration Child Welfare Commission *with approval of the Court*
Institution responsible for carrying out penalties and measures	Juvenile correction house Probation service *for restriction of liberty, community service and most reformative measures* Socialization centre *for reformative measures and placement in special reformative facility* Bailiffs *for fines* Other bodies and organizations		Police Other competent authority	Schools Child and youth day-care centres Health care institutions Other bodies and organizations	Socialization centre
Institution responsible for enforcing penalties and measures	Prosecutor Prison Department under the Ministry of Justice		Police Municipality Other competent authority	Municipal administration Municipal child welfare commissions	
Coordinating Ministry	Ministry of Justice		Ministry of Justice Ministry of Internal Affairs	Ministry of Education, Science and Sport	

Both criminal penalties and reformative measures can be imposed on juveniles who have committed a criminal offence. With the exception of life imprisonment, children are subject to the same penalties as adults—such as, a custodial sentence, arrest (short-term custodial sentence), deprivation of liberty, and community service.

The CC provides shorter and more lenient sentences for minors compared to adults (see Table no. 2). The maximum duration of a community service sentence for minors is 240 hours (480 hours for adults for crimes and 240 hours for misdemeanours). A minor may be fined an amount of between 5 and 50 basic social allowances (BSA)[152] (for an adult, between 15 and 6000 BSA depending on the type of crime). The CC also stipulates that a fine may be imposed only on a minor who is employed or has property. A juvenile can be sentenced to between 5 and 45 days of short-term imprisonment (for adults, it ranges from 15 to 90 days for a crime and from 10 to 45 days for a misdemeanour).

The CC lays down special conditions for the imposition of a custodial sentence: firstly, the term of imprisonment of a minor may not exceed ten years; secondly, a juvenile may be sentenced by a court to a term of imprisonment where there is reason to believe that other types of punishment would not be sufficient to alter the juvenile's criminal inclination or if the juvenile has committed a serious or very serious crime; thirdly, the CC reduces the minimum term of imprisonment for minors. Under Article 91, the minimum sentence for a minor is half the minimum sentence that would be imposed on an adult[153].

[152] Basic social allowance is an indicator for defining and calculating social security and other allowances established by legal acts; its exact amount is approved by the Government of the Republic of Lithuania (BSA for the year 2021 in Lithuania is 40 EUR).

[153] For the specific crimes, the minimum and maximum duration of the custodial sentence is established, leaving for the courts to decide on the length of the sentence in each case. In practice, this means that the average custodial sentence imposed on a juvenile is about half that of an adult.

Table no. 2: Length of criminal penalties for minors and adults

Type of penalty	Length of penalty – minors	Length of penalty – adults
Custodial sentence	From 6 weeks to 10 years	From 3 months to 20 years
Probation (*suspension of custodial sentence*)	1–3 years	1–3 years
Arrest (*short-term custodial sentence*)	5–45 days	10–90 days from 15 to 90 days for *crimes*; from 10 to 45 days for *misdemeanours*
Restriction of liberty	3 months – 2 years	3 months – 2 years
Community service	1–12 months *Not more than 240 hours to be worked in total*	1–12 months Not more than 480 hours to be worked in total for *crimes* *and* not more than240 hours for *misdemeanours*

Reformative measures may be imposed on a minor who has committed a criminal offence and who has been released from criminal liability or sanction, as well as on a minor who has been given a suspended sentence or excused prison (probation). A minor may be subject to the following reformative sanctions:

1) a warning[154];
2) compensation for (or repair of) damage to property[155];

[154] A warning may be given to a minor as an independent reformative sanction or in conjunction with other such sanctions. When imposing this reformative sanction on a minor, the court shall warn him in writing of the possible legal consequences that may follow from the commission of new criminal acts (Art. 83). In Case Law this warning is usually imposed as an additional measure to other reformative measures.

[155] Compensation for or Repair of Property Damage shall be ordered only when a minor possesses resources which he can independently dispose of or when he is capable of making good the damage by his own work. Property damage must be compensated for or repaired by the person's own work within a time limit laid down by the court (Art. 84)

3) unpaid reformative work[156];
4) placement for upbringing and supervision with parents or other natural or legal persons taking care of children[157];
5) restrictions on conduct[158];
6) placement in a special reformative facility[159].

There are no diversionary measures for juveniles in Lithuania. However, article 93 of the CC provides for the *release of a minor from criminal liability*. When a minor

[156] Unpaid reformative work can be imposed for a period of 20 up to 100 hours to be performed at health care, curatorship, guardianship or other state or non-state bodies and organisations, when the work is of a reformative character. This measure can be imposed only with the consent of the minor (Art. 85). Art. 85 also stipulates that unpaid work may not be imposed upon a minor when he is placed in a special reformative facility.

[157] Placement for upbringing and supervision with parents or other natural or legal persons taking care of children may be ordered for a period from six months up to three years, but not beyond the date when the minor reaches the age of 18 years. Under Art 86 the measure may be imposed with the following conditions:
1) the parents or other persons agree to bring up and supervise the minor, to have no negative influence on the minor, to provide favourable conditions for the development of his personality, and agree to provide the necessary information to the supervising institutions;
2) the minor agrees that the indicated persons may bring him up and supervise him, and promises to obey them and behave properly.

Placement of a minor with parents or other persons for upbringing and supervision may be ordered as an independent measure or in combination with other reformative sanctions. The measure may not be imposed where a minor is placed in a special reformative facility (Art. 86).

[158] Restrictions on conduct include court-imposed obligations and prohibitions, such as: to be at home at a certain time; to study, resume studies or take up employment; to acquire certain knowledge or learn rules (traffic safety regulations, school regulations, etc.); to complete a course of treatment for alcohol addiction, drug addiction or addiction to toxic substances or for a sexually-transmitted disease. At the request of parents or guardians and subject to the consent of the minor, a mandatory injunction may be imposed; requiring him to participate in social education or rehabilitation measures organised by state or non-state bodies and organisations; not to gamble; not to engage in certain types of activity; not to drive a motor vehicle; not to visit places that have a negative effect on his conduct or to communicate with people who exert a negative influence on him; and not to change his place of residence without giving notice to the institutions supervising this sanction (Art. 87). These restrictions may be imposed for a term of thirty days up to twelve months, the length being counted in days and months. At its own discretion (and at the request of the minor or other participants to the proceedings), the court may impose other mandatory or prohibitive injunctions not provided for by the criminal law but which, in the court's opinion, would have a positive impact on the conduct of the minor. A restriction on a minor's conduct may be imposed on the minor as an independent reformative sanction or in conjunction with other such sanctions. This sanction may not be imposed where a minor is placed in a special reformative facility.

[159] These institutions are *socialization centres*, which are educational institutions under the governance of the Ministry of Education, Science and Sport. In practice, the nature of these institutions is close to that of an open prison—although the children are not physically in custody, they are obliged to stay in the institution for a specified period with visits to their parents or guardians allowed during holidays.

has committed a misdemeanour, an act of negligence or a less serious premeditated crime for the first time, he may be released from criminal liability by the court if he:

1) has offered an apology to the victim and has compensated for or made good (fully or in part) any property damage, either in monetary terms or by his work;
2) is found to be of diminished capacity; or
3) pleads guilty and regrets having committed a criminal act or there are other grounds for believing that in future the minor will abide by the law and will not commit new criminal acts.

Having released a minor from criminal liability, the court may impose reformative sanctions on him.

Administrative Liability

A minor who is 16 years or more and has committed an administrative misdemeanour may be subject to administrative penalties and measures. The Administrative Misdemeanour Code (AMC) provides the following types of penalty:

1) warning;
2) fine;
3) public works (Art 23 of the AMC).

The administrative measures that may be imposed are as follows:

1) deprivation of any special rights;
2) confiscation of property;
3) an obligation to participate in programmes on alcoholism and drug prevention, early intervention, health care, resocialization, interaction with children, modification of violent behaviour or other courses;
4) a ban on attending public events (Art 27, AMC).

The AMC does not provide specific penalties or measures for minors. However, Art. 42 and Art. 43 p. 2 establishes the general condition that, when imposing an administrative penalty or measure on a minor, his or her age and personality must be taken into account; and Art. 44 provides that a minor shall be punished by a fine equal to half the fine that would be imposed if he were an adult (but

not less than 5 and not more than 900 euros). It is also open to the court not to impose an administrative penalty or measure but instead to impose *minimal* or *moderate supervision* (Art. 43, AMC).

Minimal and Moderate Supervision

Children who commit crimes or administrative misdemeanours but are under the age of responsibility set by the CC or the AMC may be subject to **minimal** or **moderate** supervision measures[160]. These measures may also be applied to minors under the age of 18 who have not committed a crime or administrative misdemeanour but have failed to comply with other legal duties, such as attending school. The AMC also provides that a court can replace administrative penalties for juveniles with a minimal or moderate supervision measure, taking account of the minor's personality, the nature of the misdemeanour and the nature of administrative liability established in the AMC. Minimal supervision measures are shown in Table no. 3.

Table no. 3: Minimal supervision measures

	Measure	Maximum length
1	To visit a specialist	Up to 1 year
2	To attend a children's day-care centre or another institution or organization providing educational, cultural, sporting, social or similar services; or Work in the community, including a non-governmental organization as defined in the Law on the Development of Non-governmental Organizations	
3	To continue studies at the same or another school or vocational education institution according to obligatory education programs	
4	To participate in sports, arts or other therapy, specific programmes of non-formal education, behavioural change, social education, and prevention—implemented by state, or municipal institutions, enterprises, and non-governmental organizations—to positively influence the child's behaviour	

[160] Law on *Child Minimal and Moderate and Supervision* (LCMMS).

Table no. 3: Minimal supervision measures (*continuation*)

	Measure	**Maximum length**
5	Treatment of mental and behavioural disorders due to the use of psychoactive substances, pathological gambling, or other habits and cravings	Determined individually
6	To participate in mediation	
7	To carry out activities useful to the community or to an educational or other institution	Up to 20 hours

A **moderate** supervision measure involves the separation of the minor from his negative social environment by placing him or her in a special *socialization centre*. The LCMMS-states that moderate supervision may be imposed on a child who is 14 years of age or older. In exceptional cases moderate supervision may be imposed on a child under the age of 14 – when the child has committed a criminal offence, and when his behaviour endangers his or another person's life, health or property.

Moderate supervision may be ordered for up to one year. It cannot continue after the child reaches the age of eighteen. The total duration of a child's moderate supervision (including any extension or re-appointment) may not exceed 3 years. The length of a child's moderate supervision is calculated from the moment it comes into force.

These measures are very similar to the reformative measures provided in the CC. The development of juvenile criminal justice in the 1990s provided for an integrated system of sanctions for children exhibiting delinquent behaviour, which included both the current reformative measures of the CC and minimum and moderate supervision measures. However, in practice, the juvenile justice system has been divided into two distinct areas of public administration:

- measures targeting children who have committed an offence and who have reached the age of criminal responsibility have been assigned to the *justice* system under the Ministry of Justice; and
- measures for minor offenders who are not criminally liable have been placed within the *education* system under the Ministry of Education, Science, and Sport.

This distinction has had little effect on the nature of the measures. Most of them are similar in content, although the duration, consequences of non-compliance, enforcement and supervisory bodies are different.

4.1.2. Institutions Responsible for Criminal Proceedings Against Juveniles

Juvenile criminal proceedings are regulated by the Code of Criminal Procedure (CCP). Unlike the Criminal Code, the CCP does not contain a separate chapter on juvenile criminal procedure, but special provisions on criminal proceedings are available for juvenile suspects. The main institutions are the courts, the office of the prosecutor, and the police[161]. There are no specialized courts or law enforcement departments to deal with juvenile cases. However, elements of specialization are to be found among individual judges, prosecutors, and police officers.

Article 111 of the *Lithuanian Constitution* and Article 13 of the *Law on Courts* have provision for specialized juvenile courts to be set up. However economic reasons and the low number of cases mean that no special courts for family and juvenile cases exist at present.[162] Article 34 of the Law on Courts provides for categories of specialist judges to be created for particular types of case, and a list of judges specializing in juvenile and family cases has been drawn up by the National Courts Administration[163]. Special categories of case are usually assigned to a judge with the relevant specialization and the training and qualifications of judges must be related to their specialization[164]. However, there is no imperative to deal with juvenile cases only for judges who specialize in family and juvenile cases, thus it can be argued that the specialization of judges is only partial.

[161] There are other institutions which carry out pre-trial investigations. The functions of pre-trial investigation are assigned by law to different institutions according to the field of activity and type of crime. For example, the investigation of crimes related to corruption is under the responsibility of the *Special Investigation Service*, Investigation of Financial crimes is carried out by the *Financial Crimes Investigation Service*, crimes related to illicit goods and smuggling by *Customs agencies*, crimes related to State border violations by the *State Border Guard Service*, crimes committed in prisons by the *Prison department*. However, most crimes are investigated by the *Police*. Pre-trial investigations are coordinated and controlled by *prosecutors*.

[162] L. Ūselė, "Consistency of juvenile justice legal acts: procedural issues," *Teisės Problemos* 4, no. 86 (2014): 76.

[163] List of judges hearing juvenile and family cases. National Courts Administration. Accessed on November 5, 2020: https://www.teismai.lt/lt/visuomenei-ir-ziniasklaidai/teismai-ir-teisejai/teiseju-specializacijos/157

[164] L. Ūselė, "Consistency of juvenile justice legal acts: procedural issues," 76.

Specialization among other criminal justice officers is similar. The specialization of juvenile justice is applied at all territorial levels of the prosecution office: district and regional prosecutors' offices, as well as in the Prosecution Department of the General Prosecutor's Office[165]. The specialization of prosecutors is established in the Prosecutor General's recommendations on the specialization of prosecutors in criminal proceedings and the allocation of pre-trial investigations to prosecutors[166]. This document establishes specialization as one of the criteria for assigning a pre-trial case to a particular prosecutor[167]. The recommendations also set out a general rule that, in cases where the pre-trial investigation falls within the juvenile justice and other specialization, it must be assigned to a prosecutor who specializes in juvenile justice[168]. On the other hand, in order to manage the workload of prosecutors or for other important reasons, pre-trial investigations may be allocated to prosecutors without regard to the criteria for case allocation set out in the recommendations[169].

Until 2016 in the *police force* specialist *juvenile officers* were responsible for work with minors. Their functions were broad but focused on crime prevention and supervision of sentences imposed on minors. *Juvenile officers* could also undertake certain procedural steps in pre-trial investigations of missing children, but a wider role for them in a pre-trial investigation could only be established by a specific order from the Police Commissioner-General[170]. Under the police reforms of 2016–2018 the specialized position of *juvenile officer* ceased to exist. As a result, officers who currently deal with juvenile offenders usually perform other duties as well.

[165] Order of the Prosecutor General of the Republic of Lithuania No. I-318 "On the Approval of the Recommendations on the Specialization of Prosecutors in Criminal Procedure and the Allocation of Pre-trial Investigations to Prosecutors. Valstybės žinios, 2012, Nr. 128-6455. https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.436535/asr (Retrieved November 2, 2020).

[166] *Ibidem*

[167] *Ibidem*

[168] *Ibidem*

[169] *Ibidem*

[170] *L. Ūselė, "Consistency of juvenile justice legal acts: procedural issues," 78.*

4.1.3. Institutions Responsible for the Enforcement of Sanctions on Juvenile Offenders

The enforcement of sentences falls within the jurisdiction of the Ministry of Justice. The enforcement of penalties (except fines) and reformative measures are the responsibility of the Prison Department under the Ministry of Justice. Imprisonment takes place in the Juvenile Correctional House. Probation and reformative measures (except placement in a special institution) are the responsibility of the *Probation Service*.

In general, administrative penalties and measures can be investigated and enforced by a wide range of authorities—police, courts, and different agencies and inspectorates within their area of responsibility. Fines are enforced by bailiffs. In juvenile cases, the AMC provides that all administrative misdemeanours of juveniles are to be heard and investigated by the administrative courts (Art. 614, AMC).

The minimum and moderate supervision system is under the authority of the Ministry of Education, Science and Sport. Minimum and moderate supervision measures are formally approved by the Municipal Administrator on the recommendation of the Child Welfare Commission. Depending on the subject matter, minimum supervision measures are carried out by schools, NGOs, and health care services (e.g. when specialist supervision is provided). Moderate supervision of the child (which requires court approval) is carried out in specialized *socialization centres* which can be regarded as juvenile detention facilities with a lenient regime.

4.2. Legal Background and Regulation of Individual Assessment

Implementation of Directive 2016/800 requiring individual assessment of a child came into force on January 1st 2020. There are two points to note about the previous system of individual assessment in Lithuania.

First, the CCP contains provision for the Courts to request a social inquiry report with a detailed assessment of a juvenile's personality, his/her social environment, criminogenic risk and protective factors[171]. Social inquiry reports were

[171] According to Article 36 (1) of the CCP, a social inquiry report is a document prepared by a specialist describing the social environment of the accused or convicted person, criminogenic factors, and

prepared by staff of the probation service (or prison service, if the juvenile was in prison) in accordance with evidence-based risk assessment methodologies. Currently the risk assessment methodology for minors is START[172]. However, the purpose of the social inquiry report was limited to setting *probation conditions* and therefore did not meet the objectives of the individual assessment required by the Directive[173].

Secondly, arrangements existed for inter-institutional co-operation between the prosecutor's office, courts, child rights protection services and other institutions to provide information on the child's personality and environment [174]. These data were used by prosecutors and courts to individualize criminal proceedings and

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other information that would help the court to individualize probation conditions. The judge may call for a social inquiry report at his own discretion or at the request of the prosecutor, the accused or his lawyer. The social inquiry report is prepared by the probation service within 20 working days. It consists of three parts: general information, specific data and the conclusion. The general information part includes information (1) about the assessor, (2) about the accused person or offender who is being assessed, and (3) the enquiry techniques. The second part of the report includes a description of (1) an accused person (offender) and his social environment (previous offences, accommodation, education, training and employability, financial management and income, relationships, lifestyle and associates, substance abuse, emotional well-being, thinking and behaviour, attitudes), (2) in a case considering release on parole, the behaviour of an offender during his imprisonment, his participation in correctional programmes and the outcomes, the performance of the parents' duties, foreseen in the Civil Code and (3) any other significant data. The last part of the report, the conclusion, encompasses (1) assessment of the risk of offending and criminogenic needs and (2) a reasoned opinion on the individualization of probation conditions (recommended conditions of probation and the reasons for the recommendations). The second part of the social enquiry report assembles the list of factors related to the likelihood of re-offending, included in the OASys risk assessment instrument.

These provisions of the CCP are applicable when deciding on whether to suspend a sentence (probation) in criminal proceedings. Thus it is applicable only in few cases of criminal proceedings.

172 'The Short-Term Assessment of Risk and Treatability: Adolescent Version – START: AV' guiding assessment of the risk of adverse outcomes related to harm to others and rule violations, including assessment of both strengths and vulnerabilities of juveniles (see: V. Klimukienė et al. "Examination of Convergent Validity of Start: AV Ratings among Male Juveniles on Probation," *International journal of psychology: a biopsychosocial approach* 22, (2018): 31–54).

173 The objectives of individual assessment set out in the Directive are discussed in detail in Chapter No. 2.

174 Data about the residential and educational conditions of a child is also provided to the interested institutions in accordance with a cooperation agreement between five parties (Prosecutor General's Office, Police department under the Ministry of the Interior of the Republic of Lithuania, Ministry of Social Security and Labour, State Child Rights Protection and Adoption Service, as well as Children's Rights Ombudsman Institution of the Republic of Lithuania). Based on this agreement, if the State Child Rights Protection and Adoption Service receives a request from the prosecutor or police, it shall provide information within 7 calendar days from the receipt of request, except for emergency cases, examine family environment and submit all the available or newly checked information about the residential and educational conditions of a minor to the prosecutor or police.

criminal liability measures. However, this practice was not regulated by law, and it was not mandatory for prosecutors or pre-trial investigation officers to follow it. In consequence, the State Child Rights Protection and Adoption Service rarely received such requests[175]. This suggests that individual assessments were not provided for many of the suspected or accused juveniles who now have this right under the Directive. These regulatory shortcomings have led to legislation that fully implements the Directive's provisions on individual assessment.

The previous experience of individual assessment suggested two possible approaches to implementation of the Directive:

1) to assign the conducting of the assessment for penitentiary institutions to the probation service and juvenile remand and correctional facilities; or
2) to continue the method of cooperation between institutions for collection and exchange of information, but without specifying the use of assessment tools or trained specialists.

The legislation opts for a *mixed institutional* model. For children who are *not remanded in custody*, individual assessment is the responsibility of the Child Rights Protection and Adoption Service, which reports to the Ministry of Social Security and Labour. For children *under arrest* this function has been assigned to the juvenile remand and correctional facilities under the Ministry of Justice. (see Figure no. 1)[176].

Table no. 4: Individual assessment—Legal definition and procedures

Legal regulation of individual assessment in the CCP
Legal definition. Article 27(2) the CCP
An individual assessment of a suspected or accused juvenile is a summary of the information about the juvenile's personality, his/her environment and needs for protection, education and social integration. It is prepared by the State Child Rights Protection Institution or the custodial institution where the juvenile is being held.

[175] See below the comments of the experts who participated in the research exercise.

[176] The legal definition of individual assessment and also a more detailed description of the procedure for carrying out individual assessment are provided in Tables no. 4 and no. 5.

Table no. 4: Individual assessment—Legal definition and procedures (*continuation*)

Legal regulation of individual assessment in the CCP
Procedure. Article 189 (1) part 1 of the CCP.
Upon first questioning a juvenile suspect, the pre-trial investigation officer shall immediately file a request to the State Child Rights Protection Institution regarding the individual assessment of the juvenile suspect in accordance with the procedures established by the Minister of Social Security and Labour. The State Child Rights Protection Institution has the right to receive from the municipal pedagogical psychological service data on the special educational needs of the minor, his/her personality assessment and maturity. These data must be provided within ten working days from the receipt of the request. If a minor is under arrest, a request for conducting his or her individual assessment shall be made to the custodial institution where the minor is being held. An individual assessment of the juvenile must be carried out and a summary of the information submitted to the pre-trial investigation officer or prosecutor in the prescribed written form no later than within twenty-five working days from the date of receipt of the request.
Purpose (objectives) of individual assessment CCP Art. 189 (1) part 2 d.
The minor's individual assessment shall be taken into account when: • choosing pre-trial detention and other procedural coercion measures for the minor; • deciding whether to terminate the pre-trial investigation or to refer the case to a court; • organizing proceedings with a suspected or accused juvenile; • deciding on the imposition of penalty, punitive or educational measures on a minor.
Cases when the individual assessment of a minor does not need to be performed (if it is not in conflict with the interests of the minor) (Article 189 (1) part 3 of the CCP).
Cases which: • are being investigated under the accelerated procedure; • in which a criminal injunction is issued; • involve minor or negligent offences; or • misdemeanours

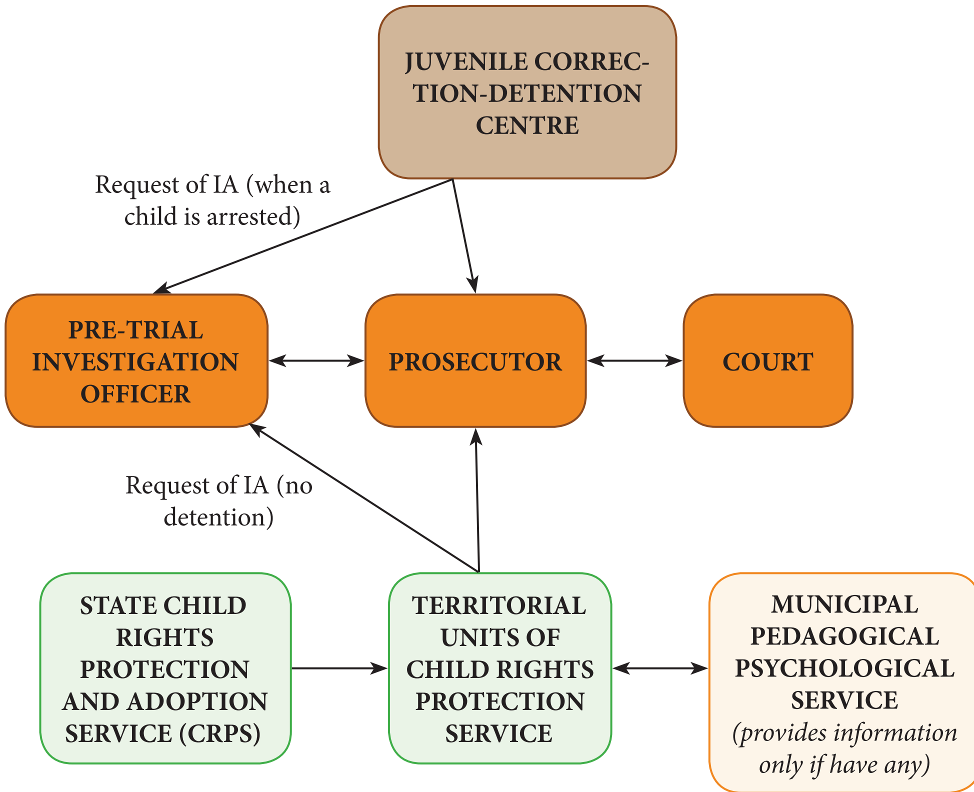

Figure no. 1: The procedure of individual assessment in Lithuania

Lithuania has exercised the discretion provided in the Directive not to conduct individual assessments in cases of minor offences. Art 189 part 1 of the CCP provides an opt out in cases

- that are under an accelerated procedure;
- where a penal order has been issued; or
- that involve minor or negligible offences or misdemeanours, provided that this is not contrary to the interests of the young person.

It is important to emphasize here that accelerated procedure and criminal injunction (penal order) procedures generally apply to minor and less serious offences as well. Thus, in practice, individual assessment will apply only to juveniles who have committed serious or very serious crimes. This is not contrary to

the Directive, but it means that individual assessment will apply to only a very small proportion of suspected or accused juveniles[177].

The CCP does not establish the concept of a *juvenile*, so it is not clear whether individual assessment can be applied to young persons under 21 years of age if their social and psychological maturity corresponds to that of a juvenile. It is true that such a concept is enshrined in the CC, but the provisions of the CC are limited to the application of criminal liability and do not cover measures outside the scope of criminal proceedings. If the court or prosecutor has doubts about the social maturity of a young person under the age of 21, a specialist opinion from a psychiatrist or psychologist is requested. In this case, an assessment of the young person's social maturity—similar in content to an individual assessment—is made. However, the legal purpose of the *social maturity assessment* is narrower than the objectives of the Directive, since it only determines whether it would be appropriate to apply the provisions of juvenile criminal liability. The purpose of a social maturity assessment is not directly related to ensuring the needs of a minor in criminal proceedings or to individualizing criminal proceedings measures (especially those involving coercion).

Lithuanian legal regulations do not require the application of specific individual assessment tools or evidence-based assessment tools. The CCP links individual assessment to the collection and analysis of information about the child's personality and his or her environment, but the choice of method and means of collecting this information remain within the discretion of the institutions performing the individual assessment.

[177] For example, in 2019, only 95 juveniles (8%) were registered out of the total number of juvenile suspects (1167) were suspected of committing a serious or very serious crime (see: Department of Informatics and Communications under the Ministry of the Interior of the Republic of Lithuania). Data on the crime of suspected (accused) persons in the Republic of Lithuania. (Form-2). https://ird.lt/lt/reports/view_item_datasource?id=8190&datasource=41187 (Retrieved December 16, 2020).

Table no. 5: Individual assessment—issues in implementing the Directive

Who is entitled to an individual assessment?	Minors (juveniles) (persons under the age of 18) who are suspected or accused of committing serious and very serious crimes.
When should an individual assessment be applied?	After the first interrogation, the pre-trial investigation officer or prosecutor files a request for the individual assessment **immediately**.
Which institutions are responsible for carrying out the individual assessment?	Child Rights Protection and Adoption Service under the Ministry of Social Security and Labour—for cases of minors who are not remanded in custody. Juvenile remand and correctional facility—for those in custody.
Which institutions are involved in the individual evaluation process?	Municipal psychological services provide information about the child if requested by the Child Rights Protection and Adoption Service.
Which professionals conduct the individual assessment?	Employees of child protection services (social workers), psychologists working at the psychological services (if necessary); psychologists from the juvenile remand and correctional facility.
Is there a requirement for professionals to participate in training on individual assessment?	There is no such requirement for specialists from the Child Rights Protection and Adoption Service. There are internal requirements (imposed by the Department of Prisons) for juvenile correctional facility specialists to undergo training on the application of appropriate assessment tools (e.g., START, OASys, etc.).
Was there specialist training on how to conduct an individual assessment organized?	Psychologists of the juvenile correctional facilities and other employees of the penitentiary system attend special training on START juvenile risk assessment methodology.
Is there a requirement to apply evidence-based instruments?	There is no such requirement set in the legislation.
Are evidence-based instruments applied?	The Child Rights Protection and Adoption Service does not apply such instruments—it just collects information about the child.

Equally important is the effectiveness of the implementation of these provisions. In the next section, based on the results of our qualitative research involving interviews with experts, we discuss some anomalies and problematic aspects in the application of individual assessment in practice.

4.3. Implementation of the an Individual Assessment from the Experts' Point of View

In order to explore the likely impact of the legislative changes on individual assessment, we undertook a research project designed to elicit the views of experts who either carry out or make use of individual assessment. Interviews were conducted with a total of 17 experts—ten who carry out individual assessments (psychologists, psychiatrists and other specialists) and seven who use them (prosecutors). The interviews took place between August and October 2019. At that time, the new arrangements had not yet come into force. The experts based their comments on the draft legislation as it then stood. Details of the research methodology are in the Appendix.

According to this group of experts, the **positive** aspects of the new regulations are:

1) the establishment of a clear procedure for conducting individual assessment; and
2) the mandatory nature of individual assessment.

On the first aspect, prosecutors stressed that after the new procedures have come into force, the form and coverage of the data to be submitted will become more specific and uniform. They also noted that any features related to the process of personal development and upbringing that the Pedagogical-Psychological Service could provide would be useful in every case in which a minor was assessed. The assessment of ability to learn is important both in describing a minor and in the selection of appropriate educational measures.

On the second aspect, specialists from the Child Rights Protection and Adoption Service emphasized that before the new regulations prosecutors were not obliged to apply for data about the child, and that there were not many such applications. Once the new legislation has come into effect, individual assessment of a child

will no longer be at their discretion. On the other hand, respondents noted that the increased number of requests will increase the workload of specialists in the Child Rights Protection and Adoption Service.

However, the experts perceived several shortcomings in the model introduced by the regulations.

First, the new regulation does not substantially change the procedure based on the cooperative agreement between the five parties which was previously in place. Prosecutors and specialists in the child protection service noted that the new procedure does not differ significantly from the previous practice of inter-institutional cooperation. The new regulation was criticized as formal and not adding value or quality to existing practice. Some experts also pointed out that the drafters of the amendments had not taken into consideration either the human resources available nor existing experience of applying assessment tools in the work of the probation service:

> *"The state looked at this matter only in a formal way. They have not built on the social inquiry report, which was carried out by the Probation Service and is targeted and already specialised for such accused or suspected persons. They merely duplicated the functions of the institutions; therefore, we will not get any actual benefit from it. As I told you before, we will collect the same information that we usually collect, i.e. the descriptive data from all other institutions"* Prosecutor from Klaipėda District Prosecutor's Office.

Second, respondents pointed to a lack of expertise in collation and interpretation of data collected during the assessment process. Respondents, representing the State Child Rights Protection and Adoption Service, doubted if the new procedure would meet the requirements of the Directive as there is a lack of qualified professional involvement in summarizing and interpretating the data collected about children. In their opinion, assessing and summarising data and drawing conclusions should be done by specialists with appropriate qualifications and competences. To meet the objectives of the Directive, competences of pre-trial investigation officers or prosecutors may be insufficient:

> *"Even in cases when a family has been well known for a long time, such individual assessment will not be performed the way it is understood in*

the Directive because material [from the State Child Rights protection and Adoption Service] will be collected and simply put alongside the information obtained from the Pedagogical-Psychological Service. To draw conclusions from these sources, special knowledge is required. It is not clear whether the investigators and prosecutors have such knowledge, although they may possibly have it. So it would be necessary to have a separate person—a psychologist—to do it." (Specialist of the State Child Rights Protection and Adoption Service)

According to the prosecutors who participated in the research, under the new arrangements all data that are collected will be more explicitly regulated and in a unified and mandatory form. However, the coverage, specification and quality of the assessments will not change substantially. This is because the data that are collected will not be supplemented by expert analysis which would describe and interpret them. Prosecutors claimed that they interpret a variety of data themselves and that they are sufficiently competent to interpret the data in many cases, although their interpretation may not be sufficient in more complex cases. Therefore, in more complex cases, prosecutors ask forensic specialists for expert advice about seeking further expertise. However, that further expertise is aimed at answering very specific questions about the minor's liability for the crime committed as well as his/her capacity to participate in and comprehend the criminal process.

It should be noted that the time needed to draw conclusions about the need for further expertise and then to engage it can be very long and can lead to delays in the criminal process; therefore, the prosecutors frequently avoid seeking the assistance of forensic experts.

Third, an important aspect, noticed by respondents, is **the limited amount of data which can be collected during the assessment.** Based on their functions and competences, specialists of the Child Rights Protection and Adoption Service are only able to provide information available to that institution—such as physical and social living conditions etc:

"Thus, they would describe what they see, mention the number of rooms, indicate whether a child has a separate space, bed or a writing-desk. Meanwhile, after visiting a family for the first time, we will not be able to

tell what kind of emotional bond is formed between a child and his/her parents because they may say: "Everything is all right, we live on friendly terms" Any conclusion will be superficial. I would say that it will not be as deep as it could be if we could actually find it out how that child grew up and why he became the way he is now, as well as how he could be encouraged to re-engage in society. It would be necessary to have a specialist for this. I would say that it could be a psychologist, who might assess the personality of such a child better and explain how he became the way he is." Specialist from the regional division of the State Child Rights Protection and Adoption Service.

Thus, respondents pointed out that such an assessment would reflect only one of the Directive's objectives—to assess economic, social and family circumstances. The personality and maturity of the child will not be assessed, or will be assessed only in part once the Pedagogical-Psychological Service has provided some conclusions about particular features of the personal development of the child and his participation in the education system. However, as was noted by representatives of the Vilnius Pedagogical-Psychological Service, the service can provide information about a child's assessment and special educational needs to other institutions only if the child has already been assessed by specialists of the service. If the Pedagogical-Psychological Service has no data about the minor, a further assessment is not carried out.

Fourth, an issue, raised particularly by forensic experts, is the **poor quality of data collected** from various institutions:

"Information about a person is frequently incomplete or very poor, for example, the schools provide very brief information about a child. Let's say that a family has long-term problems. Even though such family has social and other problems, the relevant authorities know nothing about it and these services rush to perform an assessment only after an accident has happened... Or let's say that a minor, who should attend the Pedagogical-Psychological Service, has learning difficulties, but his school does not send him to the Service or his family is not able to travel there. Then there will be no pedagogical-psychological assessment. There is simply insufficient information. So, if every institution could work to the limits of its

competence and could have and provide detailed information about such a child and his family, then the general assessment that we are talking about would be more comprehensive". Psychologist of the State Service of Forensic Psychiatry.

Fifth, amongst the shortcomings that adversely affect expert data quality and evaluation, the respondents emphasized **the need for a greater involvement of mental health professionals (psychiatrists and psychologists) in the individual evaluation of a child:**

"*It could be a stated requirement, for example, that a psychologist has to perform the assessment, couldn't it? Let's say that he performs a psychological test. His social maturity is reasonable. Then we could probably make a decision regarding the outcome of the pre-trial investigation. Maybe, we would be able to exempt him from criminal liability more readily, wouldn't we? Maybe, then we would be able to ask the court for an exemption from liability or a lighter sentence before taking any other actions so that he could benefit*" (Prosecutor of Klaipėda District Prosecutor's Office).

According to the prosecutors, in order to make individual assessment significant in their work, data collected by various institutions should be summarised by providing an expert conclusion. Such a conclusion could be used by prosecutors during the criminal procedure, either provided by a psychologist included in a list of experts or by a specialist, approved by legislation (e.g. a probation officer). An individual assessment of a suspected or accused minor without a conclusion by an expert or specialist will only be of the same value as the descriptive data collected before the new regulations. Hence, it is likely that the new regulations on individual assessment will not result in any improvement to criminal procedure and that the objectives of the Directive will be implemented only in part.

Sixth, the quality issue could be resolved by introducing and implementing evidence- based tools. As mentioned above, the child protection services do not have evidence-based assessment tools at their disposal. Such instruments are used by psychologists and psychiatric experts and in penitentiary institutions (correctional facilities and the probation service). The participation of the for-

mer in individual assessment is very limited. Meanwhile, the juvenile correctional facility has a START risk assessment methodology for minors, but until the new amendments came into force, it was applied only to convicted juveniles. The psychologists of Kaunas Juvenile Remand Prison-Correction House expressed doubts on the compatibility of START with the objectives of the Directive as it does not cover educational needs. Thus they use a semi-structured interview to assess suspected minors:

> *"Only a semi-structured interview can cover the matters set out in the Directive. Let's say that it includes several aspects, but we may also ask him about his education or needs; however, these are only our questions. It is not a methodology.*" Psychologist, Kaunas Juvenile Remand Prison-Correction House.

This expert confirmed the lack of a unifying instrument that could be used during the assessment and planning of further work with the suspected and accused persons. Specialists from the Probation Service agreed with the opinion expressed by the psychologists from Kaunas—currently, START: AV methodology is used only for minors who have been sentenced That raises the inevitable question regarding the application of methodology for suspected and accused persons.

A different opinion was expressed by probation officers, who are not included in the procedure of individual assessment. Specialists of the Probation Service emphasized that their involvement in the procedure of individual assessment is essential because they have an instrument to help them assess the dangers and strengths of a person, and can select suitable educational measures. In addition they are well aware of measures that are currently applied in the Probation Service to change behaviour and they know which measures would be most suitable for a minor. The probation officers who participated in the research, said that they have to go to court frequently regarding the imposition of additional measures or changes to inappropriate measures. Preparation of social reports for suspected or accused minors, together with the use of START:AV assessment combined with data provided by other institutions, would significantly contribute to achieving the Directive's objectives, to determining criminal liability and to the selection of suitable sanctions or educational measures. According to spe-

cialists of the Probation Service, the procedure of individual assessment should look as follows:

> *"For example, general information [from the State Child Rights Protection and Adoption Service] could be provided during the first step. Then information obtained during the investigation of the child's social maturity, including all the necessary criteria, could be provided during the second step. Then our officers could probably act on such additional information. I believe that they could perform START and provide their conclusions then. Because, as you may see, a child is here not only because of his/her social immaturity, but due to the offence, so, logically, his/her social maturity should be assessed and then the nature of the crime, including danger, strengths and weaknesses, as well as other factors. Finally, recommendations should be provided regarding the imposition of a sentence. So, the steps should be in the following order: their assessment [provided by other institutions], then an assessment provided by our probation service and, finally, the probation service should provide its conclusions in writing". Chief Specialist of the Probation Service.*

4.4. Conclusion and Recommendations

The legislation that came into force in 2020 to implement the Directive has established clear procedures for the performance of individual assessment, and has made the individual assessment of a child mandatory in the field of criminal proceedings. However, our research has revealed some problematic aspects of the regulation and application of individual assessment, which cast doubt on the effective implementation of the Directive.

First, the new model lacks added value if compared to the previous practice of assessing a child in criminal proceedings: the regulation repeats previous provisions on the sharing of information about the child between institutions, although in practice there is still a lack of expert-level evaluation of the data gathered, the high-quality summarization thereof and finally a lack of application of evidence-based tools.

Second, the research revealed that child protection professionals entrusted with individual assessment may have limited information about the child, therefore some characteristics of the child (especially psychological, or related to social maturity ones) may remain undocumented. Such an assessment would only partially achieve the objectives of the Directive.

Third, there is a lack of involvement of qualified professionals (especially mental health professionals), both in terms of legal regulation and practical implementation.

Recommendations

The Ministry of Social Security and Labour should ensure the application of evidence-based measures for the individual assessment of a child involved in criminal proceedings and should train staff performing individual assessment accordingly;

Mental health professionals should become involved in the process of individual assessment, especially in cases when a comprehensive (deeper) assessment of the child is needed;

The Ministry of Justice and the Ministry of Social Security and Labour should cooperate in applying the individual assessment tools that are already available in penitentiary institutions.

Appendix

Research Methodology

To address the aim of the research, a multi-method qualitative approach was used, using semi-structured interviews and focus groups. The overall purpose of using semi-structured interviewing individually or in groups is to explore key participants' perceptions, interpretation and beliefs in order to gain an understanding of a particular topic from their perspective. Semi-structured interviewing is best used for gathering reliable, comparable qualitative data in projects when several interviewers are deployed to collect data on the topic.[178] An expert (selective/purposive) sampling technique was applied in the research. Qualitative content analysis was applied to analyse the data collected during this research.

The sample of experts was drawn from practitioners in the juvenile criminal judicial system and relevant stakeholders. Data collection took place from August 2019 to October 2019 in three large cities: Vilnius, Kaunas and Klaipėda. One week before the interviews, key participants were given an introduction to this IA-CHILD project in written form as well as to Directive 2016/800 Article 7. Individual and group interviews were scheduled with key participants at a time and place convenient for them.

One or two members of the research team conducted the individual or group interviews with the experts. Individual interviews lasted from 35 minutes to 1 hour and focus group lasted 1 hour 15 minutes. Overall, 10 interviews were conducted: 6 individual interviews, 2 group interviews and 2 focus groups. Seventeen experts participated in the research: 10 experts who conduct and 7 who use individual assessment. Details are presented below in table 6.

Interviewers addressed questions to the experts in ways that would encourage their free verbal expression. All of the participants gave their oral informed consent to participate in the interviews or focus groups and all of them signed the interviewee list. All the interviews conducted for this research were audio-recorded and transcribed verbatim.

At the time of the interviews, the legislation implementing the provisions of the Directive had not yet come into force, therefore the experts evaluated the current practice of assessing children in the criminal justice system and the new draft regulations *as they stood at that time*.

[178] H. R. Bernard, *Research Methods in Anthropology: Qualitative and Quantitative Approaches* (Rowman Altamira, 2006).

Table no. 6: Research participants' characteristics

	Interview	Institution	Position
Experts doing IA	1.	State Forensic Psychiatry Service under the Ministry of Health	*Forensic psychologist*
	2.	State Forensic Psychiatry Service under the Ministry of Health	*Forensic psychiatrist*
	3.	Regional division of Klaipėda, Probation Service.	*Chief specialist*
			Specialist
			Specialist
	4.	Kaunas	*Psychologist*
	5.	Kaunas	*Psychologist*
	6.	State Child Rights Protection and Adoption Service under the Ministry of Social Security	*Chief specialist*
			Specialist in regional unit.
	7.	Ministry of Social Security and Labour	*Specialist*
Experts using IA	8.	Kaunas District Prosecutor's Office	*Prosecutor*
	9.	Klaipėda District Prosecutor's Office	*Prosecutor*
			Prosecutor
	10.	Vilnius District Prosecutor's Office	*Prosecutor*
			Prosecutor
			Prosecutor
			Prosecutor

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5 Implementation of Individual Assessment in Greece

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5.1. Legal Background and Juvenile Justice System in Greece

In Greece, the juvenile justice system functions as a specialized form of the administration of justice and is governed by the principles of education and protection of the child's best interests[179]. Article 21 of the Greek Constitution establishes that childhood shall be under the protection of the State and that the State will provide special measures for that protection. Article 96 specifies:

- *firstly* that special statutes should regulate matters pertaining to *juvenile courts*;

[179] C. D. Spinellis, "The Juvenile Justice System in Greece," in *European Juvenile Justice Systems*, ed. V. Patanè (Milano: A. Giuffrè, 2007), 171-199; C. D. Spinellis and A. Tsitsoura, "The Emerging Juvenile Justice System in Greece," in *International Handbook of Juvenile Justice,* ed. J. Junger-Tas and S. H. Decker (Dordrecht: Springer, 2006), 309-324; N. Courakis, "A Typology of Juvenile Justice Systems in Europe," in *Human Rights, Crime, Criminal Policy. Essays in honour of Alice Yotopoulos-Marangopoulos*, ed. A. Manganas (2003), 251-273; A. Pitsela, *The Penal Treatment of Juvenile Delinquency*. 7th Ed. (Athens-Thessaloniki: Sakkoulas Publications, 2013), 66-99.

- *secondly* that the principles of *publicity* of the hearings of all courts[180] and the trial of felonies and political crimes by *mixed jury* courts[181] need not apply in cases of children; and
- *thirdly* that the judgements of juvenile courts may be pronounced *in camera*[182].

The eighth and final chapter of the General Part of the Greek Criminal Code[183] is entitled *Special Provisions for Minors* as it contains substantive law provisions for young offenders and functions as a *lex specialis* within the general criminal law. That means that the general provisions of the Greek Criminal Code apply to children only when no relevant provisions are contained in the eighth chapter and always provided that the general provisions are in accordance with the meaning and purpose of the specific provisions for children[184]. The Greek Criminal Code of 1950 was amended in 2019[185] [186].

The *criminal procedure* applicable in cases of *minors in conflict with the law* is regulated by the provisions of the Greek Code of Criminal Procedure[187]. Its provisions apply in general both to adults and minors, but the CPC does contain certain specific procedural rules relevant only to minors—such as the provisions about refraining from prosecution, restrictive measures, pre-trial detention and the Juvenile Courts[188]. The 1950 Code of Criminal Procedure was also replaced by the Greek Code of Criminal Procedure (CPC) in 2019[189].

[180] Art. 93, para. 2 of The Constitution of Greece.

[181] Art. 97 of The Constitution of Greece.

[182] The Constitution of Greece. http://www.hri.org/docs/syntagma/artcl120.html (Retrieved September 25, 2019).

[183] Ratification of the Greek Criminal Code (*OG 4619/2019*).

[184] A. Pitsela, "Greece," in *Juvenile Justice Systems in Europe. Current Situation and Reform Developments*. 2nd Ed. (Forum Verlag Godesberg, 2011), 624-625.

[185] *OG 4619/2019* (in force since July 7, 2019).

[186] Ratification of the Greek Criminal Code (*OG 4619/2019*). http://www.ministryofjustice.gr/site/LinkClick.aspx?fileticket=d-eIhEXNm_Y%3d&tabid=534 (Retrieved September 25, 2019). (In Greek).

[187] Ratification of the Greek Code of Criminal Procedure (*OG 4620/2019*), in force since July 1, 2019.

[188] Pitsela, "Greece," 625.

[189] Ratification of the Greek Code of Criminal Procedure of 1950 (*OG 1493/1950*), in force since January 1, 1951. OG 4620/2019. http://www.ministryofjustice.gr/site/LinkClick.aspx?fileticket=tUzwSIbnWNY%3d&tabid=534 (Retrieved September 25, 2019). (In Greek); Th. I. Dalakouras, *The new Code of Criminal Procedure*. 2nd Ed. (Athens: Nomiki Bibliothiki, 2020). (In Greek).

The *correctional treatment* of adult and minor detainees is governed by the legal provisions of the Greek Correctional Code[190] of 1999, which contains a few provisions for minors. In 2005 a specific legal framework on the functioning of *institutions for young offenders* was created[191] [192].

During the first decades of the 21st century and under the influence of international *human rights* standards, Greek juvenile law has been in a process of reform. The enactment of several laws[193] has given a *child-friendly* orientation to the Greek juvenile justice system[194]. These important developments are discussed below by analysing the various legal aspects of juvenile justice in Greece.

Age of Criminal Responsibility

According to article 1 of the United Nations *Convention on the Rights of the Child*[195], the term *child* may refer to every human being below the age of eighteen years unless, under the national law applicable to the child, the majority is attained at an earlier age[196].

In Greek juvenile criminal law, the *age of criminal responsibility* means the minimum age above which a minor may be sentenced to detention in a young offenders' institution[197]. Detention in a young offenders' institution is a punishment imposed only when a minor is held criminally responsible. On the other hand, the imposition of educational or therapeutic measures does not depend on the establishment of the minor's criminal responsibility[198]. In fact, when

[190] Ratification of the Greek Correctional Code (*OG 2776/1999*).

[191] Under the Internal Regulation for the Operation of Institutions for Young Detainees, *Ministerial Decision 47503/2005*.

[192] Pitsela, "Greece," 625.

[193] OG 3189/2003, 3860/2010, 4322/2015, 4356/2015, 4619/2019 and 4620/2019.

[194] Pitsela, "Greece," 625.

[195] Ratified in Greece (*OG 2101/1992*).

[196] P. Naskou-Perraki, K. Chrysogonos and Ch. Anthopoulos, *The United Nations Convention on the Rights of the Child and the national legal order* (Athens-Komotini: Ant. N. Sakkoulas Publications, 2002), 31-37.

[197] N. Androulakis, *Criminal law - general part. Theory for the crime* (Athens: P. N. Sakkoulas, 2000), 465.

[198] Pitsela, *The Penal Treatment of Juvenile Delinquency*, 55, 199-204; A. Pitsela, *Greece. Criminal Responsibility of Minors in the National and International Legal Orders* (Revue Internationale de Droit Pénal 75, 2004), 355-378.

only educational and / or therapeutic measures are imposed, the minor is not considered as a culpable person[199].

In 1950 the age of criminal responsibility was set at the age of 12. It has been raised twice since then: to 13 in 2003[200] and to 15 in 2010 where it now stands[201] [202].

The special provisions of the eighth chapter of the Criminal Code apply to minors, which means to persons who were between the ages of 12 and 18 at the time of the commission of an offence[203]. Persons between the ages of 12 and 15 are, based on the irrebuttable presumption doctrine, held to be *not criminally responsible* and if they infringe the criminal law, they are subject only to educational or therapeutic measures[204].

Persons between the ages of 15 and 18 who are found to be *not criminally responsible* may only be subject to educational or therapeutic measures. However, if they are found to be *criminally responsible* the court may impose detention in a young offenders' institution. This applies only when the minor has committed certain categories of felony and if the court determines that educational measures would not be sufficient to deter him or her from the commission of further crimes[205].

Persons between the age of 18 and 25 are *young adults* and when they infringe the criminal law, the court may impose:

a) *detention in a young offenders' institution* if it considers that the commission of the offence is attributable to the incomplete development of his/her personality due to his/her young age and that detention in a young offenders' institution will be sufficient to deter the young adult from the commission of further crimes; or

[199] L. Margaritis, N. Paraskevopoulos and G. Nouskalis, *Poinologia (Theory of punishment)* articles 50-133 of the New Criminal Code, Nomiki Bibliothiki, 2020, 20.

[200] Art. 1 of OG 3189/2003.

[201] Art. 2 of OG 3860/2010 as well as by Art. 7 of OG 4322/2015.

[202] Ch. Dimopoulos and K. Kosmatos, *Juvenile Law. Theory and Practice*. 2nd Ed. (Athens: Nomiki Bibliothiki, 2011), 46-48; G. Ath. Evaggelatos, *The Law of Minor Perpetrators. Interpretation of Articles-Comments-Applications* (Athens: Nomiki Bibliothiki, 2014), 27-33; H. Nik. Seferidis, *The Penal Treatment of Minor Perpetrators* (Athens: Nomiki Bibliothiki, 2015), 42-64.

[203] Art. 121 of the Greek Criminal Code (*OG 4619/2019*).

[204] Margaritis, Paraskevopoulos and Nouskalis, *Poinologia*, 25.

[205] Art. 126 and 127 of the Greek Criminal Code.

b) *mitigated punishment,* which consists of the usual incarceration, attenuated, though, according to the judge's decision[206] [207].

Types of Measures/Sanctions for Juvenile Offenders

In Greek juvenile criminal law an independent system of measures and sanctions for minors has been established. The legal consequences of the criminal acts of juveniles are subdivided into:

- educational measures;
- therapeutic measures; and
- detention in a young offenders' institution.

The general idea is that *non-custodial treatment* has precedence, and that deprivation of liberty is only imposed as a measure of last resort[208]. For this reason, the catalogue of *non-custodial educational measures* has been significantly enriched[209], *non-custodial therapeutic treatment* has been introduced[210], and *detention* in a young offenders' institution is imposed only when strictly defined conditions are fulfilled[211] [212].

Educational measures *(anamorfotika metra)* are mainly a non-custodial form of intervention aiming to promote the education and the social inclusion of young offenders[213]. The child's criminal responsibility is not a necessary pre-condition for the imposition of educational measures[214].

[206] Art. 83 and 133 of the Greek Criminal Code.

[207] See OG 4619/2019.

[208] N. Paraskevopoulos, *The foundations of criminal law* (Athens: Thessaloniki, Sakkoulas publications, 2008), 281.

[209] Art. 122 of the Greek Criminal Code, as amended by Art. 1 (*OG 3189/2003*).

[210] Art. 123 of the Greek Criminal Code, as amended by Art. 1 (*OG 3189/2003*).

[211] Art. 127 of the Greek Criminal Code, as amended by Art. 2 (*OG 3860/2010*), Art. 7 (*OG 4322/2015*), Art. 26 (*OG 4356/2015*) and OG 4619/2019.

[212] Pitsela, "Greece," 634; OG 4322/2015. http://www.ministryofjustice.gr/site/LinkClick.aspx?fileticket=cnpkwa3KnDE%3d&tabid=132 (Retrieved October 12, 2019). (In Greek); OG 4356/2015. http://www.ministryofjustice.gr/site/Portals/0/uploaded_files/uploaded_15/N_4356.pdf (Retrieved October 12, 2019). (In Greek); see also OG 4619/2019.

[213] Art. 122 of the Greek Criminal Code.

[214] Pitsela, *The Penal Treatment of Juvenile Delinquency,* 199-208.

Between 1950 and the reform of 2003[215] only four educational measures were in place. In 2003 a long list of measures was added so that educational measures are now provided for exhaustively in the text of the law, graduating according to the intensity of the treatment, and shown in the accompanying box:

Juvenile Educational Measures

a) reprimand;

b) placing the minor under the responsible care of parents or guardians;

c) placing the minor under the responsible care of a foster family;

d) placing the minor under the care of Youth Protection Associations, Youth Centres or the Juvenile Probation Service;

e) mediation between the young offender and the victim, so that the offender can apologize to the victim and the consequences of the act can be settled out of court;

f) compensation to the victim or by some other means the removal or alleviation of the consequences of the act—reparation;

g) the performance of community work;

h) participation in social and psychological programmes organized by public, municipal, local authority or private institutions;

i) attendance at vocational schools or other training or vocational training facilities;

k) participation in special road safety training programmes;

l) placing the minor under the intensive care and supervision of the Youth Protection Associations or the Juvenile Probation Service; (the Code refers a second time to this measure, due to the application of the principle of subsidiarity, as analysed below); and

m) placing a minor in an appropriate public, municipal, community or private educational institution[216].

[215] OG 3189/2003.

[216] Pitsela, "Greece," 634.

In each case, the court may impose further obligations in relation to the minor's lifestyle or education[217]. In exceptional cases, the court may impose two or more of these non-custodial educational measures[218].

Under another legal reform[219] it is now explicit that the *principle of subsidiarity* applies when a court has to decide which educational measures to impose. The educational measures *a-i* in the box have precedence over measures *k-m*[220]. The content and duration of each measure must be proportionate to the gravity of the offence committed, the minor's personality and his/her living conditions[221].

Therapeutic measures (*therapeutika metra*) constitute a special form of treatment and they are imposed when a minor's mental state or health condition require a therapeutic intervention[222]. To be subject to therapeutic treatment, the minor may lack mental capacity and he/she must not be deemed criminally responsible[223].

Before the reform of 2003[224], therapeutic treatment was available only as a custodial measure or by placement in an appropriate institution. A non-custodial form of therapeutic intervention is now possible[225], and under the 2019 Law[226] conditions for therapeutic treatment have been slightly reformed[227].

In particular, when a minor is suffering from a mental illness or an organic disease or is in a condition that causes a serious physical dysfunction or is internet-, alcohol- or drug-addicted and cannot recover by him/herself or when he/she exhibits a significant retardation in moral or mental development, the court may impose one of the following measures:

a) placement under the responsible care of parents, guardians or a foster family;

[217] Margaritis, Paraskevopoulos and Nouskalis, *Poinologia,* 62.
[218] Pitsela, "Greece," 635.
[219] OG 4619/2019.
[220] Art. 122 sec. 1 of the Greek Criminal Code.
[221] See OG 4619/2019.
[222] Art. 123 of the Greek Criminal Code.
[223] Pitsela, "Greece," 635-636; Evaggelatos, *The Law of Minor Perpetrators,* 17-22.
[224] Art. 1 (*OG 3189/2003*).
[225] Dimopoulos and Kosmatos, *Juvenile Law. Theory and Practice*, 87-88.
[226] OG 4619/2019.
[227] *Ibid.*

b) placement under the care of a Youth Protection Association or the Juvenile Probation Service;

c) participation in a therapeutic advisory programme; or

d) placement in a therapeutic or another appropriate institution.

In exceptional cases the court may impose the measures mentioned in a) and b) in combination with the measure mentioned in c)[228].

A further intended reform was that therapeutic measures might be ordered only after a member of a specialized group of doctors, psychologists and social workers—responsible to the Ministry of Justice, to health centres or to public hospitals—had made a diagnosis and expressed an opinion on the child's state of health. However, this group of specialists has not been set up and thus no progress on this part of the provision had been made till Greece adopted the Law 4689/2020 to *transpose* the Directive 2016/800[229].

Detention in a young offenders' institution (*periorismos se eidiko katastima kratisis neon*) is the sanction imposed on juveniles which leads to deprivation of liberty[230] [231]. Juveniles must be held *criminally responsible* before a court can impose detention in a young offenders' institution. Although detention in a young offenders' institution is a *sui generis* punishment, it aims primarily to serve a young offender's special needs, especially their correction and social integration[232]. It is imposed as a measure of last resort, and the pre-conditions for its application have been reformed over the years by several laws[233] [234].

Before the 2010 reform[235], detention in a young offenders' institution could be imposed on minors over the age of 13 and particularly when—after examining

[228] Pitsela, "Greece," 635-636; OG 4619/2019.

[229] Pitsela, *The Penal Treatment of Juvenile Delinquency,* 254; Seferidis, *The Penal Treatment of Minor Perpetrators*, 105.

[230] Art. 127 in conjunction with Art. 51 sec. 1 and Art. 54 of the Greek Criminal Code.

[231] A custodial educational measure of placing the minor in an appropriate public, municipal, community or private educational institution (Art. 122 of the Greek Criminal Code) as well as the custodial therapeutic measure of placing the minor in a therapeutic or other appropriate institution (Art. 123 of the Greek Criminal Code) also lead to deprivation of liberty.

[232] Margaritis, Paraskevopoulos and Nouskalis, *Poinologia,* 31.

[233] Art. 2 (*OG 3860/2010*), Art. 7 (*OG 4322/2015*), Art. 26 (*OG 4356/2015*) and OG 4619/2019.

[234] Pitsela, "Greece," 636; OG 4322/2015, 4356/2015 and 4619/2019.

[235] Art 2 (*OG 3860/2010*).

the circumstances of the offence and the minor's personality—the court determined that a prison sentence was necessary in order to deter the minor from recidivism. In this way, a minor's punishment was linked to a prediction of the risk of re-offending[236].

After the 2010 reform, detention in a young offenders' institution could be imposed only on minors over the age of 15 and when the crime committed was a felony[237] and it involved elements of violence **or** it was against life or bodily integrity and it was committed professionally or persistently. Thus, the conditions for detention became stricter[238].

Under reforms made in 2015[239], detention in a young offenders' institution could be imposed on minors over the age of 15 in relation to:

- the commission of a serious offence;
- an offence which would be characterized as a felony punishable with life imprisonment if committed by an adult;
- rape[240] against a person under the age of 15; or
- if a minor over the age of 15 was subject to an educational placement measure in an educational institution and after placement in the institution he/she committed an offence which would be characterized as a felony if committed by an adult.

[236] Dimopoulos and Kosmatos, *Juvenile Law. Theory and Practice*, 94-102; Pitsela, *The Penal Treatment of Juvenile Delinquency,* 257-271; Evaggelatos, *The Law of Minor Perpetrators,* 29-33; Seferidis, *The Penal Treatment of Minor Perpetrators*, 115-124.

[237] In the Greek Criminal Law, the difference between felony and misdemeanour lies in the gravity of the offence. Felonies are acts that are punished with a penalty of 5 to 15 years of imprisonment, while misdemeanours are acts of minor gravity, punished with a penalty of ten days to 5 years of imprisonment. A felony is punished with *κάθειρξη – katheirksi* while the misdemeanor is punished with *φυλάκιση – fylakisi*. Criminal law through the world does not divide between the two types of punishment, as they both refer to incarceration i.e. confinement in a jail. Obviously the nature of the two types of penalties of the deprivation of ***liberty***, as seen by their boundaries, may overlap, when mitigating factors are present. But the two types have different side-effects. For example the *katheirksi* – which refers to felonies – needs more time to pass (3/5 of the original punishment or 20 years, art. 105B CC) before a detainee can apply for an early release, while in *fylakisi* this time is reduced to the 2/5 of the original sentence. Also, the punishment for felonies remains on the criminal record for a longer period than the one imposed for a misdemeanour.

[238] Dimopoulos and Kosmatos, *Juvenile Law. Theory and Practice*, 94-102; Pitsela, *The Penal Treatment of Juvenile Delinquency,* 257-271; Evaggelatos, *The Law of Minor Perpetrators,* 29-33; Seferidis, *The Penal Treatment of Minor Perpetrators,* 115-124.

[239] Art.7 (*OG 4322/2015*) and Art. 26 (*OG 4356/2015*).

[240] Art. 336 of the Greek Criminal Code.

So the framework for the imposition of detention became more precise[241].

Under the legal reform of 2019[242] detention in a young offenders' institution may be imposed on minors over the age of 15 when the crime committed would be characterized as a felony if it was committed by an adult and it involves elements of violence or is against life or bodily integrity. In this way, Greek legislators confirmed the conditions for detention as they had been broadly outlined in the 2010 Law[243] [244].

The principle that educational measures take priority over detention in a young offenders' institution is a provision of the Criminal Code. Article 127 explicitly requires that a judgement imposing detention in a young offenders' institution should include a special and thorough justification[245] of the reasons which led the court to decide that educational or therapeutic measures were insufficient to deter the minor from reoffending, and also requires that the particular circumstances of the offence and the minor's personality are taken into account[246].

Length of Different Measures/Sanctions for Juvenile Offenders

In its judgement the court must define the *maximum duration*[247] of any educational measure[248] it imposes. The court which imposes educational measures has the right to replace them by others at any time deemed necessary, and the court will revoke the measures when their purpose has been fulfilled[249].

Similarly, the court which imposes therapeutic measures has the right to replace them by others at any time when this is deemed necessary and will revoke them

[241] OG 4322/2015, 4356/2015.

[242] OG 4619/2019.

[243] OG 3860/2010.

[244] OG 4619/2019. About the penal treatment of Juveniles and Young Adults, see: St. Pavlou and K. Kosmatos, *The Sanctions in the New Criminal Code* (Athens-Thessaloniki: Sakkoulas Publications, 2020), 95; E. Symeonidou-Kastanidou and I. Naziri, "The System of Penal Sanctions in the Greek Criminal Law," *Poinika Chronika* 70, (2020): 81-92; Margaritis, Paraskevopoulos and Nouskalis, *Poinologia*, 20.

[245] Margaritis, Paraskevopoulos and Nouskalis, *Poinologia*, 24.

[246] Pitsela, "Greece," 636.

[247] Art. 122 sec. 4 of the Greek Criminal Code.

[248] Evaggelatos, *The Law of Minor Perpetrators,* 5, 13-14; OG 4619/2019.

[249] Art. 124 of the Greek Criminal Code.

when their purpose has been fulfilled[250]. But an additional condition for replacing or revoking therapeutic measures is that the court obtains and takes into account an *assessment report* drafted by experts. No later than one year after the imposition of the measures, the court will examine whether the conditions for replacement or revocation of the measures exist[251].

Educational measures imposed by the court end *ipso jure* when the minor attains the age of 18[252]. The court may decide to continue the measures until the young person attains the age of 21, but has to give a thorough justification for that decision. The court may decide on the continuation of therapeutic measures until the young person attains the age of 21, but only after having taken into account an expert report[253] [254].

In cases where the person was under-age at the time the offence was committed, but was over 18 at the time of sentencing, any educational measures imposed by a court end *ipso jure* as soon as the person reaches the age of 25[255].

The rules about the replacement or revocation of educational and therapeutic measures, as well as their duration, were reformed both in 2003 and 2019[256] [257].

The *length of detention* in a young offenders' institution used to be *indefinite*. Following reform in 2003[258], detention is now imposed for a *fixed period of time*[259]. The range of possible sentences of detention in a young offenders' institution is set out in the text of the law[260]. When a court imposes detention, it must define the exact duration of the punishment[261]. Indefinite punishment is considered a penalty against human rights, which specifically violates art. 3 of the European

250 Due to their special nature, though, the therapeutic measures do not have a standard duration ruled by the court. Margaritis, Paraskevopoulos and Nouskalis, *Poinologia,* 62.

251 Evaggelatos, *The Law of Minor Perpetrators,* 22-25; OG 4619/2019.

252 Art. 125 of the Greek Criminal Code.

253 Art. 123 sec. 2 of the Greek Criminal Code.

254 Evaggelatos, *The Law of Minor Perpetrators,* 25-26; OG 4619/2019.

255 Evaggelatos, *The Law of Minor Perpetrators,* 47-51; OG 4619/2019.

256 Art. 1 (*OG 3189/2003*) as well as recently by OG 4619/2019.

257 Pitsela, "Greece," 635; OG 4619/2019.

258 Art. 1 sec. 8 (*OG 3189/2003*).

259 Art. 127 and 54 of the Greek Criminal Code.

260 In particular in Art. 54 of the Greek Criminal Code.

261 Dimopoulos and Kosmatos, *Juvenile Law. Theory and Practice,*104; Pitsela, *The Penal Treatment of Juvenile Delinquency,* 273.

Convention on Human Rights, as the European Court of Human Rights has repeatedly decided[262].

Following the 2019 reform[263], where the offence is punishable by law for an adult with imprisonment of up to 10 years, the duration of detention for a minor can range from 6 months to 5 years. If the offence is punishable for adults by imprisonment for more than 10 years or for life, the duration of detention for a minor may be from 2 to 8 years[264].

Criminal Procedure for Juvenile Offenders

The Greek Code of Criminal Procedure enunciates the principle of *legality*[265]. That means that the *Public Prosecutor* is both entitled and obliged to initiate criminal proceedings if the evidence that a crime was committed is strong enough.

If the Public Prosecutor of the Court of First Instance considers that a report about a crime made by a third person or an accusation made by a victim of an offence are credible, well-founded in law and can be assessed by the judicial authorities, he or she will order a *preliminary examination*:

a) *compulsorily* for felonies or misdemeanours triable by the three-member Court of First Instance or the three-member Court of Appeal[266]; and

b) *optionally* in all other cases.

The submission of a *social inquiry report* is not envisaged at this stage of the proceedings. If there appears to be a case to answer, the Public Prosecutor of the Court of First Instance will initiate criminal prosecution in one of the following three ways:

a) by bringing the case directly to a court hearing[267];

[262] A. Kivrakidou, "Offences against the human dignity: comparative analysis of the greek law and the ECHR (article 3)," *National Registry of Doctorate Thesis* (2017).

[263] OG 4619/2019.

[264] *Ibid.*

[265] Art. 43 sec. 1 of the Greek Code of Criminal Procedure.

[266] Art. 111 sec. 6 of the Greek Code of Criminal Procedure.

[267] All misdemeanours, unless Art. 43 of the Greek Code of Criminal Procedure about the conduct of a preliminary examination is to be applied.

b) by ordering a pre-investigation[268]; or

c) by ordering a main investigation[269].

In cases of juveniles who are accused of having committed a crime[270] which would be characterized as a felony if it was committed by an adult and for which detention in a young offenders' institution is envisaged as a punishment[271], the Public Prosecutor brings the case before the Judicial Council of the Court of First Instance by submitting his/her proposal and the Council declares the end of the investigation by issuing an order and deciding whether or not the accused person will be brought to trial. In all cases, *after* the initiation of a criminal prosecution and *before* the court hearing, the Juvenile Probation Service has a duty to submit a social inquiry report[272].

When a minor commits a misdemeanour, the public prosecutor may decide to refrain from prosecution[273] if, having examined the facts of the case and the minor's personality, he/she considers that prosecution is not necessary to deter the minor from committing further criminal acts. The public prosecutor may order the minor to undertake one or more non-custodial educational measures[274] (see box above) and he/she determines the period of time within which these obligations must be fulfilled. The public prosecutor must always justify the imposition

[268] In the cases of Art. 245, 322 and 323 of the Greek Code of Criminal Procedure, in particular when the identity of an unknown offender is revealed and the case file is retrieved from the archive (Art. 245) and when the accused person has lodged an appeal against the direct entry of the case to a hearing of the Court of First Instance or the Appeal Court and the Public Prosecutor considers that extra proof material should be collected (Art. 322 and 323).

[269] In the case of Art. 246 of the Greek Code of Criminal Procedure, in particular for felonies and for misdemeanours for which the possibility of imposition of pre-trial detention is envisaged as well as for misdemeanors for which, according to the prosecutor's judgment, the restrictive measures of Art. 283 of the Greek Code of Criminal Procedure may be imposed.

[270] Under Art. 308 of the Greek Code of Criminal Procedure.

[271] According to Art. 127 of the Greek Criminal Code.

[272] OG 4620/2019; Art. 7 and 8 of Presidential Decree (*OG 49/1979*).

[273] Art. 46 of the Greek Code of Criminal Procedure. In this article, the principle of expediency is applied, as an exemption from the general principle of legality. According to the article, the Public Prosecutor may refrain from prosecution of a minor in case of a misdemeanor where – even if there is strong indication of the commitment of the act – if by researching the circumstances of the act and the overall personality of the minor does not find it necessary to start the prosecution in order to prevent the minor from committing a new criminal act (para. 1). The Public Prosecutor can still impose therapeutic measures as provided by law along with a deadline for the minor to comply with them. In the absence of compliance, the public prosecutor may waive the diversion and prosecute the minor (para. 2).

[274] Art. 122 of the Greek Criminal Code.

of educational measures[275]. In every case, the Public Prosecutor must *hear the minor* before deciding on *diversion* and he/she must take into account the report drafted by the Juvenile Probation Officer[276].

Modifications to the provisions of Article 46 of the Code of Criminal Procedure can be summarized as follows:

- *firstly*[277] the *obligatory hearing* of the minor by the public prosecutor[278];
- *secondly* the *mandatory submission* of a report by the juvenile probation officer[279]; and
- *thirdly* the deletion of the provision that the public prosecutor could impose a payment of up to 1000 euros in favour of a non-profit institution[280] [281].

Institutions Responsible for Criminal Procedure for Juvenile Offenders

The juvenile justice system in Greece is considered as a component of the justice system, but also as a vital part of a broader strategy for the prevention and control of juvenile offending. Along with the Juvenile Courts, the system includes other bodies and services, such as:

- the Police;
- the Public Prosecutor's Office;
- the Law Bar (Defence Lawyers);
- the Juvenile Probation Service and the Social Welfare Probation Service merged with the Service of Juvenile Probation Officers and Social Welfare Probation Officers;

[275] Art. 139 of the Greek Code of Criminal Procedure.

[276] Pitsela, "Greece," 632-633.

[277] Art. 5 (*OG 3860/2010*).

[278] Explanatory Report of Law 3860/2010. http://www.ministryofjustice.gr/site/LinkClick.aspx?fileticket=EDGoAWfMKgM%3d&tabid=132 (Retrieved October 2, 2019). (In Greek).

[279] Art. 9 (*OG 4322/2015*).

[280] *Ibid.*

[281] Explanatory Report of Law 4322/2015. http://www.ministryofjustice.gr/site/LinkClick.aspx?fileticket=_1ulBzQXENA%3d&tabid=132 (Retrieved October 2, 2019). (In Greek). The Explanatory Report explained that the imposition of a financial measure in a time of financial crisis could be applied only to a limited number of juveniles, while its educational effect seems to be limited as the measure is more likely to be fulfilled by the juveniles' parents or guardians and not by the juveniles.

- the Youth Protection Associations;
- the Central Scientific Council for the Prevention and Confrontation of the Victimization and the Criminality of Minors; and
- the Educational and Therapeutic Institutions and the Penitentiary[282].
- The Juvenile Courts have jurisdiction to decide on the imposition of measures or sanctions envisaged in the Criminal Code for juvenile offenders, in particular juveniles who were between 12 and 18 years of age at the time the offence was committed[283]. The legal status regarding the establishment, jurisdiction and functioning of Juvenile Courts is provided by the Greek Code of Criminal Procedure, the Code of the Organization of Courts and the Status of Judicial Officers[284].

Juvenile Courts adjudicate cases of offences committed by minors and impose either educational or therapeutic measures or penalties defined by the Greek Criminal Code[285] in the following categories:

(i) The *three-member Juvenile Court* tries offences committed by minors covered by article 127[286] of the Criminal Code; and

(ii) The *single-member Juvenile Court* tries any other acts committed by minors.

Juvenile Courts of Appeal hear appeals against decisions of both the single and the three-member Juvenile Courts[287].

If a minor is involved in criminal offences along with adult offenders, the criminal prosecution is separated and the minor is tried by the Juvenile Court[288].

[282] Pitsela, *The Penal Treatment of Juvenile Delinquency,* 332.

[283] Art. 121 of the Greek Criminal Code.

[284] Pitsela, *The Penal Treatment of Juvenile Delinquency,* 309.

[285] Art. 113 of the Greek Code of Criminal Procedure.

[286] Art. 127 of the Criminal Code refers to the cases where the punishment of Detention in a young offenders' institution is imposed. The prerequisites in order to impose this punishment are a) the minor must be at least 15 years old b) his/her act if was committed by an adult would be characterized a felony and c) also has elements of violence or was violating or trying to violate the protected interests of life or bodily integrity. The decision imposing this punishment must have special and detailed reasoning as to why the therapeutic or educational measures (or the execution of the punishment in the house, combined with such therapeutic or educational measures) are not deemed sufficient, regarding the special circumstances of the act and the minor' s personality.

[287] Art. 114 of the Greek Code of Criminal Procedure.

[288] Art. 130 sec. 3 of the Greek Code of Criminal Procedure.

Before reform in 2009[289] it was possible to join the trial of the case of juvenile with adult offenders in certain cases, i.e. when:

(a) the crime was a misdemeanour;

(b) the minor participant had reached the age of 15 at the time the crime was committed; and

(c) the Public Prosecutor **or** the Judicial Council considered that separation was not appropriate for reasons relating to the interests of Justice.

In (c) the Public Prosecutor had to justify *not* separating the case of the juvenile from that of the adult offenders[290].

The Police force is the first *official* form of power and social control that a minor comes into contact with. The minor will have had contact with formal and informal sources of social control—eg. parents, school and community—either before or at the same time as contact with the police. As members of the first subsystem of the juvenile justice system, police officers are usually the primary law enforcers[291].

The protection of minors is a major concern of the Ministry of Citizen Protection[292] and the Hellenic Police Headquarters. Specialized and appropriately staffed agencies operate within the Hellenic Police at both central and regional level. These agencies are:

a) the Public Security Directorate of the Hellenic Police Headquarters, which is responsible for the coordination of regional agencies and their guidance on the proper handling of juvenile affairs;

b) the Department of Juvenile Protection of the Cybercrime Division;

c) the Juvenile Protection Directorate of the Security Directorate of Attica;

d) the Department of Minors of the Security Directorate of Thessaloniki; and

e) the Juvenile Offices of the Security Directorates of Patras and Heraklion.

Where there is no specialized Department, the related competence for dealing with juvenile cases is exercised by the Security Services under the direction

[289] Prior to the amendment of the Code of Criminal Procedure in 2009.

[290] Dimopoulos and Kosmatos, *Juvenile Law. Theory and Practice,* 159-160; OG 4620/2019.

[291] C. D. Spinellis and A. Troianou, *Juvenile Law – Penal Regulations and Criminological Extensions* (Athens – Komotini: Ant. N. Sakkoulas Publications, 1987), 64-68.

[292] Formerly Ministry of Public Order.

of the Public Security Directorate of the Hellenic Police Headquarters—(a) above[293].

The Public Prosecutor prosecutes in the name of the State[294]. In the Courts of Athens, Piraeus, Thessaloniki and Patras, the Prosecutor of Appeals appoints a Public Prosecutor and a Deputy for the *prosecution of minors*. The prosecuting authority is the Prosecutor of each court[295].

The Defence Lawyer has an active role at all stages of the criminal proceedings, as he/she represents the suspected or accused juvenile and supports him/her in accordance with the Code of Criminal Procedure[296]. During the main court hearing the Juvenile Judge is obliged to appoint a defence lawyer for an accused juvenile who does not have one where a juvenile is accused of having committed a crime which would be a felony if it was committed by an adult and involves elements of violence or is against life or bodily integrity[297].

The Juvenile Probation Service[298] has a central position in the juvenile justice system, as it contributes to the effective fulfilment of the principle of education and social reintegration, mainly through the conduct of *social inquiries* and the *implementation* and *supervision* of non-custodial educational measures. The Juvenile Probation Service belongs organizationally to the Ministry of Justice. It operates at each Court of First Instance[299] [300].

Finally, the Youth Protection Associations play a significant role, as their primary aim is to contribute actively to the prevention of child victimization and offending. Among other activities, the Youth Protection Associations support minors pending criminal proceedings, and they also provide accused minors with legal assistance[301].

[293] The Ministry of Citizen Protection. http://www.mopocp.gov.gr. (Retrieved October 14, 2019). (In Greek); The Hellenic Police Headquarters. http://www.hellenicpolice.gr. (Retrieved October 14, 2019). (In Greek).

[294] Art. 27 sec. 1 of the Greek Code of Criminal Procedure.

[295] OG 4620/2019; Art. 27 sec. 3 of the Greek Code of Criminal Procedure.

[296] Art. 89 *et seq*.

[297] Art. 340 sec. 1 of the Greek Code of Criminal Procedure; Art. 89 *et seq*.; Art. 127 of the Greek Criminal Code; OG 4620/2019.

[298] Merged with the Service of Juvenile Probation Officers and Social Welfare Probation Officers.

[299] Presidential Decree (*OG 49/1979*).

[300] Pitsela, *The Penal Treatment of Juvenile Delinquency,* 340.

[301] Art. 18 (*OG 2298/1995*); OG 3860/2010.

They operate at the seats of the Court of Appeal[302] and belong to the Ministry of Justice. The President of the Youth Protection Associations' Administrative Council should preferably be or have been a Juvenile Judge or a Juvenile Public Prosecutor[303] [304].

5.2. Individual Assessment in Greece

In the Greek juvenile justice system, the need for individual assessment of juvenile offenders is based on the principle of *individualized treatment*. However, the term *individualized treatment* is not referred to explicitly in any legal text on juvenile justice. The principle means that every child in conflict with the law should be treated in a way that takes into account his/her personality, special needs, vulnerabilities and actual family, social, and economic background. The primary aim is that all professionals working in the juvenile justice system should be able to comprehend the special personal and educational needs, the family situation, and the framework of the social, school or working environment of each child, so that the experts who come in contact with the child and deal with the case are in a position to apply the most suitable, effective and constructive method of treatment[305].

The principle of *individualized treatment* is fulfilled in Greece in the following way: Juvenile Probation Officers have the task of conducting social inquiries for children in conflict with the law and submitting reports to the judicial authorities[306]. A social inquiry is defined as the collection of information about a juvenile's way of living, attitudes and personality by direct contact with the juvenile, his/her family members, relatives, teachers or employers[307]. For each child, the social inquiry begins from the first moment of contact with the Juvenile Proba-

[302] Art. 11 (*OG 4109/2013*).

[303] Art. 18 (*OG 2298/1995*), as it was amended by Art. 11 (*OG 3860/2010*).

[304] Pitsela, *The Penal Treatment of Juvenile Delinquency*, 350-351.

[305] A. Troianou-Loula, *The Penal Legislation on Juveniles. Texts – Bibliography - Case law - Comments* (Athens-Komotini: Ant. N. Sakkoulas Publications, 1995), 188; A. Troianou-Loula, *The Probation Officer's Service of Juvenile Court* (Athens-Komotini: Ant. N. Sakkoulas Publications, 1999), 188-189, 192-193.

[306] Art. 7 and 8 of Presidential Decree (*OG 49/1979*).

[307] Troianou-Loula, *The Penal Legislation on Juveniles*, 186-187.

tion Service to diagnose that child's individual needs and, if necessary, to make a specific intervention[308].

The Juvenile Probation Service

Social inquiries are conducted by the Juvenile Probation Service[309]. This is a specialized service which operates as a regional Department of the Ministry of Justice[310]. Its main mission is to provide assistance and support to the Juvenile Court as well as to suspected or defendant juveniles. The specialisation of criminal proceedings against children calls for the establishment of this form of *link* between the child and the Court or the judiciary.

This role is played by the Juvenile Probation Officer, who assesses the personality, family and social environment of the child, proposes the most suitable measure or sanction/penalty and enables the judicial authorities to decide appropriately on the child's case. A Juvenile Probation Officer acts at all stages of the proceedings—at the stage of diversion, the investigation of the case before the introduction of the case to court, as well as after sentencing and during detention in a young offenders' institution. Because of the above, the Officer's presence in the closed-door trial is considered essential. The relevant provision[311] does not explicitly establish the obligatory presence of a juvenile probation officer at a trial. It states that:

> *apart from the parties to the proceedings, their lawyers and the juvenile probation officers, the parents or the guardians as well as the representatives of the competent Youth Protection Association may be present*[312].

The juvenile probation service functions as a connecting link, a "bridge" between the juvenile welfare system, social work and the law on juvenile justice. However,

[308] Association of Juvenile Probation Officers about the Qualitative Features of the Work of Juvenile Probation Services. http://www.epimelitesanilikon.gr/poiotika.html (Retrieved February 20, 2019). (In Greek).

[309] Juvenile Court Aid or the Service of Supervision of Minors; A. Pitsela, "Youth Justice and Probation," in *Crime and Punishment in Contemporary Greece: International Comparative Perspectives,* ed. L.K. Cheliotis and S. Xenakis (Oxford: Peter Lang, 2011), 505-527.

[310] OG 378/1976, Presidential Decrees (*OG 49/1979, 101/2014, 96/2017, 81/2019*), OG 4625/2019.

[311] Art. 1 para. 1 (*OG 3315/1955*).

[312] Pitsela, *The Penal Treatment of Juvenile Delinquency,* 340-350.

the legal status of the service is not clearly defined. It is not a purely investigative body nor an assistant to the police or the judicial authorities or a counsel to or representative of the juvenile. Nevertheless, it is by nature an investigative body, because one of its basic tasks is to conduct research and submit a social inquiry report in relation to the juvenile's personality and social living conditions to the authorities at various stages of criminal proceedings[313].

Although one of the most important functions of Juvenile Probation Officers is conducting social inquiries, no special training is offered on how to conduct the individual assessment of a minor. There is no common set of principles setting out the steps to be followed on how to approach minors and so the juvenile probation officers act as they see fit. Of course they do so in the context of the Service's guiding principles, but based on their own educational background and their own system of ethical values. Juvenile Probation Officers have no common educational background and each one joins the sector with their own academic, educational characteristics and tools[314].

In 2017 the Ministry of Justice issued practical guidelines on the work of juvenile probation officers and social welfare probation officers as part of a technical assistance programme to reform the Greek judicial system, run with the assistance of the Austrian organization *Neustart*. The practical guidelines constitute a useful training tool for professionals in the sector, and consist of three main sections relating to:

a) a presentation of the profile and role of such services in Greece, from a theoretical and statutory viewpoint;

b) working with minor and adult perpetrators, covering counselling skills, ethical and moral issues, and anger management; and

c) work techniques and a detailed presentation of the working methods of probation officers at *Neustart*[315].

[313] A. Pitsela and A. Giagkou, "The Juvenile Probation Service in a Greek-German Comparison," in *The Path to Justice: Conference in honour of Prof. Emeritus Stergios Alexiadis*, ed. A. Pitsela (Athens-Thessaloniki: Sakkoulas Publications, 2012), 104, 109; A. Pitsela and A. Giagkou, "Institutions in the Greek legal order promoting the best interest of the child and the principle of education," Essays in honor of Professor Füsun Sokullu-Akinci, *Istanbul: Legal Yayincilik* II, (2013): 1003-1020.

[314] M. Pykni, "The educational needs of Youth Probation Officers of the Ministry of Justice under the prism of the Transforming Learning of J. Mezirow," essays in honour of Professor S. Alexiadis, *Sakkoulas Publications, Criminology: Searching for answers* (2010): 919, 921.

[315] Practical Guidelines on the Work of Juvenile Probation Officers and Social Welfare Probation Officers (2017).

Research shows that Juvenile Probation Officers themselves acknowledge the importance of specialized training.

Social Inquiry—Process and Methods

The process of assessing a juvenile offender in an individual manner falls into two sequential phases: conducting *research* and formulating a *report providing conclusions*.

During the first phase, the Juvenile Probation Officer has a duty to conduct research: he/she has to collect facts and data and evaluate them so that he/she can formulate diagnostic conclusions regarding decisive factors, causes and events which contributed to the juvenile's offending behaviour. Thus, he/she is able to make a decision and propose the most suitable measure in each individual case[316].

In order to achieve his/her goal at this first phase, the Juvenile Probation Officer invites the juvenile and his/her parents to his/her office and interviews them. He/she can also visit the juvenile and his/her parents at their residence; however, in practice, such visits rarely take place.

The Juvenile Probation Officer can invite the juvenile and his/her parents for more than one meeting-interview as it is important for him/her to comprehend the juvenile's personality and social and family background. In the first meeting, at the beginning of the conversation, the Juvenile Probation Officer will explain his/her special role and mission so that the juvenile and / or his/her parents may feel at ease. Building a bridge of trust with the juvenile is one of the primary challenges in the Juvenile Probation Officer's work. It is also crucial to let the juvenile and his/her parents speak freely and express their views without interruption or censure. Above all, Juvenile Probation Officers must show respect and discretion, inspire trust and have in mind the importance of their mission[317].

Juvenile probation officers may also make contact with other relatives or with professionals at the juvenile's educational or working environment, if they be-

[316] Troianou-Loula, *The Penal Legislation on Juveniles*, 187; Troianou-Loula, *The Probation Officer's Service of Juvenile Court*, 185.

[317] Troianou-Loula, *The Penal Legislation on Juveniles*, 188-201; Troianou-Loula, *The Probation Officer's Service of Juvenile Court*, 184-189; Art. 15 of Presidential Decree on the Function of the Juvenile Probation Services (*OG 49/1979*).

lieve that is necessary to make a full diagnosis. These contacts can be very helpful as they enable the juvenile probation officer to observe directly the conditions, relations and problems arising in the juvenile's surroundings, which would not be easily revealed by third parties' statements. However—unless there is a compelling reason—research at school or the working environment is avoided in order to protect the juvenile from potential stigmatization[318].

The relevant legal framework[319] on the protection of personal data and respect for privacy must be carefully observed by Juvenile Probation Officers during the conduct of their social inquiries[320].

During the second phase, the juvenile probation officer has a duty to write a social inquiry report and submit it to the judicial authorities. The report has a predefined structure in each region of Greece. However, there is no common structure for the report across the country as a whole.

In Thessaloniki, the juvenile probation officers fill in a printed individual sheet of standard "open" questions after they have conducted their research. The information includes a brief description of the following information on the juvenile's status:

a) composition and background of the family, personal data on family members, education, the quality of relations between family members and specifically with the juvenile;
b) the living conditions of the juvenile, his/her residence and surroundings;
c) the juvenile's personality and the main features of his/her character, such as physical, intellectual, emotional, moral and social development as well as level of educational attainment, school attendance, professional occupation, other activities and hobbies;
d) any event in his/her life that might have strongly influenced him/her; and
e) the circumstances of the offence.

[318] Troianou-Loula, *The Penal Legislation on Juveniles,*187-188; Troianou-Loula, *The Probation Officer's Service of Juvenile Court,* 186-188; T., Koskiniadou, *The Meaning and The Practical Implementation of The social Inquiry or The Psychosocial Assessment* (2012).

[319] OG 4624/2019. http://www.ministryofjustice.gr/site/LinkClick.aspx?fileticket=RGmIORriSZE%3d&tabid=534 (Retrieved October 12, 2019). (In Greek).

[320] *Ibid.*

Juvenile probation officers do not express an opinion on the child's criminal responsibility.

Based upon this information, the juvenile probation officer must conclude with a proposal on the most suitable measure for the juvenile's treatment. The proposal must be thoroughly justified and combined with the information and facts derived from the social inquiry so that it is objective and well-grounded.

If the juvenile probation officer concludes that—apart from his/her own inquiry—there is a need for a **psychiatric** or **psychological** examination, he/she undertakes the necessary preparation and makes a request for such an examination to take place. The relevant conclusions of any further assessments are attached to the social inquiry report. At any stage of the criminal proceedings, the need for a psychiatric assessment may also be acknowledged by the judicial authorities when they will order relevant experts to express an opinion on the juvenile[321].

The social inquiry report is not binding on the judicial authorities. However, according to a decision by the Greek Supreme Court for Civil and Criminal Cases[322], the Juvenile Probation Officer's report is a *special source of evidence* for the Juvenile Court and should be explicitly taken into account in formulating decisions. Thus, the Greek Supreme Court has emphasized the pivotal role of the Juvenile Probation Officer's report in juvenile criminal proceedings, recognising that the report is special and distinct among other documentary evidence[323].

Social Inquiries at Different Stages of Criminal Proceedings

The social inquiry report is used by Juvenile Public Prosecutors, Juvenile Investigating Judges and Juvenile Judges at several stages of proceedings after the juvenile has come into conflict with the law and has been brought before a judicial authority. The report is used:

- at the stage of diversion before initiation of a criminal prosecution;
- at the stage of the investigation of the crime; as well as
- during the main hearing at trial[324].

[321] Art. 80 and 200 of the Greek Code of Criminal Procedure.

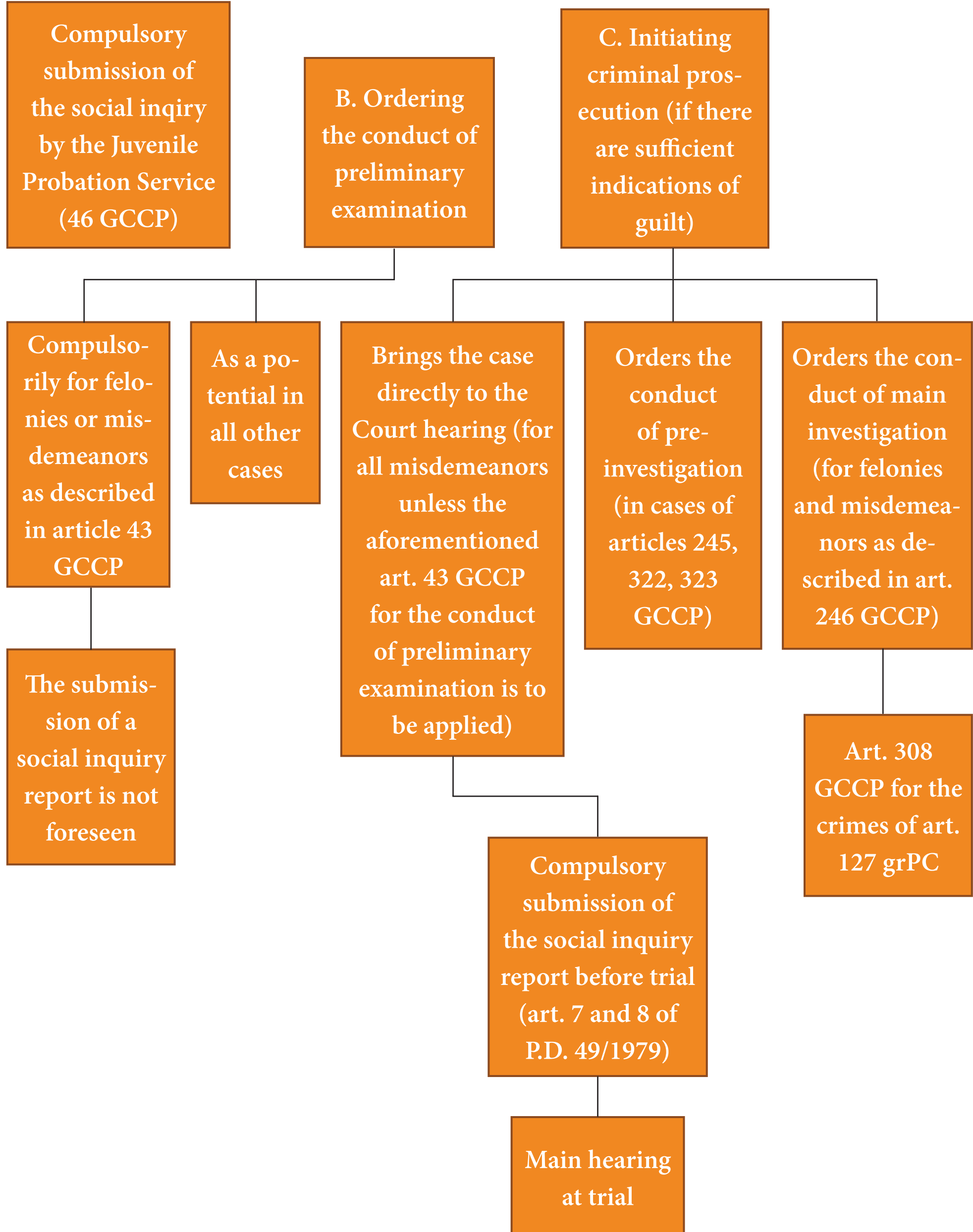
[322] Areios Pagos (*OG 948/2016*).

[323] Explanatory Report of Law 4322/2015.

[324] Pitsela, *The Penal Treatment of Juvenile Delinquency,* 295-332.

The use of social inquiry reports within the criminal procedure is shown in **scheme no. 1**

Scheme no. 1: Criminal procedure and the use of social inquiry reports:[325]



[325] *Angelika Pitsela, Georgios Nouskalis, Charalampos Karagiannidis, Anastasia Giagkou, Anna Kivrakidou*

Firstly, at the *stage of diversion* prior to initiation of criminal prosecution, Juvenile Probation Officers have to submit a social inquiry report for the Juvenile Prosecutor to decide (a) whether to refrain from prosecution and (b) on the imposition of non-custodial educational measures. Diversion can be applied only when the child has committed a *misdemeanour*. The Juvenile Prosecutor uses the social inquiry report to conclude whether or not prosecution is necessary to deter the child from further criminal acts and—if the decision is to refrain from prosecution—whether non-custodial educational measures are necessary[326].

After the initiation of a criminal prosecution in cases where a child is accused of having committed a *felony*, Juvenile Probation Officers may be assigned by the investigating authorities or investigating judge to conduct and submit a social inquiry report. The report has to provide evidence of the child's physical, moral and intellectual development, previous life, family conditions and general environment. Juvenile Probation Officers may also contact the child's family members, relatives, teachers or employers so that they can collect useful information about the child's way of living and social and family conditions. In this way, the Judge and the Prosecutor are able to gain knowledge of the child's personality and make proper decisions about the child's case during the criminal proceedings[327]. When there are *serious indications of guilt* against the juvenile, the report can help the investigating judge to decide at the pre-trial stage and after the accused juvenile has defended him/herself whether to order restrictive measures, house arrest under electronic supervision or pre-trial detention.

Before hearing the case in court, the Juvenile Judge must read and take account of the social inquiry report submitted by the Juvenile Probation Officer. Thus, the judge can form an opinion on the juvenile's personality and family and social background. Although not obliged to follow the Juvenile Probation Officer's proposals on the most suitable measure for the juvenile's treatment, the judge must decide what kind of intervention would be the most appropriate. The social inquiry report is a key input to this decision[328].

[326] Art. 46 of the Greek Code of Criminal Procedure.

[327] Art. 239 of the Greek Code of Criminal Procedure.

[328] Art. 7 of the Presidential Decree (*OG 49/1979*).

5.3. Research on Implementation of Individual Assessment in Greece

As part of this investigation into individual assessment and the implementation of Directive 2016/800, we undertook research to obtain the views and experience of experts who currently prepare social inquiry reports on young offenders and of expert users of those reports.

In the period July-October 2019, six (female) Juvenile Probation Officers, who carry out individual assessments, took part in interviews. Five work at the Thessaloniki Juvenile Probation Service[329] and one at the Drama Juvenile Probation Service[330]. All six have several years of professional experience in the sector (ranging from 13 to 23 years). Two of the Juvenile Probation Officers have studied law, have acquired specialist knowledge of juvenile law and are candidates for PhDs in the field of juvenile law. The other Juvenile Probation Officers have studied social work and psychology and have received training in the basic use of interviewing tools in the course of their studies.

A further six interviews were conducted with experts who use social inquiry reports prepared by Juvenile Probation Officers. Three interviews were conducted with Juvenile Judges and three with Juvenile Public Prosecutors over the period July-September 2019. Their professional involvement with young offenders varied from 1 to 13 years.

The Point of View of Experts who Make Assessments

According to the Juvenile Probation Officers who took part in the interviews, the modern regime for individual assessment of suspected or accused children in criminal proceedings in Greece entails carrying out social inquiries and writing up individual or social profiles. All the participants agreed that the Juvenile Probation Service is exclusively responsible for conducting individual assessments on young offenders. Each social inquiry is followed by the drafting of a social inquiry report.

[329] Thessaloniki is a city situated in the Northern Part of Greece and it is the second largest city in Greece after Athens.

[330] Drama is a city also situated in the Northern Part of Greece, about 117 km away from Thessaloniki.

In Thessaloniki and Drama that essentially entails an individual form being filled out. It is a pre-printed form that contains questions for the juvenile to answer. However, there are no specific guidelines or protocols relating to assessment. There are some basic principles—such as the principle of *individualized treatment*—that are embodied in juvenile law which the juvenile probation officers aim to follow. One participant said that every Juvenile Probation Officer uses his/her own expertise to decide how to conduct an inquiry, and how to draw out and assess information about the young offender. That is to say the psychologist will assess certain aspects, the social worker will focus on different questions and the jurist will raise other issues.

According to the participants, assessment by Juvenile Probation Officers is normally based on knowledge and experience. All Juvenile Probation Officers have participated in training courses and seminars, but few were specific to individual assessment and were only indirectly related to the conduct of such assessments.

In Thessaloniki no Juvenile Probation Officer has expertise in psychology. In Drama, the Juvenile Probation Officer has studied psychology and her expertise allows her to have sessions with juveniles to assess their level of intelligence, and the degree to which they understand language and comprehend time.

If a Juvenile Probation Officer finds that a juvenile has health or behavioural problems which need specialized investigation, they can ask for an expert report or for a child psychiatric evaluation using tools or diagnostic tests. One Juvenile Probation Officer mentioned that the assistance of mental health experts may be requested unofficially to provide advice, guidance and oversight. Almost all Juvenile Probation Officers declared that there are good working relations with such specialists. A juvenile's teachers may also be helpful, and one Juvenile Probation Officer reported that, for juveniles with drug use problems, the "ANADYSIS" treatment programme of "KETHEA" (Therapy Centre for Dependent Individuals) has been used.

The participants viewed **interviews** with the juvenile and his or her family as the main tool for drawing up a satisfactory profile of the juvenile. A key role is played by exploring and understanding the family by holding meetings with the juvenile and his or her family. Meetings are usually held at the Juvenile Probation Officer's workplace or are on-site investigations, visiting the areas that the child frequents. To avoid any stigma, the Juvenile Probation Officer will make contact

with teachers, the headmaster of the school or the child's employer only if there is an exceptional reason to do so.

Social inquiries include information about the conditions that led the child to commit the crime and in particular the child's attitude to and connection with the crime. Under no circumstances do Juvenile Probation Officers take a position on whether or not the child has committed the offence. The presumption of innocence (recently included on the CPC[331] but always a core value in the criminal system throughout the years, deriving from article 6 of the ECHR) is respected. Juvenile Probation Officers focus on whether the child is ready to take responsibility for his/her actions as part of the process of growing up. In the end, they assess the types of interventions available and propose how the child should be treated by the court.

Juvenile Probation Officers may also seek other sources. They may talk to experts (child psychiatrists, psychologists, social workers) at welfare institutions, hospitals, and organisations or services provided by the Municipality, if the child has been in contact and has cooperated with them. In the case of refugees, a meeting is held with representatives of the NGOs concerned. Information may also be provided by the Police, the Prosecutor or another Juvenile Probation Service, if the child has been involved in the criminal justice system in the past.

According to the participants, accurate assessment of a child's personality and maturity, his/her economic, social and family background and the specific difficulties faced, depends upon how much each case is individualized. One Juvenile Probation Officer pointed out that the assessment requires involvement in each child's case for a reasonable amount of time. The Juvenile Probation Officer should undertake the individual assessment in all phases of the process. Involving the same Officer in the juvenile's case throughout the process certainly helps to build a trusting relationship, allows a better approach to the juvenile, and avoids confusion and a piecemeal approach.

The participants considered that the timing of the individual assessment is neither consistent nor legislatively mandated. The time spent on the assessment depends on the need for individualized treatment of each case, on the child's personality, his or her family profile, on the social environment in general, on the severity of the crime, the child's degree of involvement in it, the assessment

[331] Art. 71.

of the risk of re-offending and / or any difficulties in assessing the case. Usually, each session lasts between 1 hour and 1 hour 30 minutes. Based on the principle of minimal intervention, in cases of *low level crimes*, Juvenile Probation Officers usually satisfy themselves with a single meeting/session to collect the necessary information. In cases of *serious crimes* or incidents with *specific needs* and *problems*, more than one meeting/session is required. In Drama, the Juvenile Probation Officer carries out one to three meetings/sessions. In Thessaloniki, the Juvenile Probation Officers seek to hold repeat meetings with the child and parents either together or separately.

Juvenile Probation Officers also explore the specific difficulties each child has. Difficulties may arise from the child's physical and mental health, communication skills and degree of social integration—relations with others and participation in social activities—drug/alcohol and internet addictions, the child's relationship with the criminal justice sector—past involvement in crimes, repeat offences, pending cases—the child's connection with the crime under investigation, and the cultural framework of refugees.

If a difficulty has been diagnosed, it may need individualized intervention—evaluation by child psychologists at diagnostic centres, such as at the Education and Counselling Support Centre or at mental health centres, medical-pedagogic centres and teen units, or at diagnosis, evaluation and support centres, which are educational services identifying learning difficulties and fostering cooperation between teachers and parents. Other support may be sought from MAZI (English: "TOGETHER") program, a charity supporting people suffering from depression and mood disorders and day centres supporting children and families.

One Juvenile Probation Officer mentioned that there are programmes in Thessaloniki providing financial support and promoting the social integration of children. These include programmes run by *Entos-Ektos* (a Volunteer Association for the Support of Minors and Youth) and by the Youth Protection Associations, the educational scholarships offered by the DELTA IEK Vocational Educational Institute, and the Hellenic Manpower Employment Agency's subsidized vocational training programmes for children aged over 16–though there is a lack of awareness among employers and there are restrictions on the type of work that can be done.

All the participants acknowledged that the Juvenile Probation Service faces difficulties in effectively conducting the individual assessments of young offenders. The difficulties are related to:

a) lack of a single regulatory framework for how social inquiries are to be conducted, the lack of a certified objective assessment tool for the character and personality of minors and of the risk of repeat offences;
b) the difficulty of sometimes tracing the child and family, despite the assistance of other bodies, or even the unwillingness of the parents and children to cooperate with the Juvenile Probation Service;
c) the existence of a confusing legal framework about how assessment is supervised;
d) the absence of a social policy on networking of agencies and structures to achieve better co-operation;
e) the lack of a wide-ranging intervention programme designed to meet the needs of the assessment;
f) the lack of interpreters in cases involving young refugees and the lack of training for juvenile probation officers in cultural mediation despite the existence of an interpreter;
g) the prevalence of poor working conditions, in Thessaloniki at least, such as pressure and insufficient time, the presence of many Juvenile Probation Officers in a single place that is not child-friendly, the use of a single computer, the absence of a secretary and the fact that Juvenile Probation Officers take on secretarial duties.

In the light of these difficulties, the participants stressed:

- the need to adopt a single set of guidelines, a regulatory framework and / or a tool for approaching and assessing minors;
- the need for the parallel training and education of Juvenile Probation Officers about a new framework or tool, especially in relation to current social issues;
- the importance of newly appointed Juvenile Probation Officers receiving induction training and the more senior undergoing life-long learning;
- the obligation to carry out individual assessments should be enacted in law and supervision of cases should be placed under the guidance of experts, and specialist structures and services;

- the need to enrich the network of collaboration with other bodies and improve co-operation; and
- the need to exchange knowledge about how best practice is being implemented, primarily via participation in European research programmes.

The Point of View of Experts who Use Assessments

All the Judges and Prosecutors participating in the study stated that there was not a single special session regarding juvenile offenders while attending the School for Judges and Prosecutors. A majority of research participants stated they had taken part in training seminars and other workshops on young offenders—prevention and suppression, vulnerable youth groups, child victims, abuse of minors, link between sexual abuse and animal abuse, child abduction, and others. None of these, however, was related to individual assessment and its use during the course of their duties. In one case, a Juvenile Public Prosecutor stated that she may have taken part in a seminar on young offenders as well as perhaps on individual assessments—specifically on the social inquiries conducted by Juvenile Probation Officers.

All survey participants highlighted the key role played by Juvenile Probation Officers in the process of conducting individual assessments and specifically in the social inquiry report prepared and submitted to the competent Juvenile Court. The existence of a social inquiry report is essential when hearing the case, given that the trial will be adjourned in the absence of such a report.

In addition, a majority of the participants stated that an individual assessment is made after criminal proceedings are initiated against a child. A majority also stated that contact with the juvenile to prepare the social inquiry report should be done as early on as possible and well before the hearing, so that there is sufficient time to investigate each case in depth. Of course, as one public prosecutor said, that issue has to do with the seriousness of the crime the juvenile is accused of. Other participants explicitly stated that this is difficult due mainly to the workload of Juvenile Probation Officers but also to the under-staffing and lack of resources at police departments specialized in handling minors.

As to the current forms of assessment corresponding to *individual assessment*, all participating juvenile judges and prosecutors stated that an example of such

an assessment is the social inquiry and related report prepared by Juvenile Probation Officers—the *case sheet*—which includes, at the end, a proposal for the appropriate handling of the young offender. Most participants mentioned the existence of municipal social worker reports, prepared as part of investigations into the suitability of children's living conditions, or previous psychiatric reports, which are also used by Juvenile Probation Officers as background to their own social inquiry reports.

As to the manner in which the existing assessment meets the goal set in recital 35 to Directive (EU) 2016/800 regarding the need and extent of special measures during criminal proceedings, all participants responded positively, given that the Juvenile Probation Officers' assessment reports always contain proposals for the most appropriate educational or therapeutic measures and for their duration.

Some participants stressed that the contribution of Juvenile Probation Officers should be limited to recommending the measure most appropriate to the young offender, without going so far as to make a determination on whether the minor had committed the crime, because this is the task of the Juvenile Court and not the Juvenile Probation Officers. In other words—as one juvenile judge commented—the social inquiry report contains the juvenile's views on the crime, but does not constitute a platform for the juvenile to answer for his or her actions.

Judges and Prosecutors were of the belief that the duration of each individual assessment depends on the severity (gravity) of the crime the juvenile is suspected or accused of and on the juvenile's willingness to cooperate with the Juvenile Probation Officer. The judges and prosecutors made it clear that, although the report can be done in one or two days, it may require longer-term cooperation with the juvenile to complete it. All participants said that it is an issue well known among the Juvenile Probation Officers, though still unresolved.

One Juvenile Public Prosecutor added that one criterion determining the length of time is the stage at which the Juvenile Probation Officer becomes involved in carrying out the individual assessment, eg during the pre-trial stage—when there is ample time to effectively and systematically engage in the assessment—or during the main investigation. Lastly, all participants stated that a reasonable amount of time is needed in each case to properly and effectively carry out the individual assessment to help the court choose the appropriate measures for the juvenile.

On confidentiality, all participants with one exception said that the form is completely confidential, in the sense that the contents of the report set out in the form are made known only to the Prosecutor and the Juvenile Judge, and are not included in the case file but in a separate dossier, and its contents are not mentioned in the judgement given by the Court. One Juvenile Public Prosecutor mentioned, however, that the Juvenile Probation Service reports are included in the criminal case file and that the juvenile (but not any third party) can have access to their contents.

As for challenges and suggestions for improvement aimed at effectively carrying out individual assessments and using them properly, mention was made of:

- setting up and using a modern individual assessment tool;
- including psychologists and psychiatrists in the team of Juvenile Probation Officers carrying out the assessment;
- close collaboration between all bodies and services involved in juvenile crime along with the Juvenile Probation Services;
- online connection between these bodies; as well as at the stage when individual assessment starts, that is at as early a stage as possible; and
- coverage of the expenses needed for assessments, such as on-site inspections of the juvenile's school or work environment.

One participant proposed that a distinction should be drawn between a Juvenile Probation Officer who carries out an individual assessment before the case is heard and the Juvenile Probation Officer who takes on the juvenile after a measure has been imposed by a Juvenile Court.

All participants emphasized the need for individual assessments to be carried out by Juvenile Probation Officers in a holistic, cooperative, substantive manner based on modern scientific guidelines to ensure rational and effective handling of juvenile offending.

Conclusions and Recommendations

In Greece, respect for the child's *best interests* and *well-being* and the promotion of the child's *education* and *rehabilitation* are the prevailing and long-standing principles of the juvenile justice system. In recent times, Greek juvenile law has

been harmonized to a great degree with international human rights instruments and a more humane, child-sensitive and child-friendly legal framework for the treatment of under-age offenders in Greek society has been created.

The *individualized treatment* of young offenders is an important principle of international human rights and it functions as a guiding light for all professionals working in the Greek juvenile justice system.

In Greece the principle of *individualized treatment* of young offenders is met in the following ways:

- Juvenile Probation Officers conduct *social inquiries,* collecting information on the child's personal, family, educational and social background, writing a report proposing suitable measures or sanctions and submitting that report to the judicial authorities so that—at various stages of the criminal proceedings—the latter can choose the most effective and constructive treatment for that particular child.
- Juvenile Probation Officers are regarded as the best qualified personnel to conduct these social inquiries. They are ready to apply a multidisciplinary approach. If necessary, they can request assistance from experts in other institutions—such as psychologists, psychiatrists and social workers.

The involvement of Juvenile Probation Officers during all stages of criminal proceedings is critical and rightly considered one of the most important factors in dealing with juvenile offending.

Social inquiries are conducted at the stage where *diversion*—refraining from prosecution—is being considered for the young offender, as well as after the initiation of a *criminal prosecution*. A social inquiry report is regularly updated when the facts of the case change. As a rule, in the absence of a social inquiry report, a trial will be adjourned. A derogation from the obligation to conduct a social inquiry is possible in certain circumstances—or instance for non-serious offences or when a foreign minor has left the country or has been deported.

Thus a framework for individualized assessment of young offenders is well-established in Greece. In practice, a number of difficulties arise.

The absence of an agreed tool for the conduct of social inquiries, the limited number of Probation Officers and their insufficient training, and a lack of specialized knowledge by Juvenile Public Prosecutors and Judges seem to be the

most pressing problems, adversely affecting the quality and effectiveness of their work and rendering juvenile justice incomplete[332].

To address these problems, it is proposed *de lege ferenda:*

Recommendations:

- *firstly* that a modern scientific tool for the conduct of social inquiries resulting in the writing of a social inquiry report should be introduced,
- *secondly* that the juvenile probation service should be staffed by an adequate number of qualified personnel who should be continuously trained and specialized; and
- *thirdly* that juvenile prosecutors, juvenile investigators and juvenile judges, at least in the major cities, should deal exclusively with juvenile cases, their term of office should be renewed for many years, with their consent, and professional development and career prospects in the juvenile justice system should be enhanced[333];
- in addition, a psychologist should be included in the team of Juvenile Probation Officers carrying out assessments; and
- collaboration between all bodies and services involved in juvenile justice and welfare should be strengthened.

Major changes are to be expected after the incorporation of EU Directive 2016/800 into Greek law. These legislative changes could have a positive impact on the practice of individual assessment. In order to take into consideration a juvenile's need for protection, education and social reintegration, Article 7 of the Directive requires the report on individual assessment to be drafted before any adverse measure is imposed on a juvenile by a judicial authority. This and other proposals could have significant implications for the resources required by the Juvenile Probation Service and allied experts.

[332] Pitsela, *The Penal Treatment of Juvenile Delinquency,* 300.
[333] Pitsela, *The Penal Treatment of Juvenile Delinquency,* 659-660.

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6 Implementation of Individual Assessment in Cyprus

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6.1. Legal background and regulation of juvenile justice in Cyprus

Cyprus has been an independent Republic since 1960. For the previous 82 years, Cyprus was a British colony. The British legal system has had and continues to have considerable influence on the legal structure of Cyprus. The Republic of Cyprus has its own laws, but British case law is still considered relevant, even during court hearings.

The hierarchy of legal rules in Cyprus is as follows:

- European law (takes priority over national law and even the Constitution);
- Cyprus Constitution;
- International Law[334];
- Ordinary laws[335];

[334] The set of rules generally regarded and accepted as binding in relations between states and between nations, serving as a framework for the practice of stable and organised international relations. In Cyprus, international law is directly applicable, which is relevant inter alia for the application of the UN Convention on the Rights of the Child.

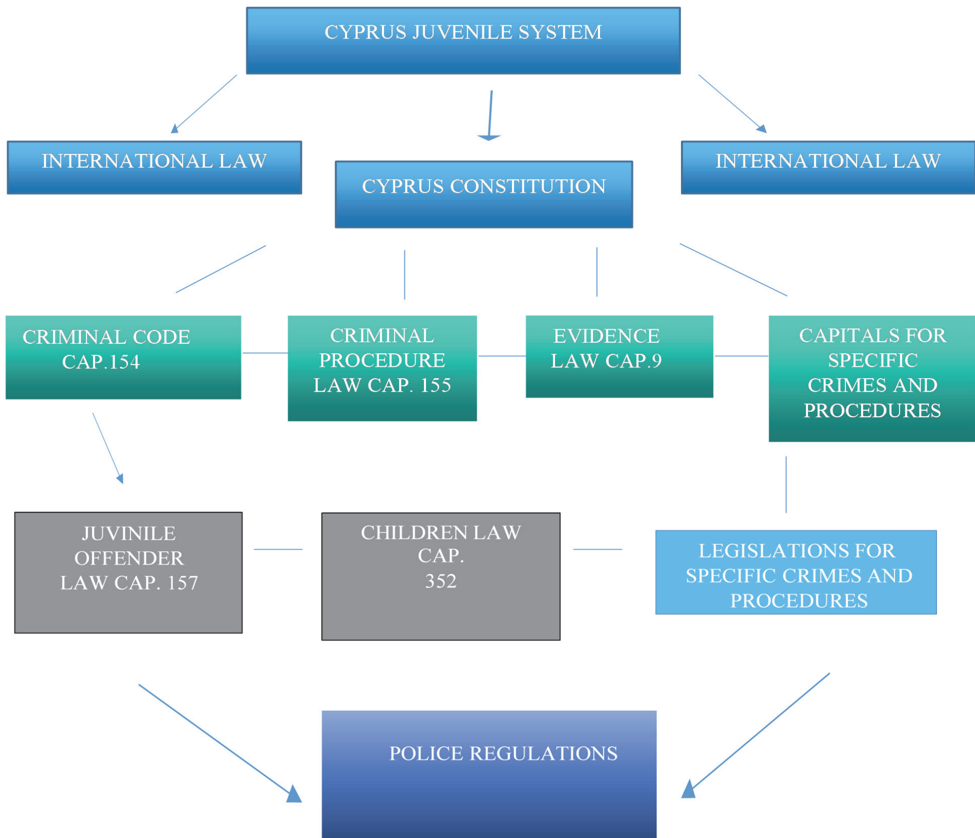
[335] CAPITALS: define specific legislation and crimes and / or procedures within the justice system and the laws retained in force by virtue of Art. 188 of the Constitution).

- Secondary legislation; and
- Administrative or Implementing Acts.

The Cypriot Criminal Code and the Law on Criminal Procedure do not have separate chapters on juvenile crime. Although there are legal provisions guaranteeing rights, there is no specific *statutory legal framework for minors*. Instead, there are legislative provisions, dispersed across various Acts, which apply to juvenile offenders and their sentencing. In many instances, these provisions are similar or identical to those for adults, with variations to meet the requirements of each situation.

The *juvenile justice system* is presented schematically in scheme no. 1 below.

Scheme no. 1: Juvenile Justice System in Cyprus



The most important pieces of legislation dealing with juvenile offenders and suspects are:

- The Juvenile Offenders' Act[336];
- The Children Act[337]; and
- The Law on the Rights of People Arrested and Taken into Detention.

The *Juvenile Offenders' Act* is the fundamental legislation regulating juvenile justice in Cyprus. The legislation dates from 1946 when it was adopted under British rule. Since then, it has been amended only once, in 1972. It consists of 25 Articles, not all of which have been implemented---eg. establishment of Juvenile Courts and is aimed at regulating procedures in criminal proceedings and the sentences imposed upon *juvenile offenders.*

- Article 5 regulates requirements and responsibilities concerning the Court. The cases of minors should be heard in a *Juvenile Court* which should be located in a different building or structure from the District and Supreme Courts. However, in reality, cases concerning juvenile offenders are held in either the District or Assize Courts, since no provision for specialised Juvenile Courts has yet been made;
- Article 7 states that if a juvenile is detained, custody should take place at a *police station* not in a prison, in order to limit contact between young people and adult offenders;
- Article 12 prescribes the sentences and penalties that may be imposed upon juvenile offenders, taking into account their age and the promotion of their best interests.

The *Juvenile Offender Act* is considered *ius speciale* - in incidents where a child has committed a crime, the rest of the legislation functions as *ius generale*.

The *Children's Act* contains general provisions concerning children;

- Paragraph 63 refers to the circumstances in which a person under the age of 16 may be regarded as a *child in need of care and protection*.
- Paragraph 64 states that if the Juvenile Court is satisfied that the child before it is in need of care and protection, the Court may take a number of measures which promote the child's wellbeing.

[336] Juvenile Offenders' Act, *Chapter 157*. Retrieved from: http://www.cylaw.org/nomoi/arith/CAP157.pdf
[337] Children Act, *Chapter 352*. Retrieved from: http://www.cylaw.org/nomoi/indexes/352.html

The *Law of the Rights of People Arrested and Taken into Detention*[338] introduced in 2005 sets rules for the regulation of detention, as well as specifying the rights of detainees and prisoners - such as their right to dignity. The following articles are intended to protect minors from violation of their rights during criminal procedures.

- Article 6 enshrines the right of parents and guardians to information. The Police must inform parents or guardians when a person under the age of 18 has been arrested or detained, giving reasons. If necessary, the Police must also inform the Social Welfare Services (SWS);
- Article 12 (3) affirms the right of parents or guardians to attend all meetings or communication with the young person's lawyer;
- Article 27 (2) gives them the right to attend any medical examination or follow-up;
- Article 10 provides that, if a person under the age of 18 with limited intellectual competence is interviewed by a Police Officer, their lawyer should be present at all times, throughout the investigation procedure;
- Article 16 (1) provides that, while in detention, juveniles are allowed to have visitors every day (parents/guardians, relatives etc.). Minors are considered to be vulnerable people; and
- Article 20 (a) provides that the juvenile detainee should be placed in a different area from adult detainees. However, in Cyprus, convicted minors are imprisoned in the Central prison. Although they do not share the same sector with adult detainees, minors share the same yard with them. Despite its importance, this requirement for separation between adult and juvenile detainees is not currently met in Cyprus.

Perhaps the most important reform in the treatment of young offenders[339] was the introduction in 1996 of a wide range of measures, such as a guardianship decree that may be combined with community work or education, conditional supervision or other measures providing alternatives to detention.

[338] On the Rights of People Arrested and Taken into Detention, *CyLaw 163(I)/2005*. Retrieved from: http://www.cylaw.org/nomoi/indexes/2005_1_163.html

[339] By amending the Guardianship and Other Ways of Treatment of Offenders Act, *CyLaw 46(I)/1996*. Retrieved from: http://www.cylaw.org/nomoi/arith/1996_1_046.pdf

Age of Criminal Responsibility

There are many definitions in the Cypriot legal framework concerning *age*. The term *juvenile* is generally used to mean anyone who has not reached the age of 18.

The *age of criminal responsibility* was set at 14 years[340] in 2006; and the Criminal Code currently states that

> *anyone under the age of fourteen years is not criminally liable for any act or omission*[341].

The legal framework attributes *criminal liability* to minors aged 14 and above[342]. A suspect or offender is considered to be a *minor* only up to the age of 16. In other words, persons from 14 to 16 are held to be *criminally responsible* and are dealt under the *Juvenile Offenders Act*[343].

The *Juvenile Offenders' Act* defines a *child* as 'any person *under the age of 14';* and a *young person* as a *minor who has reached the age of 14 years but is not more than 16 years old.*

The *Children Act* defines a *child* as anyone who has not reached the age of 18 years[344]. Paragraph 63 refers to the circumstances in which someone under the age of 16 may be regarded as a *child in need of care and protection*.

To summarize, the upper age limit for *juvenile justice* is 16[345], although 'young age' is seen as a mitigating factor for young adults up to the age of 20 and even beyond.

[340] Since the amendment of Art. 14 of the Criminal Code, *Chapter 154*. Retrieved from: https://sbaadministration.org/home/legislation/01_02_09_01_COLONIAL_CAPS_1959/01_02_01_04_Caps-125-175A/19600101_CAP154_u.pdf

[341] Art. 14 of the Criminal Code, *Chapter 154*. Retrieved from: http://www.cylaw.org/nomoi/enop/ind/0_154/section-scaed29111-fa9c-4a13-85d8-681b0eabe8f6.html

[342] *Ibid.*

[343] Juvenile Offenders' Act, *Chapter 157*.

[344] Children Act, *Chapter 352*.

[345] Cyprus is thus in violation of the UN Convention on the Rights of the Child (CRC), which stipulates a separate juvenile justice system for juveniles, defined as 'children' below the age of 18. (Art. 40 (3) of UN Commission on Human Rights, *Convention on the Rights of the Child*, 7 March 1990, E/CN.4/RES/1990/74. Retrieved from: https://www.refworld.org/docid/3b00f03d30.html).

Criminal Procedure and Sanctions for Juvenile Offenders

There are at least three Ministries or sections with responsibilities in the fields to do with juvenile offenders or suspects.

- The Ministry of Justice and Public Order through the Police Force and the Juvenile Delinquency Office;
- The Ministry of Labour, Welfare and Social Insurance through the Social Welfare Services (SWS); and
- The Law Office of the Republic of Cyprus.

The Ministry of Health may also become involved through the Mental Health Services. One of the most serious issues for juvenile justice procedures is the fact that the Court that hears cases involving children is not separate from the Court that deals with adults. One might say that there is lack of infrastructure. The district court where the case will be handled is decided by the place where the crime was committed. There are no requirements for Judges to become specialised in juvenile justice, although the SWS and the Police Force hold training sessions on cases involving children for lawyers and police officers.

It should be noted that the Ministry of Justice and Public Order (MJPO) and the Commissioner for the Rights of the Child (CCR) have been preparing and promoting a Bill within the framework of the criminal justice system on the needs of children in conflict with the law and matters relating to the prevention and treatment of young offenders. The MJPO and CCR have said that the Bill will be in accord with internationally legally-binding instruments and guidelines[346]. However, the Bill has been under discussion for at least five years.

Minors between the ages of 14 and 16 who are suspected of crime are dealt with under the *Juvenile Offenders' Act*. Article 12 provides for the following outcomes:

a. Dismiss the case;

b. Impose probation;

c. Commit the offender into the care of a relative or other fit person;

d. Send the offender to a reform school;

[346] UN Committee on the Rights of the Child (CRC), *General comment No. 10 (2007): Children's Rights in Juvenile Justice*, 25 April 2007, CRC/C/GC/10. Retrieved from: https://www.refworld.org/docid/4670fca12.html

e. Order the offender to pay a fine or to restore any damage;
f. Imprisonment.

An outcome of the procedure might be one of the alternatives to imprisonment provided for under the *Law of Guardianship and Other Ways of Treatment of Juvenile Offenders*[347]. One of the most common alternative ways of dealing with juvenile offenders is the issue of a *Custody Order* under Article 5. The offender is placed under the supervision of a *Guardian Officer* of the SWS for a period of time between one to three years. The terms of the Custody Order are left to the discretion of the Court. The terms take the circumstances and family environment of the offenders into consideration and are designed to ensure their *good conduct* and to deter them from another criminal act. Under a Custody Order with community-based regulation, the juvenile offender does community work for a designated period of time, which is not specified in the legislation. The Order can be issued if:

a. The offender agrees (art. 6);
b. Appropriate arrangements have been made by the Ministry of Labour and Social Insurance (art. 7); and
c. The juvenile offender is suitable for the performance of community work (to be assessed by a report from the SWS).

If the juvenile offender fails to comply with the terms of the Order or is accused of intoxication or other addictive substances, the Officer will prepare a new report and the offender will have to re-appear in Court. The Court may then impose a fine or cancel the Order and resentence the offender (within the limits of its jurisdiction). For example, in the case of *Head of Police of Limassol v Constandinou Georgiou*[348] the Court, after taking into account the details of the case - marital status, report from SWS, etc. - imposed a penalty of imprisonment on the juvenile offender (aged 17.5) because he had repeatedly violated the terms of the Order.

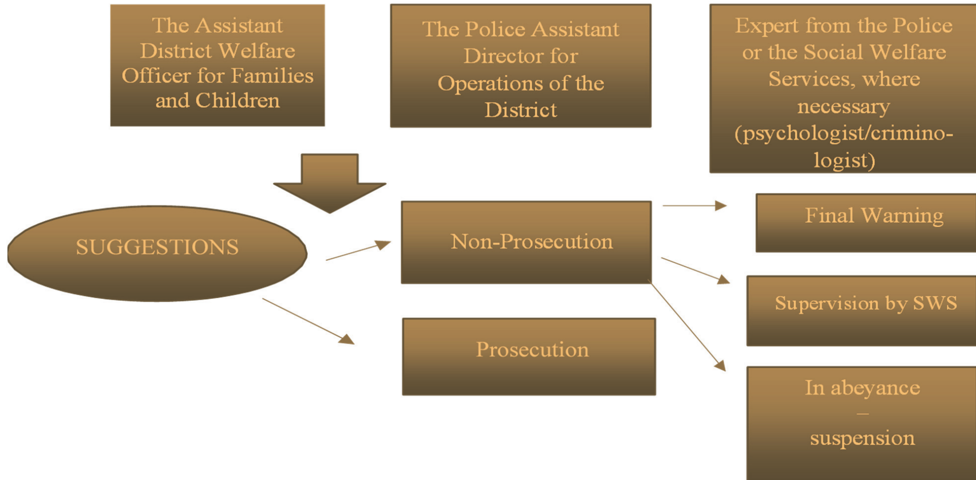
When a crime is reported to the local police station, if the suspect is a minor (between the age of 14 and 16) the *Juvenile Board* acts. The Juvenile Board or Committee consists of the Assistant Chief of Police, an Officer of the Social Welfare

[347] Custody and Other Ways of Treating Offenders in Custody and Other Ways of Treating Offenders, *46(1)/96*.

[348] Head of Police of Limassol v. Constandinou Georgiou (No. 34504/10).

Services and, when needed, a psychologist and / or criminologist. Every municipality or province has their own Juvenile Board which is supposed to meet once a month. In practical terms, this is not feasible. The Board's professionals may seek clarification or guidance from the Attorney General's Office. The procedure is presented schematically below:

Scheme no. 2: Criminal proceedings of minors aged from 14 to 16



To sum up, analysis of all the relevant legislation reveals that Cyprus lacks up-to-date legal provisions which correspond to changed realities in the country and reflect the international legal framework. Urgent action is needed to overcome a lack of specialization in and facilities for juvenile justice and to promote the best interests of young offenders.

6.2. Individual Assessment of Juvenile Offenders

Procedural safeguards for accused, suspected or convicted minors in Cyprus are not well-developed, especially in relation to Directive 2016/800. The Republic of Cyprus has not had a great number of cases of juvenile offending, so one could say that the identified gaps have been visible only for a decade or so. However, even though the numbers are small, we cannot ignore the fact that Cyprus lacks mechanisms for the individual assessment of juvenile offenders.

Assessments and reports are prepared by the Social Welfare Services after a request from the Director of the Police Force. The purpose is that the report should be presented at the court hearing, or even prior to the hearing, for judge(s) to decide on sentencing the juvenile offender or suspect. The court may ask for additional information on the juvenile school performance, behaviour, medical history etc. - relevant to the outcome of the case.

The assessment is based on information gathered at the discretion of the SWS Officer. If a minor is arrested, SWS officers will compile (if needed) a socio-economic report on the minor. The assessment includes general information about the family, information about the minor, the juvenile's environment, school, etc. However, there is no specific tool which the officers use to produce the report or to make the assessment. The officers have some general guidelines that cover the writing of all SWS reports. These guidelines cannot be considered to be a specific tool for the assessment of young offenders. It is also worth mentioning that the report of the assessment might be produced without even a single house visit.

The most significant gap is that psychologists are not engaged to have a meeting with the offender at any time. The only aspect in which psychologists become involved is when a conviction is related to addictive substances or drugs. The Social Welfare Services do not make any assessment of the maturity of the minor however, if necessary, the minor may be referred to the Mental Health Services. The Mental Health Services do not use an assessment tool specific to young people. They use the *Minnesota Multiphasic Personality Inventory* (MMPI) which can assess personality traits and psychopathology. It is primarily intended to test people who are suspected of having mental health or other clinical issues, which, most of the time, does not reflect the minor's situation.

Individual assessment, which is based on the child's background, his/her parents' backgrounds, medical history for both child and parents, school performance, child's environment, social and economic situation of the family can take up to a year (because some tests such as DNA take time) and there is no follow-up from the Social Welfare Services (who conduct the individual assessment). If the case goes to a court hearing, depending on the child's maturity and their age, they might be accompanied by an officer of the SWS.

Cyprus has not implemented key points of the Directive. There is no *standardised procedure* for the assessment of juvenile offenders or suspects - every professional relies on their own skills and abilities as social workers or as psychologists. The socio-economic background of the child and information from parents is part of the report, but the professionals cannot assess the *maturity* of the child without an appropriate tool. The duration of the assessment also does not correspond to the aims of the Directive. One could conclude that Cyprus has not implemented or ratified *Individual Assessment* according to Article 7 of the Directive.

6.3. Research on the Implementation of Individual Assessment in Cyprus

The Cypriot research team interviewed six professionals from the Social Welfare Services, Mental Health Services, the Ministry of Justice and Public Order and *first-line* officers.

The main aspect that was emphasized by participants is an absence of methodology or a toolkit (adapted to the Cypriot context) by which juvenile offenders or suspects could be assessed. The 'first line' officers stated that assessment is based on what the officer is able to identify from the family background and the behaviour of the minor. The SWS officer reported that the assessments of minors include general information such as the family's background, history report, the juvenile's environment (school etc.). The officer also said that there is no specific tool or assessment which they all use in order to complete the report that the Law Office requests[349]. The process that each social worker follows to create the assessment lacks objectivity as there are only oral guidelines for them to follow. In many cases the officer considers a house visit unnecessary. The Police Officer from the Juvenile Delinquency Office added that assessment depends mainly on the willingness and skills of the officers. Consequently, there are gaps to be filled with sufficient and detailed guidelines and specialized training.

Secondly, the research revealed that understaffing of the SWS is a major problem. Each officer of the SWS could be handling up to 100 cases, since they do not deal only with juvenile offenders. Therefore, the officer might not be able to gather in-

[349] The Law Office of the Republic asks the SWS for the so-called report 'assessment of the appropriateness' for the judge to be able to evaluate the case/incident before deciding on the penalty.

formation about the minor from different sources and compile a comprehensive report.

The assessment of a minor's maturity level, which is proposed in Directive 2016/800, is currently handled by the Mental Health Services (Ministry of Health). However, this happens rarely and is not common practice. A clinical psychologist from the Mental Health Services, who participated in the research, stated that there is no assessment tool specific to juvenile offenders or suspects. They usually use the MMPI personality test which is used to evaluate a person's personality and their maturity.

When a minor is involved in an incident involving drugs, the Mental Health Services may refer the minor or young adult to the *Multi-intervention Centre*. This practice is followed if the minor or young adult has been accused for the first time of a minor drug-related offence. The Centre has a programme called *Early Interventions* where experts work with the minor to prevent criminal behaviour in relation to drug usage. The professionals do not receive specific training for this, however, it is part of their expertise as psychologists.

Participants addressed issues relating to the absence of juvenile-friendly facilities, emphasizing the lack of specialised courts and juvenile detention centres.

The new legislative Bill which is being prepared by the Ministry of Justice and Public Order and includes most of the provisions of the Directive was widely discussed during the interviews. Consequently, our research team tried to get more information about the new Bill[350] The officer from the Ministry of Justice and Public Security said that the new Bill had been drafted before the EU Directive; however, the state is facing obstacles because of non-existent support services and infrastructure. The officer made clear that the main purpose of the new legislation is to avoid any type of imprisonment as a penalty. Detention, in the proposed legislation, will be the 'extreme' measure for very serious incidents. The new legislation has provisions for the training of professionals who come into contact with minors in conflict with the law. The procedure when arresting a minor will be as follows:

- Inform the Child Rights Commissioner
- Inform the SWS;

[350] Establishing a Child-Friendly Criminal Justice System for Minors who are in Conflict with the Law.

- Inform the minor about their rights (police officer informing);
- All questioning (interrogation) to be done within 24 hours maximum;
- Support the minor if the family is not able to;
- Referral to the Attorney General to decide how the case will proceed.

Furthermore, the new Bill has provisions for a preliminary programme lasting 6 to 12 months for monitoring and supervision of the juvenile, with adequately trained professionals. Courts for juveniles will be established. However, due to limited funding, initially family courts will act as courts for juvenile offenders. Part of the new Bill concerns detention centres for juveniles.

Under the new Bill individual assessment will begin from the moment the incident is reported up to the preliminary stage. As the officer explained, individual assessment should be taken into consideration by every professional and service which comes into contact with juvenile offenders or suspects. The Bill does not provide any specific requirements to do with juveniles' special needs; however, it makes clear that any special need has to be taken into consideration.

Conclusions and Recommendations

The fundamental legislation which regulates juvenile justice in Cyprus is the *Juvenile Offenders' Act* The legislation dates from 1946 and, since then, it has been amended only once, in 1972. One of the major legislative issues for Cyprus is that the legislation has not been updated and this creates conflicts in applying the law in practice. Some of the legislation is not adapted to reality because many things have changed since the law was first drafted. For example, there is no reference to technology, although many of the offences committed by minors nowadays take place online.

Cyprus presents significant shortcomings in the field of dealing with juvenile offenders which should be immediately addressed. In particular, some of the laws cannot be applied at all or even partly. For example, the law refers to juvenile courts and detention centres which do not exist. There is no juvenile justice system with youth courts nor is there a specialization of competences among judges[351]. That means that juvenile offenders are tried and sentenced in

[351] Art. 2 of Juvenile Offenders' Act, *Chapter 157*.

the same courts as adults and by the judges who are not trained specifically for such cases.

Furthermore, although the law[352] refers to probation orders for community work to be supervised by welfare officers, the Social Welfare Services do not have enough officers to deal with them. Welfare officers have not undergone any special training in the treatment of young offenders.

Anyone under the age of 18 is considered a *child* according to Cyprus law and they come under children's legislation. But in terms of the sanctions, minors up to the age of 15 are sentenced under the *Juvenile Offenders' Act*, while 16 and 17 year old are treated as *adults* and sentenced according to the *general Criminal Law*. This contravenes Children's Rights.

The purpose of *individual assessment* is for it to be presented during a court hearing or even prior to the hearing, for the judge(s) to decide about the sentencing of the juvenile offender or suspect. However, there is no approved methodology or even written guidelines, or training, on how assessment should be conducted. The quality of assessments mainly depends at present on subjective factors, such as skills or the willingness of the officers responsible for the assessment.

The Republic of Cyprus must undertake a series of actions to adopt specific comprehensive legislation on juvenile offenders, recruit expert staff to manage matters for juvenile offenders, adopt a toolkit and manual to perform individual assessments of the needs of young offenders, and train existing staff to be able to do the individual assessments as specified by Directive 2016/800.

[352] Custody and Other Ways of Treating Offenders in Custody and Other Ways of Treating Offenders, *46(1)/96*.

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7 Implementation of Individual Assessment in Croatia

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7.1. Legal Framework and Juvenile Justice System in Croatia

In the Republic of Croatia, juvenile justice is based on several principles defined in key legal acts that form the framework of the juvenile justice system. ThEse legal acts are the *Criminal Code (CC)*[353], the *Criminal Procedure Act (CPA)*[354], the *Youth Courts Act (YCA)*[355], and the *Act on the Execution of Sanctions Imposed on Juveniles for Criminal Offences and Misdemeanours (AESIJCOM)*[356].

The Criminal Code and the Criminal Procedure Act are organic laws[357]. The Criminal Code prescribes all significant elements of the criminal justice system in Croatia (criminal offences, offenders, minimum age of criminal responsibility, guilt, types of offences, and punishment length). The minimum age of criminal responsibility in Croatia is 14 (Art. 7, Para. 1 of CC), and that

[353] Criminal Code *(OG 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19).*

[354] Criminal Procedure Act *(OG 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13, 152/14, 70/17, 126/19, 126/19).*

[355] Youth Courts Act *(OG 84/11, 143/12, 148/13, 56/15, 126/19).*

[356] Act on Execution of Sanctions Imposed on Juveniles for Criminal Offences and Misdemeanours *(OG 133/12).*

[357] The term 'organic law' is based on the Croatian Constitution (Article 83) and refers to a law that influences constitutionally established human rights and fundamental freedoms *(OG NN 56/90, 135/97, 08/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10, 05/14)* https://www.usud.hr/sites/default/files/dokumenti/The_consolidated_text_of_the_Constitution_of_the_Republic_of_Croatia_as_of_15_January_2014.pdf.

age is exclusive. In the legal sense, persons under the age of 14 are considered children and are not criminally accountable (responsible). If they commit a criminal offence, it is impossible to react through the criminal justice system. According to the Family Act[358] and the Social Welfare Act[359], they are to be processed through the social welfare system. The Criminal Code in Article 7, Paragraph 2 also states that it should be used with regard to persons who, when committing an offence, have turned 14 years of age, but have not turned 21 years of age, unless a specific law prescribes otherwise. The same applies to the Criminal Procedure Act. Since Croatia has a special law for young offenders (lat. *lex specialis*), called the **Youth Courts Act (hereinafter: YCA/11),** when it comes to possible sanctions and criminal procedure, the Criminal Code and the Criminal Procedure Act are used mostly for adult offenders (above 18 years of age). The Croatian juvenile justice system relies on the YCA/11 and the Act on Execution of Sanctions Imposed on Juveniles for Criminal Offences and Misdemeanours (**hereinafter: A**ESIJCOM/12), with the accompanying ordinances.

The YCA/11 regulates the legal material and procedural position of juveniles and young adult offenders, and the penal law protection of children. In terms of young offenders, all persons under the age of 14 when an offence is committed are considered children, while persons between 14 and 18 years of age are considered juveniles. The YCA/11 distinguishes in Article 5 between younger (14-16) and older (16-18) juveniles, with the major difference being that juvenile prison can only be imposed on older juveniles committing more severe offences. Young adults are a specific age category (18–21 years of age), and depending on an individual assessment (their previous criminal behaviour/records, risk assessment and personality traits), as well as the gravity of the crime, they can be prosecuted and sanctioned as juveniles (young offenders by the YCA/11) or as adults (by the Criminal Code) (Art. 104 – 106 of the YCA/11). This assessment is first made by the State Attorney; however, the Court can change that decision in either direction.

[358] Family Act *(OG 103/15, 98/19).*

[359] Social Welfare Act *(OG 157/13, 152/14, 99/15, 52/16, 16/17, 130/17, 98/19, 64/20).*

Types of Measures/Sanctions for Juvenile Offenders

There are three types of **juvenile sanctions** that can be imposed by the Youth Court (Art. 5 of the YCA/11):

1) Educational measures,
2) Juvenile prison, and
3) Security measures. Table no. 1 lists all the sanctions that can be imposed on juvenile offenders.

Table no. 1: List of all Sanctions that can be imposed on juvenile offenders according to YCA/11

EDUCATIONAL MEASURES	**1. SPECIAL OBLIGATIONS** (maximum length 1 year) 1) to apologise to the injured party, 2) to repair or make compensation for the damage done by the offence, according to his or her own abilities, 3) to attend school regularly, 4) not to be absent from his or her workplace, 5) to become trained for an occupation that suits his/her abilities and inclinations, 6) to accept employment and persevere in it, 7) to spend income under supervision and with the advice of the person monitoring the correctional measure, 8) to get involved in the work of humanitarian organisations or in activities relevant for the community or the environment, 9) to refrain from visiting particular places or entertainment events and to stay away from particular persons who have a detrimental effect on him/her, 10) to undergo, with the prior consent of his/her legal representative, professional medical treatment or treatment related to drug addiction or other addictions, 11) to get involved in individual or group psychosocial treatment provided by youth counselling services, 12) to participate in training to obtain professional qualifications,

Table no. 1: List of all Sanctions that can be imposed on juvenile offenders according to YCA/11 (*continuation*)

EDUCATIONAL MEASURES	13) not to leave, for a longer period of time than allowed, the place of his or her permanent or habitual residence, without special approval obtained from the Centre of Social Welfare, 14) to have his or her knowledge of traffic regulations tested in the competent institution for the education of drivers. 15) not to approach or interfere with a victim, 16) other obligations that are appropriate considering the criminal offence committed and the personal and family circumstances of the juvenile. 2. **INTENSIFIED CARE AND SUPERVISION** (juvenile probation) – a minimum of six months to a maximum of two years 3. **INTENSIFIED CARE AND SUPERVISION WITH DAILY STAY IN AN EDUCATIONAL** institution - a minimum of six months to a maximum of two years 4. **REFERRAL TO A DISCIPLINARY CENTRE** - from a couple of hours per day to institutional stay of up to three months maximum 5. **REFERRAL TO AN EDUCATIONAL INSTITUTION** (open institution) – a minimum of six months to a maximum of two years 6. **REFERRAL TO A SPECIAL EDUCATIONAL INSTITUTION** (open institution) - a minimum of six months to a maximum of three years 7. **REFERRAL TO A REFORMATORY** (correctional closed institution) -a minimum of six months to a maximum of three years
JUVENILE PRISON	1. **JUVENILE PRISON** - a minimum of six months to a maximum of five years; and from five to ten years for extremely grave offences 2. **SUSPENDED SENTENCE OF JUVENILE IMPRISONMENT** (juvenile probation)

Table no. 1: List of all Sanctions that can be imposed on juvenile offenders according to YCA/11 (*continuation*)

SECURITY MEASURES	**1. PSYCHIATRIC TREATMENT** **2. TREATMENT OF ADDICTION** **3. PSYCHOSOCIAL TREATMENT** **4. PROHIBITION ON DRIVING MOTOR VEHICLES (only for older juveniles)** **5. PROHIBITION ON APPROACHING, DISTURBING AND STALKING THE VICTIM** **6. PROHIBITION ON ACCESSING THE INTERNET** **7. PROTECTIVE SUPERVISION AFTER A PRISON SENTENCE IS COMPLETED.**

All educational measures are flexible in their length. They have their prescribed minimum and maximum. However, the youth court judge never sets the exact length of that sanction. Every few months, the Court convenes a *control hearing* with all parties involved (juvenile, his/her parents, juvenile probation officer, social welfare representative – if different, a non-legal professional), and depending on progress, a particular juvenile sanction can be suspended, continued, or changed to a less or more severe (restrictive) sanction. Such an approach is aimed at motivating juvenile offenders to change their antisocial behaviour. These sanctions can be roughly divided into institutional and alternative (community) sanctions.

All the above-mentioned legal acts contain important juvenile justice principles that should be applied to each individual case, such as the principle of legality (Art. 2 of the CC/11), the principle of applying a more lenient law, that is, the temporal legality of criminal legislation (Art. 3 of the CC/11), the principle of guilt (no one can be punished for a criminal offence until proven guilty; Art. 4 of the CC/11), the principle of secrecy (the inquiries on criminal offences and the entire criminal procedure involving a juvenile is secret), the meetings of the court panel are closed to the public, the judgment cannot be published and all of the information related to the execution of the sanction is confidential; Art. 34 and 60 of the YCA/11 and Art. 4 of the AESIJCOM/12), the principle of

gradualness in sanctioning (when possible, considering the personality of juvenile and circumstances of his/her criminal offence, the juvenile is first imposed with a less severe sanction, and then if necessary, the sanction execution can be altered or suspended; Art. 17 of the YCA/11), and the principle of variability of the sanction (each sanction can be replaced with a less or more severe one, depending on the course of its implementation and the circumstances that can affect it; Art. 99 of the YCA/11).

Following the above principles, the YCA/11 states that criminal proceedings *towards*[360] a juvenile must be promptly dealt with (urgently) (Art. 4 and 59 of the YCA/11). Furthermore, numerous articles in the YCA/11 state that the treatment of a juvenile and the sanctions imposed should be purposeful, i.e., that these procedures should achieve the purpose of juvenile sanctions prescribed by Article 6 of the YCA/11 which states that the purpose of juvenile sanctions is to make an impact on a juvenile by providing protection, care, assistance, and supervision and by ensuring general and professional education, to impact on the upbringing, personal development, and the strengthening of personal responsibility of a juvenile offender, so that he/she might refrain from repeating a criminal offence.

Article 5 of the AESIJCOM/12 defines the basic principles of execution of sanctions, which states that a juvenile is guaranteed respect for human dignity during the execution of a sanction, and that discrimination on any grounds, torture, ill-treatment, or humiliation of juveniles is prohibited. The execution of a sanction is based on an individual treatment plan that is adjusted to juveniles' criminogenic risk factors (Art. 7 of the AESIJCOM/12), and the juvenile should be provided with timely preparation for release from an educational institution, special educational institution, educational institution, or reformatory (Art. 8 of the AESIJCOM/12).

[360] Croatia has over 100-year-old tradition of specific legal regulations for young offenders (children and youth), with different criminal procedure and sanctions within the social welfare system (i.e. tradition of a social welfare juvenile justice model and child-friendly justice system). With that philosophy, ethical and professional values, all legal acts (laws and ordinances) use terms 'procedure *towards* a juvenile' (not *against* a juvenile). All professionals withing the justice system (state attorneys, judges, etc.) are obliged to use this terminology. The term 'judgement' is also not used when imposing a sanction, but the term 'court decision'. The terms *against* & *judgement* are regularly used for adult offenders.

Criminal Proceedings Towards Juvenile Offenders

Criminal proceedings towards juvenile offenders are relatively complex, as is legislation on how to execute sanctions. The institutions that form the basic "framework" of the proceedings towards juvenile offenders are the police, the State Attorney's Office, the Court, and Centres for Social Welfare[361].

The police force is the first institution that a juvenile offender encounters. Investigations of criminal offences in proceedings towards a juvenile are carried out by police officers who work with juveniles or by other police officers if juvenile-specialist police officers cannot act due to case circumstances (Art. 69 of the YCA/11). Then, acting upon a submitted criminal report, the State Attorney's Office decides on the (non)existence of grounds for conducting criminal proceedings towards the juvenile, i.e., on the (non)existence of reasonable suspicion, on which the state attorney will act. The articles 70, 71 and 72 of the YCA/11 provide several options for youth state attorneys:

1) to dismiss the criminal complaint,
2) to apply principles of appropriateness/opportunity in cases where there is a reasonable suspicion that a juvenile committed an offence punishable with a prison sentence of up to 5 years of imprisonment, **and** the state attorney assesses that the purpose of sanctioning can be achieved without further procedure, but rather by imposing conditional obligations instead. These obligations are also called community measures and / or diversion measures (listed in Table no. 2), since their aim is to divert cases from the Court and apply fast and efficient interventions for juvenile offenders, in line with the principle of no delay (urgency); or
3) to propose sanctioning by a Youth Court and to start with the preparatory procedure, which is considered a formal beginning of a criminal procedure towards a juvenile offender.

[361] S. Mandić et al., "The View of Experts on the Effectiveness of the Juvenile Justice System," *Collected papers of the Law Faculty of the University of Rijeka* 39, no. 3 (2018): 1264.

Table no. 2: Community / diversion measures

1. apologise to the injured party,
2. repair the damage done by the offence, according to his or her own abilities,
3. participate in the victim-offender mediation process through out-of-court settlement,
4. get involved in the work of humanitarian organisations or in activities having relevance to the community or for the environment,
5. undergo a rehabilitation programme for drug or other addictions, with the prior consent of the juvenile's legal representative,
6. get involved in individual or group psychosocial treatment in a youth counselling service centre,
7. have his or her knowledge of traffic regulations tested in the competent institution for the education of drivers,
8. fulfil other obligations that are relevant taking into account the criminal offence committed as well as the personal and family circumstances of the juvenile.

From the very beginning **Centres for Social Welfare** are involved in proceedings towards juvenile offenders and are in contact with the police, the State Attorney's Office, the Youth Courts, and other institutions involved in the criminal procedure (State Attorney and / or Youth Courts) or in the execution of juvenile sanctions[362]. Reports on specific circumstances (such as a juvenile's personal characteristics, family circumstances, etc.) may be requested from a Centre for Social Welfare at various stages of the criminal proceedings[363] ; similarly, a Centre for Social Welfare may be requested to provide reports on the implementation of alternative measures in the preliminary procedure[364]. In the execution of alternative measures and sanctions, they [Centres for Social Welfare] have an obligation

[362] Mandić et al., "The View of Experts on the Effectiveness of the Juvenile Justice System," 1265.
[363] for example, Art 65, para.1, Art. 71, Art. 78, para. 2, para. 3 of the YCA/11
[364] Art. 72 para. 2 of the YCA/11

to plan the execution of these measures and sanctions as well as an obligation to report on their implementation[365].

In criminal cases towards juveniles, Youth Courts have jurisdiction[366], and they are, like Centres for Social Welfare, involved in the proceedings from the very beginning. Thus, upon the arrest of a juvenile[367], a youth judge must be immediately informed. He or she will examine an arrested juvenile at the request of the state attorney and decide on detention (shorter detention), pre-trial detention[368], or the juvenile's release[369]. Youth judges conduct evidentiary hearings[370], examine the proposal's adequacy for imposing a juvenile sanction[371] and schedule a hearing. The Youth Court also supervises the execution of educational measures[372]. Article 98 of the YCA/11 describes the modality of supervising educational the execution of measures and defines the cooperation of all three institutions: (1) Centres for Social Welfare, (2) Youth Courts, and (3) State Attorney's Office.

[365] for example, Art. 12, Art. 13, Art. 35 of the AESIJCOM/12

[366] Art. 35 in conjunction with Art. 37, para. 1 and 2 of the YCA/11

[367] Art. 63 para. 1 of the YCA/11

[368] Croatian laws differ between detention and pre-trial detention (CPA). In general, detention is short, up to 36 or 48 hours (Art. 112., para. 5. of the CPA), while pre-trial detention is longer, up to one month with some possibilities of extensions (Art. 130., CPA).

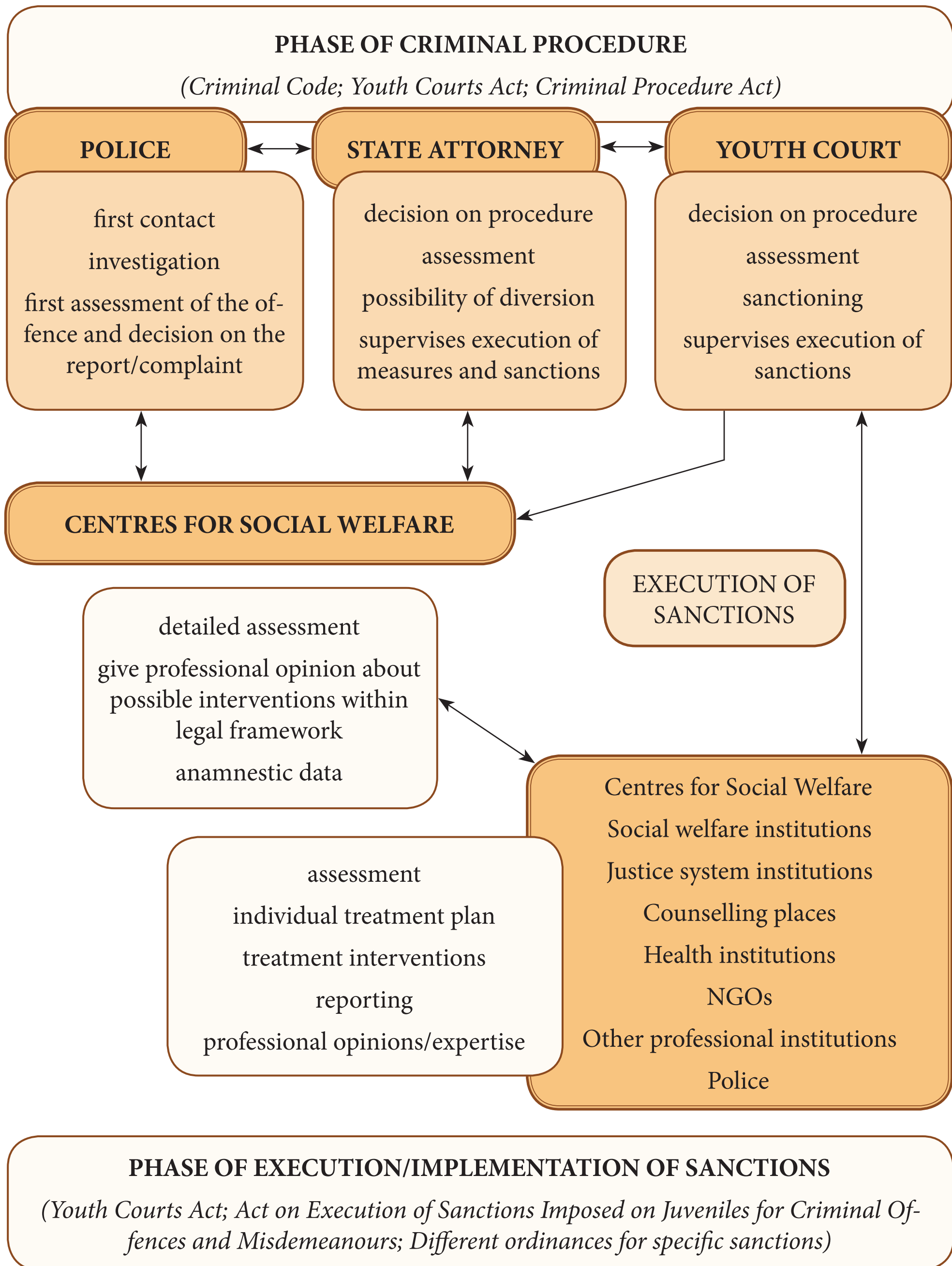
[369] Art. 63 para. 2 and para. 3. of the YCA/11

[370] Art. 77, para. 2 of the YCA/11

[371] Art. 83 of the YCA/11

[372] Art. 96, para. 1 of the YCA/11

Figure no. 3: Schematic visualization of major institutional and professional tasks within the juvenile justice system in the Republic of Croatia



The scheme presented in Figure no. 3 clearly shows that assessment of a juvenile should be performed in different phases of the criminal proceedings. In general, before applying any interventions or imposing any decision upon the juvenile, some type/level of individual assessment (IA) must be conducted. Since the youth state attorney and the youth judge have a broad spectrum of possible legal interventions that they can apply, they should always justify and explain their decisions based on an IA. They can perform an assessment themselves (that is, an expert non-legal assistant employed at the Youth Court, social pedagogue or social worker makes an assessment of the juvenile) or, more commonly, ask the Centres for Social Welfare to perform or organize a juvenile's assessment for criminal proceedings.

Legal Elements and Provisions for Conducting Individual Assessment of Juvenile Offenders in Croatia

The necessity of conducting an IA is contained in the principles mentioned above, and an obligation to conduct it in Croatia is prescribed directly or indirectly throughout the YCA/11 and the AESIJCOM/12, as well as the corresponding ordinances.

Legal provisions for IA can broadly be differentiated between:

1) the IA conducted during criminal proceedings and the execution of sanctions,
2) the IA conducted for the purpose of creating an individual treatment plan when a juvenile offender is sanctioned.

During criminal proceedings, the State Attorney's Office and the Youth Courts, as well as the Centres for Social Welfare, play the most important role in the IA. The Social Welfare System or the Justice System conduct the assessment for the individual treatment plan when a juvenile offender is being sanctioned.

IA Before and During Criminal Proceedings

The principle of appropriateness/opportunity, with the emphasis on the legal purpose of sanctioning described in already mentioned Article 6 of the YCA/11,

is a key element underlying all the provisions for the process of IA during criminal proceedings.

Apart from reasonable suspicion regarding the offence allegedly committed as well as the seriousness of that offence, the State Attorney has to take into account the juvenile's characteristics, his/her closer and wider social environment, attitude towards the criminal offence and other circumstances necessary for further actions to be taken. Before deciding to apply diversion measures[373], the state attorney must assess whether pursuing criminal proceedings towards a juvenile would be purposeful, considering the juvenile's personal and social characteristics[374]. To determine these circumstances, the state attorney can request information from the juveniles' parents or guardians, other persons and institutions, and can also request this data to be collected by an expert assistant (social pedagogue or social worker) at the State Attorney's Office or by the assessment team at the Centre for Social Welfare (usually consisting of a social pedagogue, social worker and psychologist). In this, the importance of a non-legal professional's role can be seen, either a social pedagogue or a social worker, employed in the State Attorney's Office. The State Attorney must also notify the Centre for Social Welfare about the decision subsequently taken[375]. Based on the IA, the state attorney can apply the principles of appropriateness/opportunity and impose some diversion (community) measures.

At the same time, the Youth Court conducts an assessment to see if there are grounds to initiate criminal proceedings towards the juvenile and can dismiss a criminal complaint. If proceedings are initiated, the youth court judge, throughout the entire court proceedings, is provided with various psychosocial assessments by a non-legal professional social pedagogue or social worker employed at the court. Additionally, some assessment elements can be requested from the Centre for Social Welfare or other social and health care institutions. This shows a clear intention to incorporate the work of experts who have knowledge and understanding of young people's developmental and behavioural characteristics into the daily work of youth State Attorneys and youth court judges.

[373] The principle of opportunity.

[374] Art. 71, Para. 1 of the YCA/11.

[375] Art. 71, para. 3 of the YCA/11.

When talking about IA for the purpose of proposing interventions to juvenile offenders it is important to propose a measure or sanction that will best suit each juvenile given his/her characteristics, characteristics of the offence, circumstances in which he/she lives, and other essential factors. The imposition of a specific measure or sanction depends on the IA results, the particular case, and many other factors (risks, strengths, needs, and responsiveness factors) at the level of the juvenile and his environment as well as the profiles of those risks. Since the "one size fits all" approach is not being applied one can say that interventions must be aligned (matched) with the level of criminogenic risk. Thus, for example, alternative measures and sanctions implemented in the community are suitable for juveniles assessed as of low or moderate risk, while institutional sanctions are mostly "reserved" Art. 71, para. 3 of the YCA/11for juveniles of high or very high risk[376]. Table no. 4 shows examples of appropriate measures and sanctions regarding the assessed cumulative level of risk.

Table no. 4: Examples of appropriate measures/sanctions towards juvenile offenders regarding the level of cumulative criminogenic risk within the Croatian judicial system

CRIMINOGENIC RISK LEVEL	APPROPRIATE MEASURES/SANCTIONS
LOW RISK	• Dismissal of the criminal complaint, • Application of the principle of appropriateness/opportunity (diversion) • Special obligations
MODERATE RISK	• Special obligations (with characteristics of treatment) • Intensified care and supervision • Intensified care and supervision with daily stay in educational institution
HIGH/VERY HIGH RISK	• Reformatory • Juvenile prison

[376] N. Ricijaš, *Assessment, Planning and Reporting for Juvenile Alternative Sanctions* (Zagreb: Ministry of Social Policy and Youth, 2012), 23-28.

IA for Individual Treatment Plan – When a Juvenile is Sanctioned

Execution of every juvenile sanction is based on an individual treatment plan usually resulting from comprehensive assessment, emphasizing the principle of an individual approach. Article 7 of AESIJCOM/12 specifically states that the execution of sanctions is based on an individual treatment plan adjusted for criminogenic risk factors related to his/her personality as well as the social background and is harmonised with contemporary scientific and practical achievements. In addition to that, during the execution of sanctions, a juvenile must have the opportunity to attend school.

An individual treatment plan is the fundamental document created by an appointed professional overseeing a specific sanction, in cooperation with the juvenile, his/her parents/legal guardians, other professionals, as well as other persons who can contribute to the holistic approach in the process of execution of an educational measure. An individual treatment plan elaborates all the risk and protective factors along with the procedural steps, methods, aims, and deadlines expected to be performed during the execution of a sanction. More detailed information on the theory concerning process of the development of an Individual treatment plan has been presented in Chapter 3[377].

We conclude that the legal framework sends clear messages on the importance of IA. With regard to the youth in conflict with the law, an IA is defined as a precondition for decisions made by state attorneys or youth court judges on (not) imposing sanctions and / or measures. Considering that the measures and sanctions for juveniles and younger adults range from criminal complaint dismissal to reformatory educational measures and juvenile prison, the requirement to have a quality assessment of the juvenile's needs is understandable. The legislation in Croatia respects the international guidelines and recommendations on procedures towards the young people in conflict with the law and integrates them in the contents of relevant acts. Apart from what has already been mentioned, there are also numerous special documents related to the youth in conflict with the law, emphasizing the need to perform assessment for the purpose of selecting adequate treatment. Both previous and current Croatian legislation (as well

[377] Chapter 3: "Methodology for the implementation of Individual Assessment: assessment, planning and reporting".

as Directive 2016/800)[378] send a clear message concerning the basis on which the relevant decisions and proposals are made. One may therefore interpret this as there being a need for screening, as well as a multi-dimensional, multi-professional and interdisciplinary comprehensive assessment and approach to a youth in conflict with the law, an assessment of individual factors of juveniles and environment (family, school, peers…), possibilities for interventions in practice, and so on[379].

In the following text, we discuss in greater detail the conceptual framework of individual assessment: types of IA, methods in the assessment process, quality criteria and assessment standards, the final result of the IA and the structure of the report.

7.2. Conceptual and Practical Framework of Individual Assessment in Croatia

Types and Levels of Individual Assessment

It is clear that the Croatian legal framework is well regulated and oriented towards rehabilitation and restorative justice approaches, and that IA plays an important role in the different phases of criminal proceedings and the execution of juvenile sanctions. The legislation took into account the fact that young people are developing personalities and that the purpose of sanctions/measures is not achieved only by punishment. It is generally understood that balancing rehabilitative, retributive, and restorative elements and intervention approaches towards juveniles in conflict with the law represent the guiding principle. Reasoning abilities and the capacity to interpret and regulate emotional states, function in social relations, and engage in the decision process have “limits” which are of direct relevance to decisions taken in their best interests. For this reason, it is important to focus on rehabilitation, treatment, restorative approaches, and educational measures. So, it is indisputable that intervention measures for juvenile offenders are significantly focused on treatment and rehabilitation. Assessment is the prerequisite of those decisions/interventions.

[378] Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on Procedural Safeguards for Children who are Suspects or Accused in Criminal Proceedings (SL L 132, 21. 5. 2016.).

[379] A. Žižak and N. Koller-Trbović, “Intervention Measures for Juvenile Perpetrators of Crimes,” *Croatian Annual of Criminal Law and Practice* 6, no. 2 (1999): 767–789.

Considering the legal basis of IA, it is clear that the assessment of juvenile offenders in Croatia, depending on its purpose and objectives, is conducted predominantly within two systems that cooperate closely:

1) the justice system – when the Court or State Attorney's Office conduct assessment for their own purposes, usually by non-legal professionals (social pedagogues or social workers) employed in those institutions,
2) the social welfare system – when the assessment is conducted for the purposes of the bodies that ordered it – the Court or State Attorney's Office, in the vast majority of cases, in order to make a decision on a suitable intervention/measure/sanction or intervention/treatment planning when a sanction has been imposed.

Additionally, depending on the specific features of the juvenile, the criminal offence, and the legal question at hand, assessment is sometimes conducted within the health care system**.**

In sum, we can conclude that, depending on the specific case, phase of criminal proceedings, purpose, objective, assessment issues, focus, assessment steps and other elements, broadly speaking, in the Croatian system we distinguish between:

1) screening/detection/triage/selection. Screening provides initial information about some aspects of a youth's functioning; dividing juveniles into groups according to the type and urgency of the proceedings; identifying developmental risks and less severe behavioural problems or a higher criminogenic risk; indications for a deeper, more comprehensive assessment etc., and
2) comprehensive assessment which involves the collection of more extensive information and a more in-depth exploration of the characteristics of a youth and his or her circumstances and environment. For detailed, full and complex assessment of intervention needs please see below.

In addition to these, forensic evaluation is also used as a specific form of juvenile evaluation/assessment. This is a mostly psychological or psychiatric evaluation that assists a fact-finder in answering a legal question setting out how cognitive, emotional and behavioural aspects are related to a specific legal issue that is to be resolved. Other professionals may also be involved.

Furthermore, assessment can be observed at **two levels**, with regard to its purpose, manner of implementation and the level of decision making[380]. Both are present in Croatia to a large extent:

1) **macrolevel** assessment, oriented towards general decision making within the justice system regarding further proceedings towards a juvenile or an intervention proposal;
2) **microlevel** assessment, oriented towards particular intervention/treatment guidelines, conducted after or simultaneously with the macrolevel assessment, with the objective of defining a particular treatment/measure/sanction.

Since the purpose of the most frequently used assessment is to propose and plan further interventions for juvenile offenders, its objective is to collect, analyse and interpret the data on the features, risks and strengths of children and youths with behavioural problems[381] or in conflict with the law as well as their intervention needs, and also the features, risks and possibilities of their environment to satisfy those needs[382]. Comprehensive assessment involves the collection of more extensive, in depth information and exploration of a youth's characteristics, his or her circumstances and environment (more so than screening, for example). It is a detailed and complex form of assessment of needs, criminogenic risk, juvenile's strengths and protective factors in their environment, aetiology and phenomenology of behavioural problems in general.

Briefly speaking, IA goals and tasks can be summarized as screening, comprehensive contextualized assessment, treatment and behaviour projection and prediction,

[380] Von Aster et al., "Differentielle Therapeutische und Paedagogische Entscheidungen in der Behandlung von Kindern und Jugendlichen," *Psychoterapeut* 39, (1994): 360–367.

[381] In Croatia, children and young people who are perpetrators of criminal offences are seen through the lens of the broader concept and umbrella term of *children and youth with behavioural problems*. Behavioural problems refer to a continuum of behaviours from those which are simpler, less severe, less dangerous and harmful to children themselves and others, to those defined and / or sanctioned by laws and often more severe in terms of consequences and needs for treatment. This notion subsumes the more extreme forms of this phenomenon in both directions: from risky behaviour, through behaviour difficulties, to behaviour disorders. Offending behaviour is therefore included in the umbrella term problems in the behaviour of children and youth, and range on a continuum from less dangerous and harmful behaviours for themselves and others to those high-risk behaviours that have a negative prognosis (Koller-Trbović, Žižak and Jeđud Borić, 2011).

[382] N. Koller-Trbović, A. Mirosavljević and I. Jeđud Borić, *Needs Assessment of Children and Youth with Behaviour Disorders - Conceptual and Methodical Guidelines* (Zagreb: UNICEF Office for Croatia, 2017), 23–69.

intervention planning, and intervention evaluation. There are several ways of performing this, and two basic approaches to IA are present in Croatian practice, depending on the manner of collecting and interpreting data on a juvenile and his/her environment. These two basic approaches are not mutually exclusive but complementary and jointly used[383]. They are as follows:

1) The **actuarial** or **statistical approach** is the so-called science-based approach, which is "objective", **measurable**, based on standardized instruments of assessing various aspects and dimensions of personality, emotions, behaviour, criminogenic risk, developmental risk, and similar. In terms of risk, it involves a mathematical calculation of risk; and
2) The **clinical** and **constructivist** approach, which is **qualitative**, based on the implementation of diagnostic/explorative semi-structured interviews and complementary methods and techniques; this approach is participatory, oriented towards positive aspects as well as strengths of juveniles and their environment, and the empowerment of young people. However, it is often deemed impressionistic and subjective.

In accordance with this dual approach discussed in the case of Croatia, *Shlonsky & Wagner*[384] state that assessment involves at least two different processes:

- risk assessment (predicting future problems), and
- a contextual assessment of a child or young person's functioning, important for intervention planning.

Each of them has separate functions. For example, risk assessment instruments inform intervention urgency and intensity while structured needs assessment contributes to individualized case planning. The authors emphasize that both ap-

[383] A. White and P. Walsh, *Risk assessment in Child Welfare* (Centre for Parenting & Research. Research, Funding & Business Analysis Division. NSW Department of Community Services: Ashfield NSW, 2006); Barry, "Effective Approaches to Risk Assessment in Social Work: An International Literature Review Final report"; R. D. Hoge, "Forensic Assessments of Juveniles: Practice and Legal Considerations," *Criminal Justice and Behaviour* 39, no. 9 (2012): 1255–70; N. Koller-Trbović, A. Mirosavljević and I. Jeđud Borić, "Intervention Needs Assessment of Children and Youth with Behaviour Problems," in *Risks and Strengths Assessment Aimed for Treatment planning (Results of Scientific Project: Matching Interventions with Needs of Children at Risk - Creating a Model)*, ed. A. Žižak and N. Koller-Trbović (Zagreb: Faculty of Education and Rehabilitation Sciences University of Zagreb, 2013), 23–67.

[384] A. Shlonsky and D. Wagner, "The Next Step: Integrating Actuarial Risk Assessment and Clinical Judgment into an Evidence-based Practice Framework in CPS Case Management," *Children and Youth Services Review* 27, no. 4 (2005): 409–427.

proaches are important for decision-making. Actuarial risk assessment assesses the risk of reoffending, but it does not indicate which clinical factors are the most important for effective intervention. The authors believe that experts must "translate" information from both approaches into the selection of a specific effective intervention. Often, a clinical judgment is required to make a connection with the legal questions.

In short, these two approaches should be combined and integrated to enable assessment of a juvenile's functioning, identifying and clarifying relevant problems at the individual, family, community, and societal level, choosing (treatment) interventions, establishing planned goals, and management of risk using a multidisciplinary approach[385]. The focus of criminal justice must be on resolving and alleviating other problems in juveniles' lives that might influence their behaviour, not solely on risk management. Therefore, procedures must encourage both approaches, as well as active participation of the offender in his/her ongoing risk assessment and management. The juvenile should be involved in an ongoing self-assessment of risk and in joint decision-making in relation to risk management as well as the minimisation of risk[386].

Assessment contexts include different **settings** in which services are provided to juvenile offenders. In Croatia one of the common criteria in the types of assessment is the level of institutionalization, as shown in Figure no. 5[387].

[385] C. Schwalbe, "Strengthening the Integration of Actuarial Risk Assessment with Clinical Judgment in an Evidence-based Practice Framework," *Children and Youth Services Review* 30, (2008): 1458–1464.

[386] Barry, "Effective Approaches to Risk Assessment in Social Work: An International Literature Review Final report".

[387] Koller-Trbović, Mirosavljević and Jeđud Borić, *Needs Assessment of Children and Youth with Behaviour Disorders - Conceptual and Methodical Guidelines*, 23–69.

Figure no. 5: Types of assessment in relation to the environment where it is conducted and to the level of out-of-home placement

INTEGRAL	implemented without placing a juvenile in a specialised institution/service, in his/her natural setting (e.g. school, family)
OCCASIONAL / DISCONTINUED	conducted so that a juvenile talks to an expert who conducts interviews and tests, but the juvenile is not separated from his environment
HALF-DAY	a juvenile spends part of the day in organised conditions in specialised institutions/services, but is not separated from the family or the environment where he/she lives
RESIDENTIAL	a juvenile is placed in a specialised institution, is separated from his/her close and sometimes wider family, but for a limited period of time (usually one month)

The decision on the type and level of assessment that will be conducted with regard to a particular juvenile is made depending on screening judgements and results, as well as on the basis of the specific situation and each particular case, i.e. the specific features of the type and intensity of risk as well as problems of the juvenile in relation to the consequences, severity and the degree of danger arising from the behaviour for the juvenile and / or his or her environment, the need to protect the juvenile and / or his or her environment (the public), but also depending on the features of the criminal offence, the attitude of the juvenile towards the committed criminal offence and the victim, the youth's readiness to cooperate, undergo an intervention and readiness to change[388]. In essence, if the screening results in a particular case are more serious and unfavourable, then it is the more intensive and "higher" levels of assessment that are selected and proposed.

The next section is a detailed description of the two levels of assessment that are most frequently used with juvenile offenders in Croatia[389]:

1) **Occasional/discontinued assessment** is characterized by not separating the juvenile from his/her family and wider environment. It is conducted

[388] Koller-Trbović, Mirosavljević and Jeđud Borić, *Needs Assessment of Children and Youth with Behaviour Disorders - Conceptual and Methodical Guidelines*, 23–69.

[389] *Ibidem*

by a team of experts in specific services and institutions (such as Centres for Social Welfare, State Attorney's Offices, Courts, health care centres and clinics as well as hospitals). That means that the juvenile and his/her parents/guardians, upon an invitation and in agreement with members of the team of assessment experts from the corresponding institution, undergo tests and examinations and participate in interviews over several hours on specific days. They are primarily in contact with a social worker or a social pedagogue and, if necessary, with other team members, in particular a psychiatrist or psychologist. This is a **short-term assessment** and is oriented towards an individual approach. This assessment type is the most commonly used in practice at this time.

2) **Residential assessment** refers to a systematic, structured and planned process of assessing a young person in different life situations and during a one month stay in an institution, in a maximum group of 12 children or young people who are at high risk, have a history of criminal offences and complex needs. The criteria for residential assessment are:

- Age- children and youth, both male and female between the ages of 9 and 21;
- Risky behaviour- young people whose behaviour directly and substantially jeopardizes themselves and others;
- A juvenile at risk due to neglect or abuse occurring in his/her environment;
- Instances when the interventions conducted previously did not give the expected results;
- Instances when there is a greater probability of a highly structured and complex (mostly institutional) treatment/sanction being imposed.

A young person is separated from his/her primary environment, family, community and often from his/her domicile because that is considered necessary for various reasons, such as when the living conditions in the family put him/her at risk, or when they are experiencing negative peer pressure. The young person stays in an institution for 24 hours a day (except when in school, during home stays at weekends, for medical appointments etc.) and is constantly supervised by experts. This type of assessment requires a team of experts (social pedagogue, psychologist, social worker, psychiatrist for children and adolescents, neurologist, medical doctor, pedagogue, and others if necessary). In Croatia, it is conducted by special departments within social welfare educational institutions for children and youth

with behaviour problems (formerly known as diagnostic centres), within centres for providing services in the community, and by some health care institutions (e.g. the Psychiatric Hospital for Children and Youth in Zagreb, a Psychological Medicine Clinic)[390].

Methods in Assessment Process

This chapter discusses methodology in the IA process, that is areas of assessment, and IA method and techniques.

So far, only the formal and organizational conditions for conducting a certain type and level of IA in Croatia have been described. However, the essence of that process is the issue of quality, subject and manner of assessment, in addition to the matter of who conducts it. The comprehensiveness of the assessment process is summarized in a schematic overview in Figure no. 6 below.

Figure no. 6: Elements of assessment comprehensiveness[391]

SOURCES OF DATA	INFORMATION/DATA
• Juvenile • Parents • Other important persons/observations	• Facts • Assessments • Self-assessment and self-report
ASSESSMENT METHODS AND TECHNIQUES	**AREAS OF ASSESSMENT**
• Gathering relevant documentation • Observations • Interviews • Testing • Assessment and self-assessment methods • Complementary methods	• Previous and current criminal offences and sanctions • Family • Education • Peers • Addiction, substance abuse • Personality/behaviour • Attitude/orientation

[390] Koller-Trbović, Mirosavljević and Jeđud Borić, *Needs Assessment of Children and Youth with Behaviour Disorders - Conceptual and Methodical Guidelines*, 23–69.

[391] Koller-Trbović, Mirosavljević and Jeđud Borić, *Needs Assessment of Children and Youth with Behaviour Disorders - Conceptual and Methodical Guidelines*, 23–69.

A wide variety of assessment tools and procedures is used because no (single) tool or procedure can adequately account for and predict human behaviour. Likewise, tools should not be seen as replacing but rather as informing professional judgement.

The legislation clearly defines juvenile IA parameters as well as the experts who should conduct it (primarily a social pedagogue, a social worker, a psychologist and, if necessary, other professions), whereas the methods and techniques implemented in their work depend on each profession and the diagnostic/assessment issue in focus. Broadly speaking, important assessment areas are previous and current criminal offences and sanctions, family, education, peers, addiction and / or substance abuse, personality/behaviour and attitude/orientation[392]. Information sources must be numerous and diverse in order to ensure a comprehensive approach to the data on juveniles from different environments and relationships. The young person is the key data source, followed by their parents/guardians, then their teachers/educators, and finally, other important persons in the life of the juvenile, as well as other experts who are able to establish a relationship with the young person for a particular time period. In that context, it is possible to think about the types of information that are gathered and interpreted, as related to the sources and data types. Therefore, some data represent objective facts, some data represent assessments made by experts and other persons, whereas other data are gathered in the young person's self-reports and self-assessments, representing their perspective and view of the situation. All of this needs to be "run through" various fields/areas of assessment and different environments and situations. With respect to the responsivity factors that are important in planning and implementing interventions, it is necessary to examine a whole range of other areas that are closely related to the history and functioning of the juvenile him/herself, of his/her parents, and of the system itself.

The selection and application of tools, methods and techniques of assessing the youth depend on a variety of factors, criteria and circumstances. For example, the context of assessment (level, type of the assessment, individual or group approach, assessor characteristics and profession, assessor competencies…), characteristics of the young person (age, gender, maturity…), and most importantly, the point, purpose and goals of the IA (what do we want to assess and why?).

[392] R. D. Hoge and D. A. Andrews, *Youth Level of Service/Case Management Inventory (YLS/CMI) - User's Manual* (USA, North Tonawands, New York: MHS, 2002).

The "obligatory" or key methods are the method of observation, interviews, testing, assessment and self-assessment, as well as the method of gathering relevant documentation. It is not necessary, but it is preferable to apply other methods and accompanying techniques, which is why they are called complementary methods, some of which are the various creative and expressive techniques, interactive games, sociometry and others.

The following section looks in more detail at the quality criteria for experts' opinions and proposals / IA reports. An IA report is the culmination of the assessment process. A good report is an accurate and clear presentation of the collected information together with the assessor's interpretations, conclusions, and intervention recommendations.

Individual Assessment Report

What kind of IA report does the state attorney or youth judge expect when ordering an assessment? What is relevant information for them? What is useful for making decisions? What should IA consist of? What do the assessors need to provide at this point? These are important questions the assessor as well as judge/state attorney must think of.

The final result of the IA process should be the written opinion and proposal (hereinafter: the IA report or report). It should contain all relevant information and recommendations for making decisions or implementing intervention. The report structure depends on the type and level of IA conducted - that is initial screening, or comprehensive and detailed assessment, and is related to the specific purposes and questions which are in focus, as well as the phase of the criminal procedure (as assessment may be carried out during different phases of criminal proceedings or for the imposition of sanctions, as opposed to assessment carried out to create an individual treatment plan after a juvenile offender has been sanctioned).

Müller[393], Žižak & Koller-Trbović[394], Underwood, Chapin & Griffin[395] state that, depending on the specific case, assessment approach, purpose, objective, and focus, the IA report should answer the following questions:

[393] B. Müller, *Sozialpadagogisches Konnen* (Lambertus, 1994).

[394] Žižak and Koller-Trbović, "Intervention Measures for Juvenile Perpetrators of Crimes," 767–789.

[395] L. Underwood, D. Chapin and P. Griffin, *Procedural Guidelines for Conducting Need/Risk Screening and Assessment* (The National Center for Mental Health and Juvenile Justice, 2002).

- Does the juvenile show behavioural problems and if yes, which ones?
- Is the behaviour monosymptomatic or is it about more symptoms and dimensions of behaviour problems? What can be said about complexity and comorbidity?
- In which life areas does the juvenile manifest problems?
- What is the quality of the juvenile's psychosocial functioning in different life areas (especially family, school, peers, and community)?
- In which situations, towards which persons, in which circumstances are the problems most obvious?
- What are the consequences of behaviour for the juvenile and / or for others?
- What is the frequency, intensity and duration of behaviour problems?
- Who recognizes the problem and how? How does the juvenile see it?
- Are there any organic, physiological problems or other diseases?
- Does the problem influence the developmental abilities, learning abilities, actions, desires, motives, social competences of the juvenile?
- What are the environmental conditions and factors increasing and "causing" the juvenile's behavioural problems? What supports the occurrence, development, and persistence of the problems?
- What are the strengths and competencies of the juvenile, his/her family, and his/her wider environment?
- What are the expectations of the juvenile, the parents, and the professionals?
- What was the effect of previous interventions (if any)?
- Which interventions can help him/her most? What is the time frame for these interventions?
- What are his/her chances of behavioural change?

In order to separate the good from the poor, a number of criteria must be applied. Rosado[396] emphasizes criteria for judging the quality of an IA process and report. In that sense, the authors point out the following minimum content of a good assessment:

- Inclusion of relevant identifying information (e.g., who referred for assessment, juvenile's involvement with the legal system).

[396] L. M. Rosado, *Kids are Different: How Knowledge of Adolescent Development Theory Can Aid Decision-Making in Courting. Understanding adolescents. A Juvenile Court Training Curriculum*. American Bar Association Juvenile Justice Center, Juvenile Law Center, and Youth Law Center, 2000.

- Statement of legal question(s) to be addressed (purpose and goals of assessment).
- Identification of all sources of information relied upon (e.g., review of medical or school records, interview with user, testing, parent interview, review of police reports).
- Description of relevant mental states, capacities, abilities, knowledge, and / or skills that are relevant to the legal question at hand.
- Description and interpretation of the relationship between mental states, capacities, abilities, knowledge, and / or skills assessed and their causal connection to the youth's abilities or issues in which the State Attorney Office/Youth Court is interested.
- Information that contextualizes the conclusions.
- Information qualifying the conclusions drawn**.** What external limitations (i.e., in the testing conditions, the tests themselves, the amount of time the expert was given to interview the relevant parties, in the amount of background information that the professional was able to collect and review, etc.) should be taken into account when relying on the expert's conclusions?
- Specific recommendations for intervention (when appropriate) with a reasonable attempt to identify interventions that are available in the community.

Broadly speaking, the report represents an interpretation and synthesis of the information collected in terms of the type and level of a juvenile's behavioural problems, their possible interpretations, "causes" and risk factors, the needs, strengths and protective factors displayed, a young person's environment, personal, family and school aspects, and the potential of the environment to meet those needs. It contains a set of selected but integrated and interpreted information relevant to the IA questions that are in focus. Instructions and recommendations for the assessment of children and youth who manifest socially unacceptable behaviour[397] were created. According to these instructions, assessment reports must meet specific quality criteria and respect certain guidelines, as follows:

1. The relevance of the data, which means that the data in the reports should be selected, useful, purposeful, important, and relevant to the juvenile,

[397] Instructions and Recommendations for the Assessment of Children and Youth who Manifest Socially Unacceptable Behaviour (Zagreb: Republic Institute for Social Work, 1984).

both concerning his/her behaviour and his/her general psychosocial functioning. Also, data must briefly present essential aspects of personality, so it cannot be carried out uniformly for all young people. This means that data relevant for the intervention should be addressed and should be concrete and specific. In short, the report must contain only relevant information for understanding the needs of the juvenile as well as information relevant for decision-making or further interventions.

2. Argumentation means that it is necessary to specify the data sources in the report as well as professionals' arguments for data interpretations put forward, so that one can check and validate the collected information and / or IA reports. Further, the data should be interpreted in terms of its meaning for the juvenile and for the proposed intervention. It is necessary to explain how and why the data are interpreted as they are, so that information can be understood and verified.

3. The comprehensibility of the report refers to two important aspects. On one hand, the terminology used by different assessors may not be understandable to other (legal) professionals or participants in criminal proceedings. Besides, experts sometimes use different language or terminology (or even a different understanding) for the same phenomena, which can create confusion and problems in interpretation and understanding of the report and its conclusions and proposals. Alternatively, some experts write in a lay language which is also a problem and should be avoided. On the other hand, regarding the comprehensibility of the report, it is important to note that sometimes assessors write about the needs of the juvenile that they neither understand nor have the competencies to assess, which is neither professional nor humanly justified. In such cases (which should be rare) professionals should be open and honest and say that they are not able to provide a more accurate report and interpretation of the juvenile's behavioural problems for specific reasons. Thus, one must be professionally honest and leave the assessment to those professionals who are competent to assess that specific characteristics or give the answer to the assessment question in focus.

4. Determination means that the data, information, and interpretations of the findings should enable a decision to be made. Data and interpretations

in the report must also logically lead to the selected or proposed decision concerning procedure or intervention made by professionals. However, as stated above, in some cases professional morality gives an expert the right to refrain from making a decision when he/she lacks relevant information or necessary competencies for IA (but this cannot be the rule!). This principle also refers to the prognosis of future juvenile behaviour based on the data presented in the reports. It is, therefore, necessary to determine under what concrete conditions, under a specific intervention, optimal results and outcomes can be achieved for the specific juvenile. That is why it is necessary to point out the specific problems, challenges, and difficulties that can be expected, but, more importantly, to emphasize those (positive) aspects of personality, behaviour, and other circumstances that may serve as a starting point, basis, and stronghold for future intervention. The intervention recommendations and suggestions contained in the report should be achievable in practice and presented concretely and unambiguously. For example, it is not possible to propose an intervention that does not exist in a specific community, although it is clear that such an intervention would be most appropriate for a specific case. It is, therefore, necessary and desirable to always emphasize in the report those elements that are assessed as necessary and adequate in order to constantly find different and better solutions and intervention options. However, it is also important to give recommendations for intervention that can be realized in the given circumstances for the juvenile to have a chance for change. In short, the report should provide answers to the specific diagnostic questions in focus as well as clear, realistic, and useful recommendations for intervention and the intervention plan, when needed. Recommendations and suggestions for further interventions (if needed) are part of the report, and must also be realistic, achievable in practice and concretely and unambiguously presented.

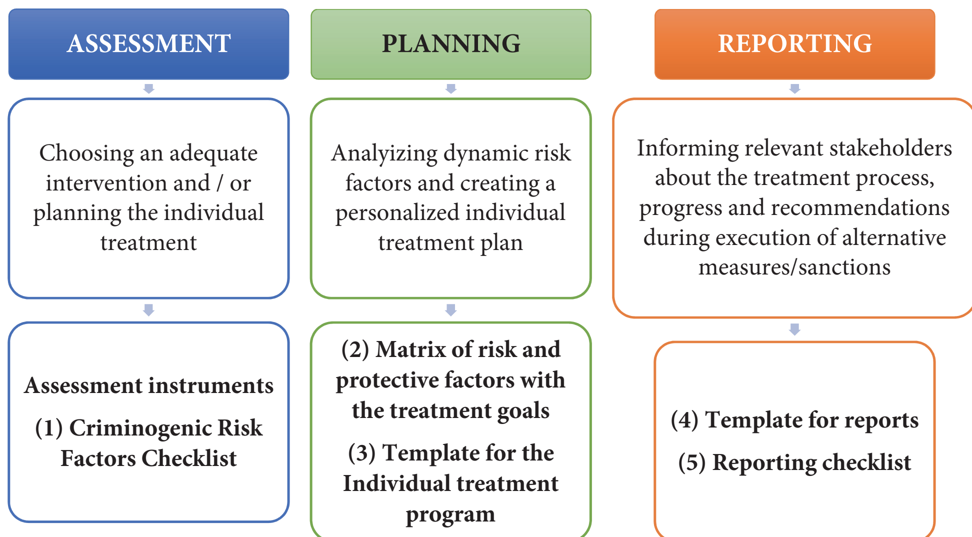
In the next section an example of Croatian methodology of practical implementation of assessment, planning and reporting is shown.

7.3. Methodology for the Implementation of Individual Assessment: Assessment, Planning and Reporting

The process of assessment, planning and reporting when conducting alternative measures or sanctions for juvenile offenders in Croatia was standardized in 2012 through the Handbook and educational materials[398]. This process was needed due to different practices in different Croatian regions. Unified templates and instructions for these procedures were created in 2012 and training for social welfare system professionals was organized.

As already mentioned there are two main purposes of the assessment in the juvenile criminal justice system: (1) in the beginning of the criminal process, after criminal charges, as the basis for choosing the most appropriate measure/sanction (intervention), and (2) at the beginning of implementation of a particular measure/sanction, where its purpose is to identify treatment needs and to create an individual treatment plan. Schematic presentation of the process and materials are presented in the figure no. 8 below.

Figure no. 7: Schematic representation of the Process of assessment, planning and reporting



[398] Ricijaš, *Assessment, Planning and Reporting for Juvenile Alternative Sanctions.*

The Croatian juvenile justice system does not use a standardized actuarial risk-need assessment instrument for identifying the level of criminogenic risk of juveniles. Different scientific projects have used foreign instruments for scientific purposes (e.g. YLS/CMI), to date, none of these instruments have been standardized and implemented within the juvenile justice system as an obligatory procedure. Professionals therefore use structured templates for assessment based on interviews and anamnestic data, as well as for the purpose of creating an individual treatment plan and writing a report. The individual treatment plan is created alongside the information provided by other types of assessment (for example, psychological testing of different personality traits, and similar). The instruments shown in the figure above are presented in detail below in the following sections.

Assessing Important Risk Factors: Criminogenic Risk Factors Checklist

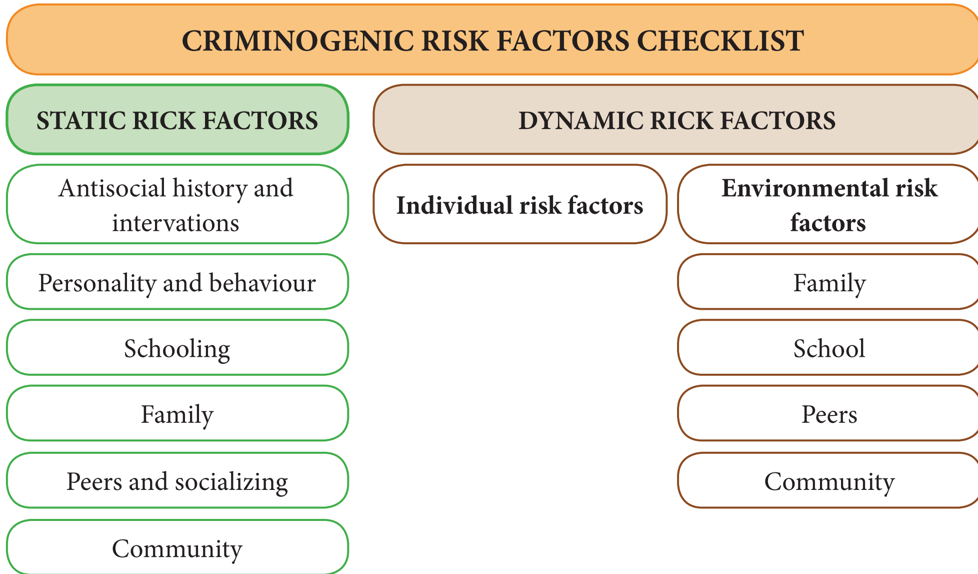
As already noted, standardized risk-need assessment instruments have not been adopted in Croatia. Therefore, the Criminogenic Risk Factors Checklist was created as a guide for professionals listing the most relevant information one should gather and / or assess in order to create the Individual Treatment Plan / Programme[399]. This Checklist consists of a spectrum of static and dynamic risk factors relevant for describing and understanding specific delinquent behaviour and planning interventions. The structure of the Checklist (schematically shown in Figure no. 8) follows the theoretical Risk-Need-Responsivity model[400]. It also provides a space for the professional (assessor) to add their own descriptions (important characteristics), since the theory, no matter how extensive and detailed, can never predict all the risk factors present in any one case, i.e. the life of the young person. Criminogenic risk factors are divided in two major categories:

1) **Static Risk Factors** – those which cannot be changed, but are important for understanding present behaviour and should be taken into consideration (mostly historical elements, from the past);
2) **Dynamic Risk Factors** – those which can be changed or influenced at some level and which are the basis of understanding criminogenic needs and / or needs of the treatment.

[399] Individual Treatment Programme is the official legal term for the individual treatment plan (Youth Courts Act).

[400] See Chapter no. 3 of this book.

Figure no. 8: Schematic representation of Criminogenic Risk Factors Checklist



Static risk factors are descriptive, and the assessor should read through each item (variable) and note whether some characteristic is relevant to the case or not. The assessor should also keep in mind that information written in this Checklist is available to other professionals included in the criminal procedure, and possibly to the juvenile and his parents/caregivers. Therefore, the language should be professional and appropriate, while all information should be correct and verified, or should mention that they are sourced from, for example, the juvenile's or the parents' reports. In addition to assessing and creating an individual treatment plan, the assessor may use this checklist as a template for conducting interviews and gathering information with the aim of writing the assessment report.

In the area of dynamic risk factors, different characteristics of the personality and behaviour of a juvenile, his/her family, school, peers, and the community in which they live are listed. The task of the assessor is to determine for each item whether the specified characteristic is present, and if so, what risk it poses to present behaviour and future delinquent behaviour (low, moderate, or high risk). The main aim of this part is to help assessors to focus on the areas that should be addressed by interventions.

Dynamic factors are related to the current situation of a juvenile and should reflect the period of the preceding 6 months. This information is also very important to all persons involved in the implementation of interventions and should therefore be made available to other experts. For example, this may be required if the implementation of some correctional/counselling measure is entrusted to an external associate or another employee in a Centre for Social Welfare, as well as in situations where a juvenile is given a specific obligation to be carried out within another institution (e.g. community work).

The first part provides a list of different individual risk factors where focus should be on behaviour, rather than on personality traits or mental health diagnoses. This is particularly the case in situations where an official medical examination and diagnosis have not been provided. Therefore, for example, instead of assessing "impulsivity, aggression, anxiety", the assessor focuses more on manifested behaviours. For example, impulsive behaviour, aggressive behaviour, anxious behavioural symptoms. These elements are important as the treatment needs often represent different social and emotional skills that contribute to better self-control, problem-and conflict-solving skills and / or ways to cope with unpleasant emotions. Of course, this does not imply that further psychiatric, psychological and / or psychotherapeutic interventions are not needed. On the contrary. But the means to achieve and target individual treatment needs are elaborated in the Individual Treatment Plan as a separate document, and other psychosocial professionals can be involved in the implementation of alternative measures/sanctions.

Assessing all risk factors from the Checklist, the assessor determines the level of risk attached to such behaviour or characteristic; this certainly represents a somewhat arbitrary professional opinion. But this Checklist is not a formal statistical screening instrument or a scale that has points, thresholds, and categories of criminogenic risk. It is merely a guide for assessors to address all the relevant factors that can contribute to risky/delinquent behaviour and that should be addressed with the interventions. Items that are assessed as moderate and high risk require a specific intervention plan and should be revisited and elaborated on in further documents. In addition, the assessor may use this checklist as a template for conducting interviews and gathering information with the aim of writing the assessment report.

Developing an Individual Treatment Programme

After the process of assessment and better understanding of the juvenile's traits, behavioural patterns, relationships and circumstances, professionals should begin to draft an individual treatment plan. In Croatia, the Individual Treatment Programme is an official document and is created in cooperation with the juvenile and his/her parents/caregivers who should also sign it as evidence of their acceptance.

Two templates are foreseen for the development of an individual treatment programme:

1. Matrix of risk/protective factors and treatment goals,
2. Individual Treatment Programme template for the implementation of intervention.

Matrix of Risk/Protective Factors and Treatment Goals

The matrix of risk/protective factors and treatment goals serves to easily identify the 'high and moderate' risk factors and to define the protective factors and objectives of the individual treatments required for an individual treatment programme. There are two reasons why it is necessary to repeat the risk factors in this matrix, in relation to the Checklist shown above.

First, the Checklist is used for assessment before and during the previous proceedings. The Matrix is filled in after the final sanction is imposed and may be filled in by another person. It is not uncommon that one professional does the assessment, while another professional, who will conduct the intervention (sanction) plans the individual treatment.

The second reason is related to the specific information recorded in the Matrix, in relation to the Checklist. The Matrix focuses more on the dynamic risk factors and adds protective factors (strengths) and the goals of intervention. The first unit of the Matrix, which covers static risk factors, generally repeats the "historical risk factors" indicated in the Checklist, but in a slightly different way. This part summarizes major static factors that have been identified in one place, which is very helpful for other juvenile justice professionals, especially

legal professionals who monitor (supervise) the implementation of the sanction and treatment process (e.g. youth judge and youth state attorney/prosecutor).

The second part of the Matrix is of particular importance to the Individual Treatment Programme because it records protective factors or strengths of the juvenile and / or his environment, which contribute to the achievement of the treatment goals. As the process of planning the intervention is also a part of the intervention process, it is vital that the juvenile has a sense of his/her strengths and positive sides and that these are noted and recorded in the official document. The process of assessment and the treatment plan should not focus only on risk factors, negative behaviour, or adverse psychosocial consequences of such behaviour.

There may be fewer treatment goals than there are identified risk factors as it is often possible that due to intercorrelation and the context of manifesting risk behaviour, the same goal will address multiple risk factors. For example, if the treatment goal is to achieve better communication and coping skills, the realization of this goal should also have an influence on aggressive behaviour, impulsive behaviour, and family relationships. It is therefore important to choose the most suitable intervention and to define accurately treatment goals that a juvenile can understand. This way, a juvenile knows what is expected in the intervention process (correctional measure/sanction), not only in the light of future delinquent behaviour, but also in the wider aspects of psychosocial functioning.

Risk and protective factors (strengths), as well as treatment goals in the Matrix are written in bullet points as short notes. The matrix is not meant for extensive elaboration, as the Individual Treatment Programme will provide more detailed information about context, treatment methods, deadlines, and professionals included in the process.

Table no. 9: An example of dynamic risk and protective factors (strengths), with treatment objectives

INDIVIDUAL RISK FACTORS		
RISK FACTORS	**PROTECTIVE FACTORS**	**TREATMENT OBJECTIVES**
• reckless and impulsive behaviour • aggressive response in situations of frustration	• shows empathy and adequate emotional reactions when expected • accepts the intervention and the professional	• the development of self-control and appropriate responses in situations of frustration
ENVIRONMENTAL RISK FACTORS		
FAMILY CHARACTERISTICS		
• permissive and inconsistent parental behaviour of the mother • mother's superficial co-operation in treatment	• relationship between the juvenile and mother is open and both are emotionally strong	• the development of mother's authoritative and consistent parenting style • the development of internal motivation and consistent cooperation in the treatment process
CHARACTERISTICS OF THE SCHOOL		
• high rate of delinquent behaviour among other pupils at school	• the educator has a positive authoritative impact on a juvenile	• strengthening skills for resisting the negative influence of peers
PEER CHARACTERISTICS		
• two of the closest friends are known as criminal offenders and have a court decision about a correctional measure	• a juvenile has some contacts with friends from the primary school who are prosocial in their behaviour	• strengthening close relationships with prosocial peers

Whenever possible, risk factors should be defined as behaviours rather than fixed personality traits or diagnoses. Most of the psychosocial interventions within the juvenile justice system are not psychiatric or psychotherapeutic, but counselling, supervision or correctional measures provided by social workers, social pedagogues and / or psychologists and other educators. They aim at changing undesirable, harmful, risky, and illegal forms of behaviour. It is therefore essential to define such behaviours in the Matrix, but also to underline strengths and potentials, as well as expected outcomes. It is understandable that some less functional personality traits support different risk behaviours, but correctional measures are not psychotherapeutic treatments.

The objectives of the intervention should be realistic, in line with the possibilities and context of each specific case and that objectives should be defined positively in a way that reflects desirable behaviours, i.e. preferred circumstances. For example, a goal should not be defined as "... the juvenile does not engage in verbal conflicts...", but "... the juvenile has improved problem solving communication skills...".

Individual Treatment Programme

Creating and preparing the Individual Treatment Programme for every juvenile sanctioned within the juvenile justice system is a legal obligation in Croatia. The laws define timelines and subject areas that the Programme should cover. As was previously mentioned, the juvenile and his/her parents/caregivers must sign the Programme as an indicator of their compliance with the content. If they refuse to sign it (accept it), the Centre for Social Welfare is required by law to urgently inform the Court and / or the youth state attorney about the inability to conduct the sanction.

The template for the Individual Treatment Programme contains elements that provide all the necessary information about the case – formal information, documentation that was used to create the Programme, interviews that have been conducted for the purpose of creating the Programme and identified risk behaviours with the intervention plan categorized into the following domains:

1) Individual factors,
2) Schooling and school,

3) Family circumstances,
4) Peers / leisure time / community.

Each of these domains contains six elements that represent the essence of the Individual Treatment Plan: the definition of specific risk factors, its description, treatment goals, methods and procedures to be used, the participants who are to be engaged in this specific part of the intervention and expected deadlines.

Reporting About the Sanction

Croatian legislation requires constant monitoring of the execution of every juvenile sanction. This monitoring is realized in two ways: (1) Every three months, the institution in charge of execution/implementation must write reports about the process and the results to the Court and the State Attorney's Office, and (2) The Court that adjudicated the sanction convenes control trials at least once every six months, in order to gain a better understanding of the process and to decide on its continuation in certain cases. Therefore, written reports are of the highest importance as they represent a summary of interventions and results within a certain time frame.

The template for the reports also provides a structured schema containing all the information concerning the quality of sanction implementation which is necessary for the other institutions (Youth Court and State Attorney's Office). Alongside formal information, reports should elaborate on the following four domains:

1. key areas of intervention during the reporting period,
2. analysis of contacts during the reporting period (meetings, telephone contacts, e-mail, etc.),
3. description of interventions defined by the individual treatment programme in the reporting period,
4. further intervention proposals.

The additional Reporting Checklist is a useful tool, especially for reporting on alternative measures/sanctions, such as those within the community. This checklist provides "at a glance" information about major topics that may be of interest to the youth judge, youth state attorney or non-legal professionals at the Court

and the State Attorney's Office when planning the control trials. This Reporting Checklist is added to every report and covers the following 4 topics:

1. general cooperation factors,
2. change and progress of identified risk factors (risk behaviour),
3. information about recidivism,
4. proposal for further intervention (if any).

7.4. What can be Learned from Research on Individual Assessment Implementation in Croatia?

As shown in the previous subsections, even though the legal, theoretical and professional frameworks send clear messages on the importance of IA and the principles of conducting IA, some challenges are still present in Croatian practice. Relevant research[401] in this area shows difficulties regarding IA in Croatia as well as recommendations for its improvement (see table no. 10 for more detail).

[401] N. Ricijaš, "Delinquent Behaviour Attributions of Low-Risk and High-Risk Juvenile Delinquents," *Criminology & Social Integration* 17, no. 1 (2009): 13–26; N. Koller-Trbović, B. Nikolić and G. Gašević Ratkajec, "Comparison of Risk/Need Assessment Instruments for Children and Youth," *Criminology & Social Integration* 18, no. 2 (2010): 1–14; I. Pencinger, "Checking the Criterions for Differentiation of Correctional Measures Ordered by Court," Master Thesis, Faculty of Education and Rehabilitation Sciences, University of Zagreb, 2010; A. Mirosavljević and N. Koller-Trbović, "Checking if Institutional Programmes are Matched with the Results of Risk and Needs Assessment in a Croatian Context," *Emotional and Behavioural Difficulties* 16, no. 3 (2011): 263–275; A. Žižak and N. Koller-Trbović, *Risks and Strengths Assessment Aimed for Treatment Planning (Results of Scientific Project: Matching interventions with Needs of Children at Risk-Creating a Model)* (Zagreb: Faculty of Education and Rehabilitation Sciences University of Zagreb, 2013); S. Radić, M. Majdak and L. Vejmelka, "The Purpose of Correctional Measure from the Perspective of Young Perpetrators in Only Correctional Institution for Young Boys in Croatia," Global Conference on Psychology Research, 28-29 November 2014, Barcelona, Spain; N. Ricijaš et al. *Intensified Care and Supervision from the Perspectives of Youth and Measure Leaders* (Zagreb: UNICEF Office for Croatia, 2014); N. Koller-Trbović, A. Mirosavljević and I. Jeđud Borić, *Assessment Process in Welfare Educational Institutions in Croatia-State of the Art. Internal report* (Zagreb: UNICEF, 2015); N. Koller-Trbović, A. Mirosavljević and I. Jeđud Borić, *The Internal Report on the Joint Meeting with the Participants of the Project "Assessment process in welfare educational institutions in Croatia" and Four Regional Consultations* (UNICEF Office for Croatia, 2016a); N. Koller-Trbović, A. Mirosavljević and I. Jeđud Borić, *Summary of Regional Consultations Carried Out in Zagreb, Osijek, Rijeka and Split with Professionals Employed in Centres for Social Welfare, State Attorney's Offices and Youth Courts on the Subject of the Assessment of Children and Youth. Internal Report* (UNICEF Office for Croatia, 2016b); D. D. Hundrić et al. *National report – Croatia* (Project Report: Procedural Safeguards of Accused or Suspected children: Improving the Implementation of the Right to Individual Assessment (IA-CHILD), 2019). Family Act, *Official Gazette 103/15, 98/19.*

Table no. 10: Difficulties and challenges regarding IA in Croatia and recommendations for improvement based on research

DIFFICULTIES	RECOMMENDATIONS
• Youth judges and youth state attorneys lacking specialization • Insufficient number of (specialized non-legal) experts in the justice system and in Centres for Social Welfare • Long court proceedings and significant time span between the assessment, decision-making and sanction implementation • Defence attorneys are not educated sufficiently for Youth Court proceedings (they use all the steps that they are allowed and so thus slow down procedures without recognizing the juvenile's best interest) • The lack of uniformity of case law at the national level • The lack of harmonization in the work of youth judges at the national level • The lack of uniform assessment procedures at the national level • The criteria for the selection of measures and sanctions are not uniform (the measures and sanctions are not always harmonized with juveniles' needs and risk levels) • Treatments in juvenile institutions are of poor quality and inefficient, and thus rarely imposed • Questionable quality of some IA reports received by Youth Courts • The principle of focusing on the positive during assessment process is not respected enough (more focus on problems, negative aspects of juvenile and his/her environment) • Few accused or suspected juveniles are referred by the Court or State Attorneys' Office to an institutional / all-day assessment due to lack of finances	• Specialisation of youth judges and youth state attorneys (to ensure that the state attorneys and youth judges work exclusively on cases in the competence of the YCA/11) • Introduction of obligatory training for defence attorneys, state attorneys and youth judges working with juveniles • Investment in lifelong education of professionals (both those who conduct and those who use IA) • Change in procedural provisions in order to accelerate court proceedings • Harmonization of procedures and practice of youth judges • "Standardization" of the assessment process, methods, techniques, instruments and procedures towards a more uniform processes of juvenile assessment • Improvement in the quality of sanction implementation in practice (especially institutional sanctions)

On the other hand, literature and research analysis on the topic of IA of juveniles in Croatia, point to many examples of good practice as well as positive features of IA in our country[402] as follows:

- IA has been well implemented and long-present in the systems of justice and social welfare that closely cooperate in juvenile cases
- Long-term presence of juveniles' assessment in legislation; good quality legislative framework
- Legislation in Croatia respects the international guidelines and recommendations on procedures towards suspected or accused juveniles and integrates them in the content of relevant acts
- The assessment is highly important, and the quality of the decision made with respect to the juvenile (either by the State Attorney's Office or the Court) depends on the quality of the assessment process implementation
- Well-educated professionals conduct assessment in practice; long-term experience of experts in the work on juveniles' assessment

[402] N. Koller-Trbović, "Diagnosis as a Presumption of Treatment," *Criminology & Social Integration* 4, no. 1 (1996): 61–72; D. Bouillet, *Manual for Differentiated Treatment of Juvenile Delinquents Based on the Conceptual Level with Instructions for the Use of Unfinished Sentences Test* (Faculty of Education and Rehabilitation Sciences, University of Zagreb, 1998); Đ. Križ, "The Criteria for Selection of Youth Educational Measures in the Light of the Juvenile Courts Act," *Croatian Annual of Criminal Law and Practice* 6, no. 2 (1999); Žižak and Koller-Trbović, "Intervention Measures for Juvenile Perpetrators of Crimes," 767–789; N. Koller-Trbović and A. Žižak, *Participation of a Child in the Process of Needs Assessment and Interventions Planning – Social-Pedagogical Approach* (Faculty of Education and Rehabilitation Sciences, University of Zagreb, 2005); N. Ricijaš, "Instruments of Assessment of Children and Adolescents – Possibilities of Application in Cases of Probation for Juveniles," *Annual of Social Work* 13, no. 2 (2006): 271–295; Pencinger, "Checking the Criterions for Differentiation of Correctional Measures Ordered by Court."; Koller-Trbović, Nikolić and Ratkajec Gašević, "Comparison of Risk/Need Assessment Instruments for Children and Youth," 1–14; A. Mirosavljević and N. Koller-Trbović, "Checking if Institutional Programmes are Matched with the Results of Risk and Needs Assessment in a Croatian Context," *Emotional and Behavioural Difficulties* 16, no. 3 (2011): 263–275; I. Jeđud Borić, "Gender Sensitivity in Risk and Needs Assessment and Intervention Programmeming for Girls with Behaviour Problems," *Annual of Social Work* 19, no. 2 (2012): 241–274. Žižak and Koller-Trbović, *Risks and Strengths Assessment Aimed for Treatment Planning;* N. Koller-Trbović, A. Mirosavljević and I. Jeđud Borić, *Assessment Process in Welfare Educational Institutions in Croatia-State of the Art. Internal report* (Zagreb: UNICEF, 2015); Koller-Trbović, Mirosavljević and Jeđud Borić, *The Internal Report on the Joint Meeting with the Participants of the Project;* Koller Trbović, Mirosavljević and Jeđud Borić, *Summary of Regional Consultations Carried Out in Zagreb, Osijek, Rijeka and Split with Professionals Employed in Centres for Social Welfare, State Attorney's Offices and Youth Courts on the Subject of the Assessment of Children and Youth;* Koller-Trbović, Mirosavljević and Jeđud Borić, *Needs Assessment of Children and Youth with Behaviour Disorders - Conceptual and Methodical Guidelines*, 23–69; Hundrić et al., *National report – Croatia.*

- Awareness among the scientific and professional public on the importance and necessity of the assessment of juveniles
- Numerous projects have been implemented and research conducted on the topic of IA of juvenile offenders
- Much training has been carried out on the topic of the assessment of juveniles
- IA is done for all juvenile suspects or juveniles accused of criminal offences
- There are different types of assessment, at different levels and with different objectives present in practice
- A Centre for Social Welfare and Social Welfare Educational Institutions are key institutions for assessment with multidisciplinary expert teams available
- There is high-quality implementation of all-day assessments of the needs of juveniles, to the mutual satisfaction of experts and young people
- At the moment of referral Social Welfare Educational Institutions/Centres for providing services in the community give priority to juvenile suspects or juveniles accused of a criminal offence
- Non-legal professionals at Courts and in a State Attorney's Offices are available
- Generally, opinions and proposals (IA reports) written as a result of IA are of high quality
- Good cooperation among sectors
- Good interdisciplinary cooperation.

Talking everything into account, we conclude that information collected about young people involved in the juvenile justice system, in the form of either screening or assessment approaches, practices and procedures, plays an important role in criminal proceedings and the juvenile justice system in Croatia. IA in our country is recognized as essential and indispensable and is implemented at various levels and in different phases of criminal proceedings. Furthermore, it is legally well-standardized, and has been implemented in practice for many years and in various institutions.

IA is necessary and extremely important because it prevents flat, arbitrary, unjustified, irresponsible and inadequate decisions. However, it is primarily important because it affects the lives of juveniles and their families. Assessment information

helps guide decision-making within the juvenile justice system. These are important decisions for society and for young people. The quality of the IA process, that is, the information and conclusions provided by assessments is critical to ensuring that fair, timely and effective decisions are made. Highly competent and well-educated staff and assessment professionals using a transdisciplinary approach play an important role in that process. Ensuring effective decision-making within the juvenile justice system is important, but it is also important to keep in mind that we are working with and for young people. Therefore, the bigger picture should be the promotion of the well-being of youth and assisting them to become mature and responsible adults who live high-quality lives.

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8 Concluding Remarks

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The field of child rights and juvenile justice has been vigorously addressed over many years. Discussion and research must and will continue at all levels. Much has been done to improve protection and safeguards for children involved in the criminal justice system. It is clear that the desire to ensure procedural justice and procedural safeguards for minors is growing, with Directive 2016/800 being the most recent example of a legally binding instrument. However, there is still room for progress through further discussion of how well changes have been implemented and by analysis of the outcomes.

Effect on children and hearing their voices

The implementation of procedural safeguards should be informed by research looking at the experience both of the experts who administer juvenile justice and—crucially—of the children who are affected by it. The personal interactions of these two groups—juvenile justice administrators and children in conflict with the law—can contribute to the minors' legal socialization and have a direct effect on their future behaviour. It is therefore crucial that professionals implementing procedural safeguards have specialist knowledge on how to build a positive relationship that best serves the interests of children / young people. It is important to consider how children feel when exercising their rights at any stage of the criminal justice process—is the young person's need to be heard satisfied; is their

voice important; do they actively and effectively participate; are they involved in the decision-making and do they have confidence in the justice system?

The individual assessment of suspected or accused juveniles can be considered as an instrument with two aims. First, as an evidence-based decision-making tool, it allows the child's needs to be met at each stage of the criminal process, particularly when it comes to procedural or sentencing decisions. Second, it enables us to hear the juvenile, to represent and interact with him/her, and to consider his or her specific situation, as well as helping to reach decisions that are as child-friendly as possible and that create favourable conditions for future improvements in behaviour.

Approaches to implementation

Directive 2016/800 establishes general principles, leaving Member States with a relatively wide margin of discretion in implementing and applying the individual assessment of children in their national systems. According to the research presented in this book, different trajectories of implementing individual assessment were discovered in the four countries examined (Lithuania, Greece, Cyprus, and Croatia).

In some countries (e.g. Lithuania), implementation of individual assessment is being carried out in a rather formal manner, based on existing provisions. This implementation trajectory may hamper qualitative improvements in national practice. In other countries, such as Cyprus, where there is a lack of comprehensive legislation on juvenile offenders, the legislative changes enacted in accordance with the Directive may be viewed as a significant step forward.

The selection of different trajectories for the implementation of individual assessment in national jurisdictions depends on the various regulations and practices existing within them, as well as the resources available and the degree of policymaker support. As a result, an individual assessment may be limited in scope, focused on a single goal, such as risk assessment or gathering specific information from school, family, and so on. Such an assessment does not take into account the entire situation of a child and does not address all of his/her needs.

Standardization

Another important aspect identified during the research is the value of standardization in the assessment process, in order to achieve more consistent and reliable assessments and to improve the quality of subsequent decisions. Risk assessment tools are used particularly widely today, helping to identify criminogenic needs and plan further interventions. In those countries, eg Greece, where a lack of standardized, science-based instruments was identified, juvenile justice professionals emphasized the need for such instruments to be adopted.

New approaches in forensic assessment theory and practice criticize standardized risk assessment for preventing active, positive involvement with and representation of young people—which in turn impedes the application of the most personalized approach possible. In countries such as Croatia—where, historically, juvenile assessment has enjoyed a long-standing position in legislation and covers various types of assessment, at different levels and with different objectives—an integrated, eclectic approach is used.

Due to the difficulty of finding a single universal instrument to assess all of a child's needs and characteristics, it is suggested that standardized, science-based instruments should be used in conjunction with non-standardized ones. If such a complex of instruments were made available, qualified professionals would be able to answer a wider range of questions, including some of the most complicated ones.

Specialization and training

All four countries acknowledge the importance and value of highly qualified professionals and their specialized knowledge. A lack of qualified personnel (particularly non-legal) or their disproportionate workload may be the primary impediment to completing assessments in a timely manner. A strong demand for training for law enforcement institutions was also emphasized. Coordinated collaboration between institutions, systematic sharing of relevant information about the child and effective case management were identified as issues that need to be addressed urgently in some countries.

Resources

A significant and immediate obstacle to implementing Directive 2016/800 may be a (real or perceived) lack of resources in Member States. Government funding, skills, personnel and other resources may simply not be available or forthcoming. Some Member States may limit the purpose of individual assessment by implementing it only partially or formally; as a result, the quality of each assessment suffers, not all children receive an individual assessment, or the resulting programmes do not meet children's rights and needs. Hence, one of the primary goals should be to raise awareness among policymakers, other stakeholders, and legal and non-legal professionals about the importance and potential of individual assessment.

To conclude, meeting the needs of the child and contributing to a range of different measures when making procedural, sentencing or welfare-oriented decisions are the key indicators and milestones for the implementation of individual assessment in accordance with the Directive. When establishing legal regulations or taking individual decisions in "grey areas" where there is no clear requirement or prohibition imposed by the Directive, the principle of promoting the best interests (and meeting the needs) of the child must be paramount.

“Individual assessment of suspected or accused children: insights into good practice in the light of the Directive (EU) 2016/800.”

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