

juvenile in administrative cases (from 1 January 2012). Qualified legal aid may be requested at any stage of the criminal proceedings and in civil proceedings, it will be possible to be sought also before the start of the process.

Legal aid is offered to juveniles in criminal proceedings only by professional lawyers who, in addition to their private activity may be contracted to assist the territorial offices of the National Council of State Guaranteed Legal Aid. In this case they will be called *legal aid lawyers upon request* being paid by territorial offices for each case from the money allocated from the state budget or from other sources permitted by law. Some lawyers offer only state guaranteed legal aid and do not have private practice. These lawyers have concluded contracts with territorial offices for providing legal aid without the right to provide services to other persons under private contracts and are called *public defenders*.

From 1 July 2009 - 30 June 2010 a network of public defenders specialized for cases with juveniles in conflict with the law has activated (Chisinau - 6 lawyers, Balti, Cahul, Causeni and Comrat - one lawyer each). Only from July 2009 - January 2010 specialized public defenders had 418 delinquent children as beneficiaries. On 29 September 2010, the National Council for State Guaranteed Legal Aid decided to develop a list of lawyers specialized in cases involving children in conflict with the law. Specialized lawyers like other lawyers take over causes:

- *according to their work schedule* (e.g. see <http://www.cnajgs.md/ro/asistentajuridica-de-urgenta.html>);
- *upon the territorial office's request*.

Thus, the criminal investigation bodies, prosecution and courts request the Territorial offices to appoint a lawyer for cases involving juveniles. The Territorial office appoints the lawyer. In case the lawyers specialized for cases involving juveniles in conflict with the law are overburdened, other lawyers are also appointed for these cases.

After the lawyers are appointed, the following actions are taken:

- contacting the requester of the qualified legal aid (criminal investigator, prosecutor, judge) for planning the first procedural actions and informing and providing contact data;
- moving to the premise of the institution where the procedural actions are to take place;
- confidential discussions with the child and his legal representative, if needed;
- explaining procedural rights and obligations of the suspect/accused/defendant;
- answering the questions of the person who is granted legal aid;
- agreeing on a defence strategy;
- offering legal assistance to the juvenile during all procedural actions performed by the prosecutor (recognizing the person as a suspect, explaining procedural rights and obligations, hearing the suspect, indictment, hearing the accused, confrontation with other participants in the case, etc.) or during the hearing proceedings (hearing the defendant, ask other participants questions, oral presentations, preparing appeals and recourses, etc.);

- discussing with the child and the legal representatives, including the injured parties, the prospects for concluding friendly settlements to conclude the case trial and eliminate criminal liability;
- drafting various requests and attaching them to the case.

Additionally, some lawyers manifest professional diligence perform certain extra-procedural activities:

- ongoing discussions with NCSGLA territorial offices' employees for optimizing the procedure of taking over cases;
- discussions with police employees to comply with the procedure and the rights of the children in conflict with the law;
- discussions with prosecutors on the need to conduct procedural actions in the prosecutors' offices premises and not in the police, on the need to ensure mandatory presence of the pedagogue or psychologist and the legal representative while performing procedural actions;
- verbal notification of the prosecutors on the fact that procedural actions will not take place in the absence of the participants listed above;
- discussions with judges and prosecutors on juvenile justice policy, promote alternatives to detention, the need to involve social services to integrate the juvenile in the society and addressing the juvenile in conflict with the law's problem first as a social problem and then as a legal one;
- discussions with the representatives of social services on the need to register juveniles in need of social assistance;
- approaching with all stakeholders involved the issue of juveniles in conflict with the law not only strictly legal, but also from a holistic point of view;
- involving all social assistance services;
- trying out all possibilities for the conclusion of friendly agreements, so that in those cases where the juvenile admits his guilt, the trial to be ceased;
- insisting that social care services be more active in terms of the needs of juveniles in conflict with the law;
- notifying the fact that the "procedure of manipulating" the juvenile in the police station is neither beneficial, nor consistent to this procedural rights;
- Notifying the prosecutor each time about the appropriate tone of the voice and vocabulary when talking to a child, so that he/she feels that the authorities have a friendly attitude and do not inspire fear, etc.

Systematic problems in the justice for children field identified by the network of specialized public lawyers:

- Juveniles are treated as criminals, not people who would have done mistakes;

- Often juveniles are kept in police stations without notifying their legal representatives within the time prescribed by law, without making the arrest report;
- Juveniles in police stations are threatened that if they do not confess what will not be allowed to go home;
- There are cases when juveniles are subjected to physical violence for make statements in the absence of the lawyer or legal representatives, and the prosecutors, knowing that such phenomena exists, tolerate them;
- Prosecutors delegate many of their duties related to the organization of the trial to the police officer, and by this allowing the rather long contact between the minor and the police;
- Prosecutors do not conceive that in the proceedings the participation of the teacher, psychologist, or legal representative of the minor is imperative, and prefer to do the procedural actions without them because they can sign documents afterwards;
- Prosecutors voluntarily comply to the procedure only if the lawyer objects or refuses to participate in procedural actions unless the educator / psychologist or legal representative is present;
- Prosecutors are accustomed to work with those lawyers providing state guaranteed legal aid and who "do not cause problems";
- Unwillingness of the prosecutors to conduct a social inquiry, to request the presentence report, this being a new practice in such cases;
- Reluctance of prosecutors to cease the criminal prosecution in the cases provided by art. 54 Criminal Code;
- Sometimes judges forget to inform the interpreters, the victims and the witnesses about the fact that they can be criminally charged for making false statements;
- Inadequate preparation of the minutes of the hearing by the Court clerk;
- Insufficient technical equipment of the Courts, the impossibility of making copies of needed documents.

Problems/opportunities found in the state-guaranteed legal aid provided to children in conflict with the law:

- A part prosecutors face difficulties in accepting the new existing approach in juvenile justice;
- There is no real specialization among prosecutors;
- Sometimes children in conflict with law are being heard for the first time without a lawyer;
- Prosecutors apparently tolerate and even encourage the breaches committed by police;
- Prosecutors do not respect the summoning procedure, ie, do not summon all the all participants at the same time for the planned procedural action;
- Involvement of social services is appropriate for rehabilitation and the reintegration into society.

These concerns and systemic issues are confirmed by the opinion of judges and prosecutors on the treatment of children in the justice system.

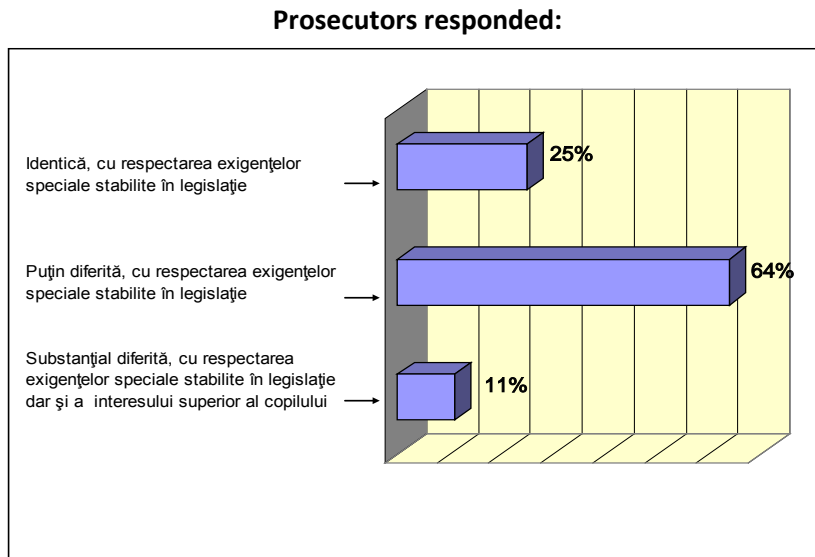


Chart 37. Do you think your approach as a prosecutor is different in the cases with juveniles or is it similar with the cases involving adults?

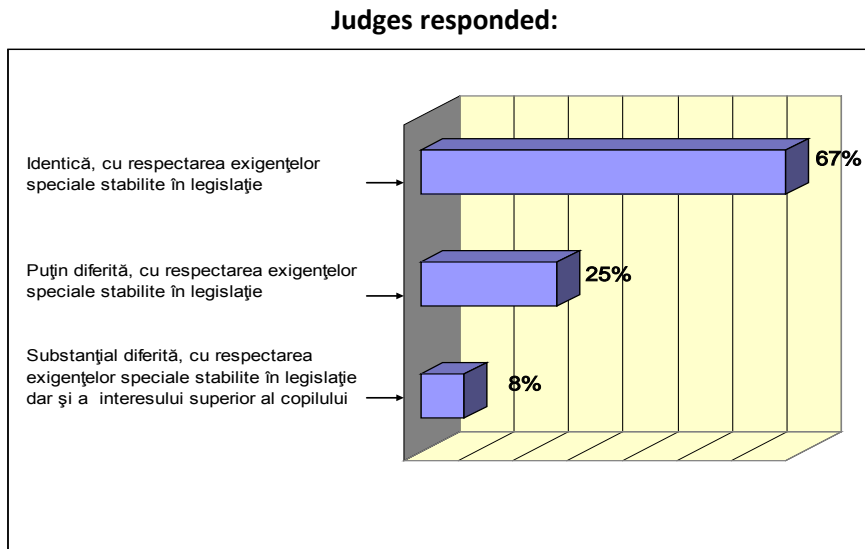


Chart 38. Do you think your approach as a prosecutor is different in the cases with juveniles or is it similar with the cases involving adults?

Conclusions and recommendations of lawyers providing state guaranteed legal aid to children in conflict with law:

- Juvenile justice system does not work according to the rule that juveniles should be treated friendly as persons who committed mistakes and not crimes;
- Juvenile justice policy should be implemented vertically, which means that the training of prosecutors in the correct spirit of a juvenile justice system should be carried out by senior prosecutors, so that the prosecutors performing criminal investigation follow their instructions and respect the rights of the child;

- Distance as much as possible the police from carrying out procedural acts in cases involving children;
- More detailed regulation of teacher’s status in the criminal proceedings;
- Create certain mechanisms of intervention of the social work specialists from the first contact of the child with the justice.

It should be noted that the number of beneficiaries minor legal aid system state is high⁷⁹. However, the quality of state guaranteed legal assistance provided by some lawyers does not always meet the standards and best professional practices due to diverse reasons (eg, some lawyers show-up late at the procedural actions, do not show the required diligence).

Prosecutors responded:

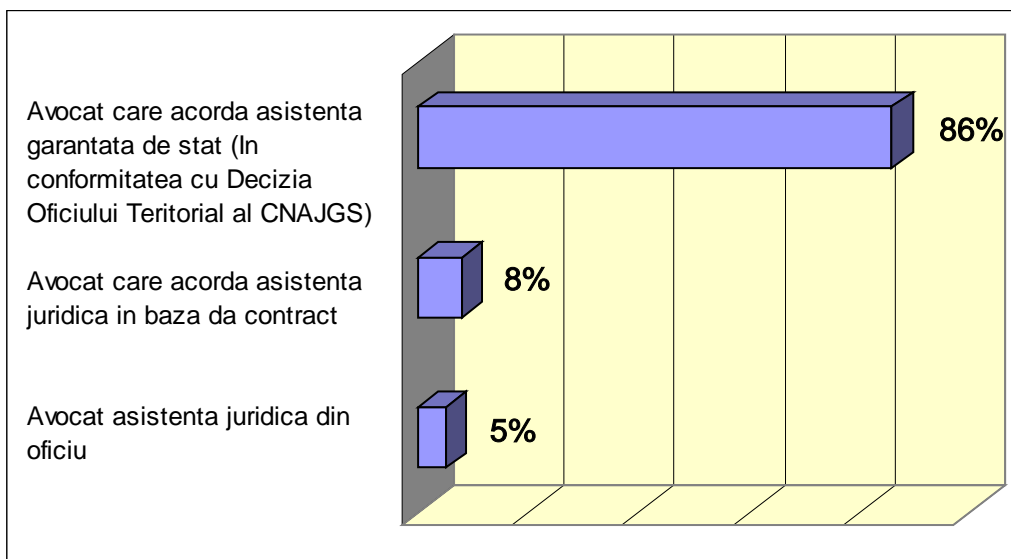
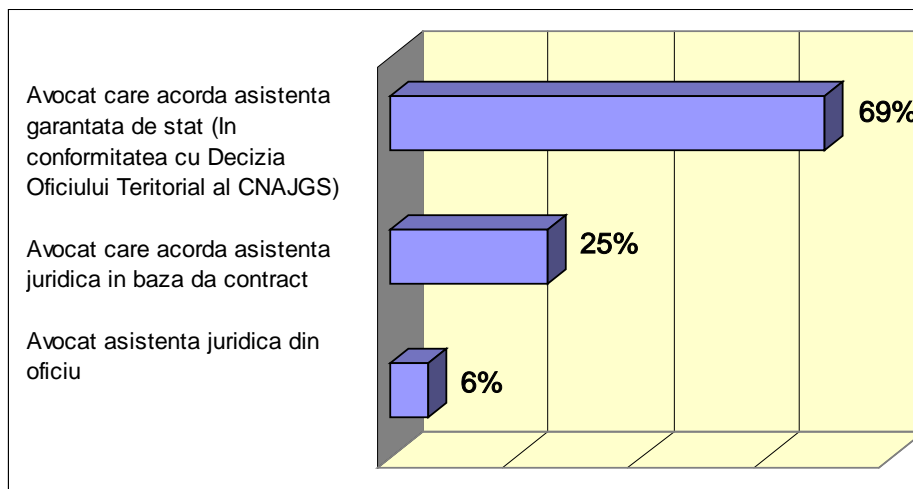


Chart 39. The defendant offering legal assistance to the child at the criminal investigation phase is employed?

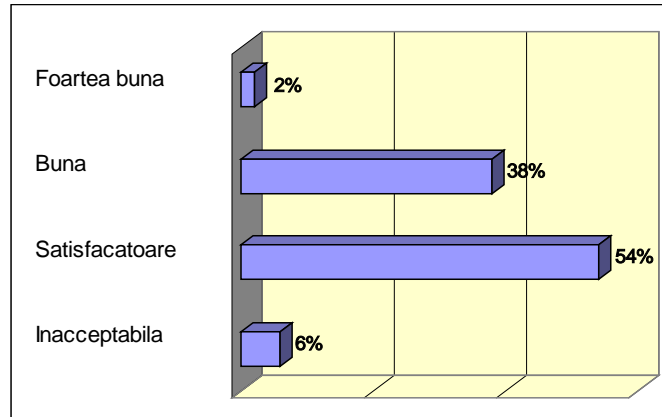
Judges responded:



⁷⁹ In the first 9 months of 2012, 1095 children have been assisted by the state guaranteed legal aid, see http://www.cnajgs.md/fileadmin/fisiere/documente/Informatie_utilita/RAPORT_statistica_consolidat_anual_AC.xls

Chart 40. The defendant offering legal assistance to the child at the criminal investigation phase is employed?

Prosecutors responded:



Judges responded:

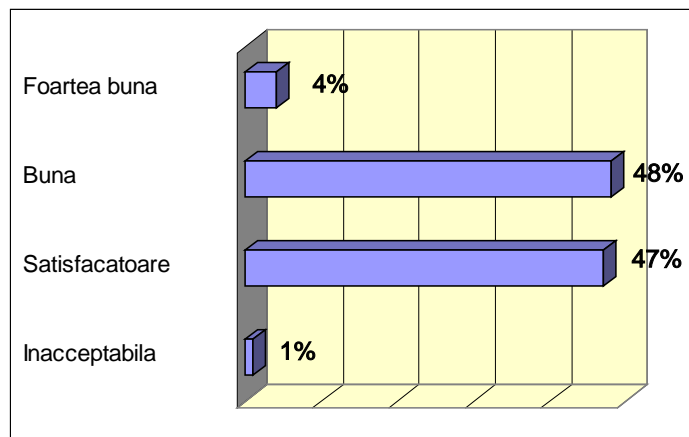


Chart 41/42. How do you appreciate the quality of the defender providing state guaranteed legal aid?

Prosecutors responded:

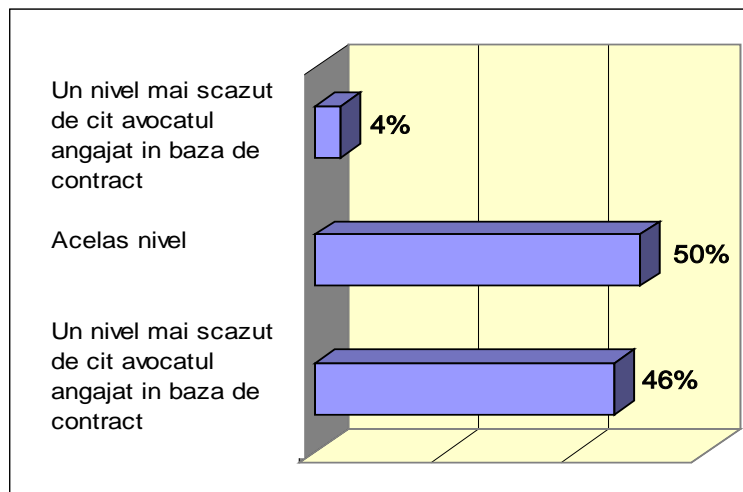


Chart 43. How do you appreciate the performance of the defender providing state guaranteed legal aid compared with the defender employed by contract?

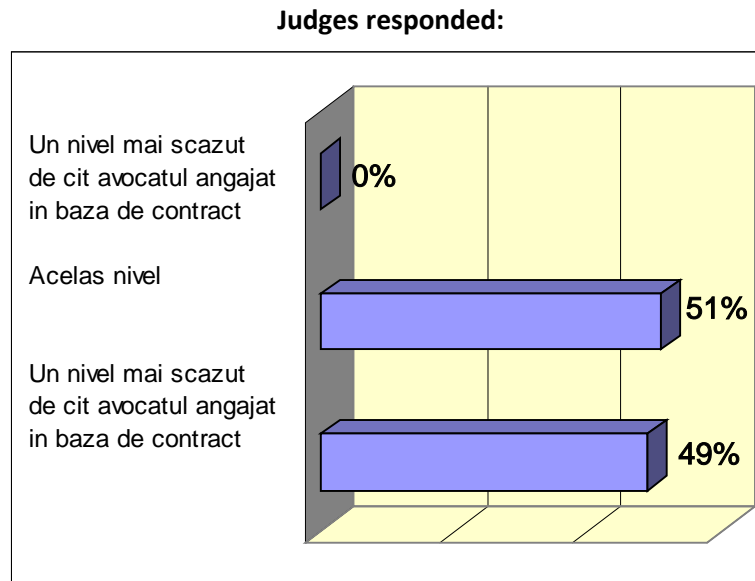


Chart 44. How do you appreciate the performance of the defender providing state guaranteed legal aid compared with the defender employed by contract?

Children in detention would require legal and psychosocial integration. In Moldova, there is some experience in this regard. In the period January 2004 - November 2008 IRP and its associate attorney's office gave such services. In the period January 2004 - December 2005, work-oriented mobile teams was positively change the situation for the minor in detention as a result of intervention of each specialist in mobile teams. This aim is achieved by cross-team efforts drinks t mobile

IX.8. Diversion mechanism of cases involving children to the community services and community programs for treatment of delinquency

Such programs should be based on individual special needs of each child in conflict with the law. The following principles of community intervention services (including probation service) can be deducted from the normative-legal regulations and the good practices:

1. **Respect for the human rights and freedoms and human dignity;**
2. **Non- discrimination;**
3. **Prompt help,** implying that the person in conflict with the law should receive support from the probation counselor and other community services in the shortest terms;

4. **Continuous support and encouragement** of the children in conflict with the law, assisted and advised in their reintegration into society and undertaking responsibility for their own actions by adopting a correct attitude towards the rule of law and to the rules of social co-habitation;

5. **Approximation**, which involves reducing as much as possible the geographical distance, but also psychological distance, so that the person concerned feels continued support from the probation counselor and other professionals in the community, so that there is mutual trust for due/proper realization of responsibilities;

6. **Opportunity**, which involves measuring the intervention, involvement whenever necessary, but without excess. From here derives the **principle of minimum intervention** which means that restraint and monitoring should not be used more than necessary;

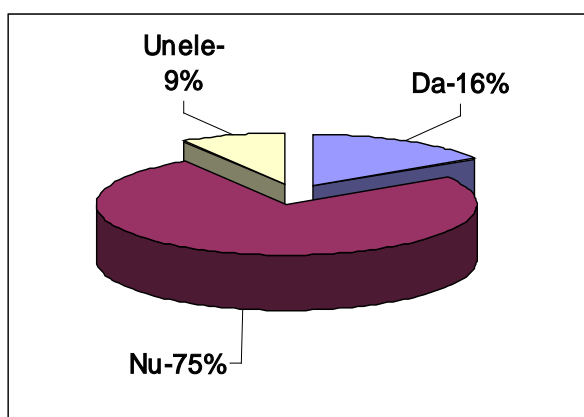
7. **Individualization and continuity** implies that interventions of the community services should meet the social needs of the person in conflict with the criminal law and that these interventions have an organized nature, being based on a social reintegration route;

8. **Active participation of the community** (people) to the process of support, psychosocial counseling and monitoring of the behavior of the child in conflict with the law. Hence the **principle of coordination of efforts**, which suggests that the role of the probation counselor is that of a community services manager (in the context of Moldova);

9. **Efficiency and normalization**, implying that the efforts of the specialists in the community should lead to full reintegration into the community of persons in conflict with the law and to minimize as much as possible the difference between persons and other members of the community.

It is also noted that in many localities, such services are not available; making the justice system representatives unable to take advantage of the legal options diversion of cases involving children.

Prosecutors responded:



Judges responded

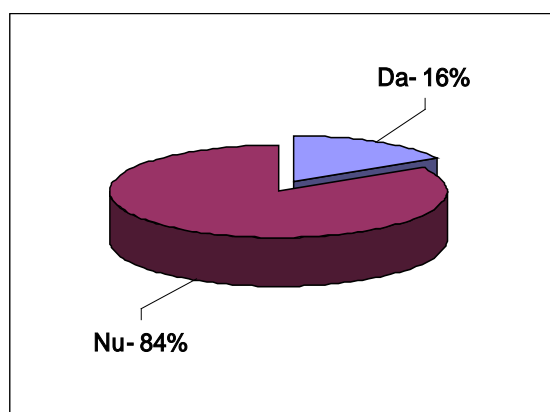


Chart 45/Chart 46. Is there in the community you are working, the possibility of sending the juvenile to community services and other competent services?

Prosecutors responded:

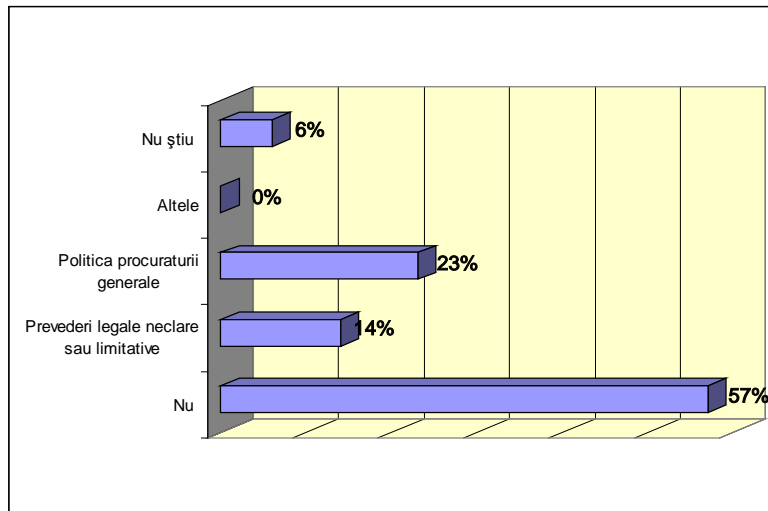


Chart 47. Are there limitations in the discretionary right/power of the prosecutor?

Judges responded:

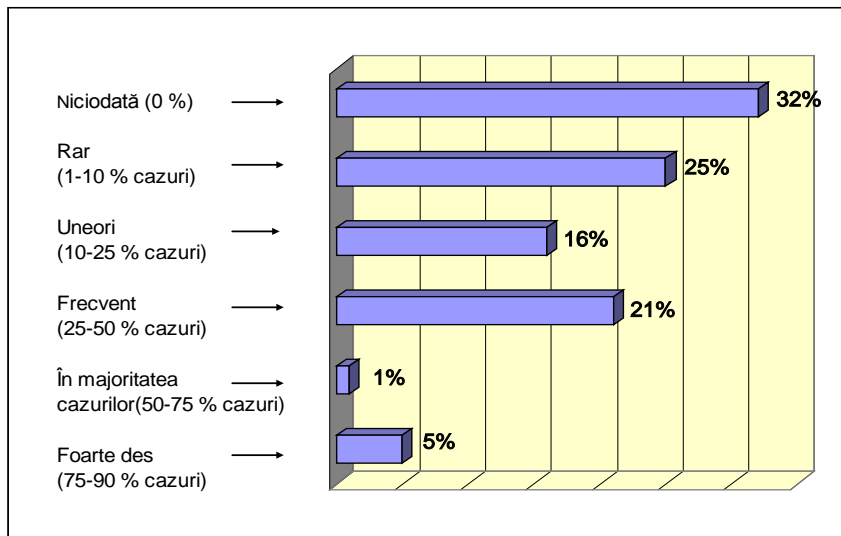


Chart 48. From your practice, how do you estimate the frequency of cases when the criminal investigation against children was ceased by waiver from prosecution and using coercive measures of educative nature?

Judges responded:

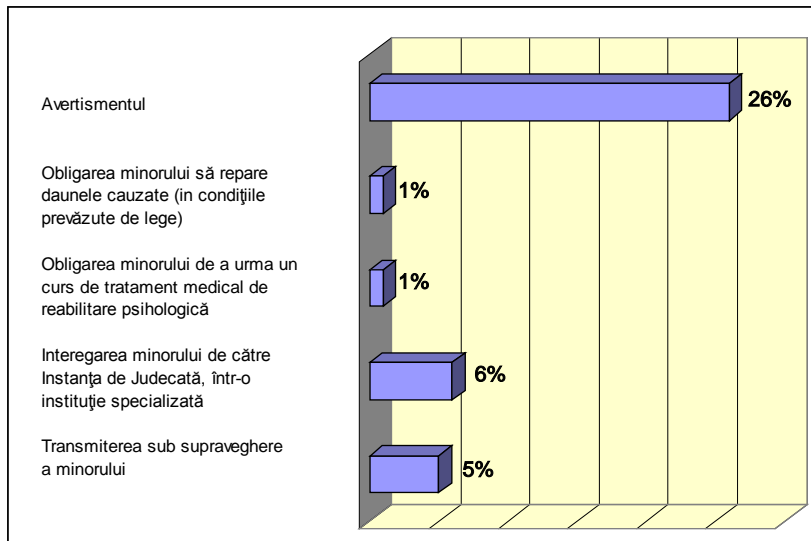


Chart 49. The percentage of coercive measures of educative nature applied?

Prosecutors responded:

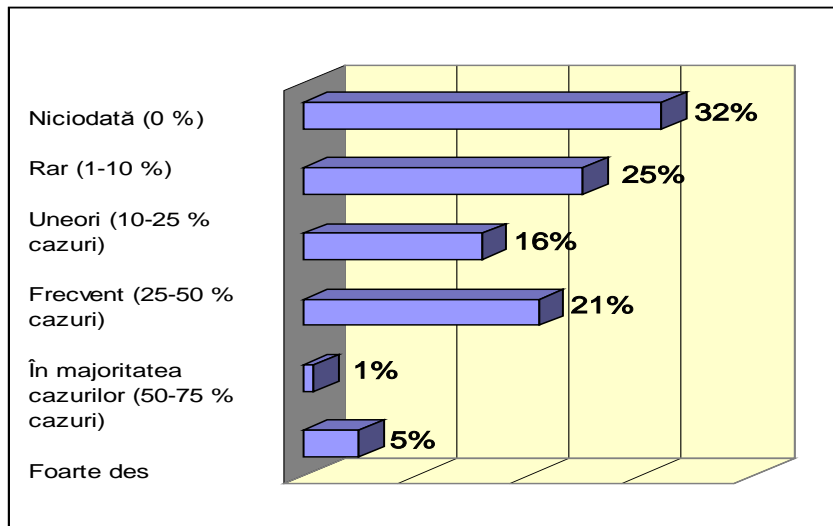


Chart 51. From your practice, how do you estimate the frequency of cases when the criminal investigation against children was ceased by waiver from prosecution and using coercive measures of educative nature?

IX.9. Favorable facilities for children

Not only community programs should be considered, but also the possibility of granting psychological assistance even in court. In this respect, it is necessary that courts are equipped with rooms for hearing juveniles (in fact, these could be the same rooms which are used for confidential meeting between lawyers and their clients). In addition, one other option could be, perhaps, reduction of the solemnity of the proceedings.

| | | | | |
|---|--------------|--------------|--------------|------------|
| party | | | | |
| Absence of the witness | 15% | 13% | 14% | 10% |
| Absence of the defendant | 9% | 11% | 11% | 17% |
| Absence of the defence attorney | 12% | 14% | 13% | 10% |
| Absence of the prosecutor | 9% | 6% | 7% | 10% |
| Need to present new evidence | 3% | 5% | 4% | 5% |
| Need to change or aggravate charges towards the defendant | 1% | 1% | 1% | 1% |
| Other | 43% | 42% | 42% | 38% |
| Total number of monitored hearings | 2,395 | 4,642 | 7,037 | 365 |

In this table, in the “others” category, were included cases when there was no reasons for delay invoked or when the participants to the trial were absent (judge, clerk, interpreter, etc), or, when the hearing took place by it was postponed for continuing the examination of the same case.

Therefore, any postponement of the hearing will double the costs which parties usually have.

Note: The cost of travel has been increased to 4 (2 persons) on average in the country, the cost of a hearing to be generally supported by the child's parents is 91.90 lei for a hearing.

The following table reflects the progress of the minimum living costs by quarter⁸³. In 2010 the size of the minimum living costs per person are in average 1343.0 lei, increased by 0.3% starting with the first quarter of 2009.

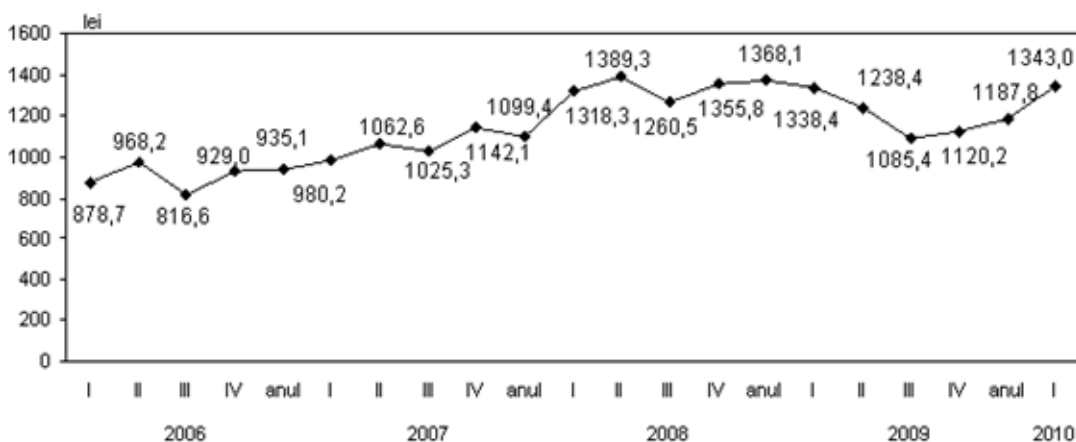


Chart 54. Quarterly development of the minimum subsistence for 2006-2010

By categories of population, the maximum level of the minimum living cost is attributed to the active/working population - 1422.4 lei, especially men - 1502.7 lei. Minimum living costs for pensioners was 1150.2 lei and accounted for 85.6% of the average total population.

⁸³ www.statistica.md

Minimum living costs for children is on average 1230.9 lei per month, with a difference of this indicator depending on age, from 494.0 lei for a child aged up to 1 year up to 1364.8 lei for a child aged 7-16 years. The available income in the first quarter of 2009 amounted 1237.6 lei on average per person. The ratio between the average monthly income available per person and the average minimum living costs was 92.2% compared to 82.4% in the same period of last year.

The average monthly salary of an employee was in the first quarter year 2740.2 lei, or by 6.7% higher compared with the same period last year, making it possible to cover the minimum living costs for the working population in size of 192.6% (in the same period of 2009 - 182.2%). The ratio between the average salary and the average minimum living costs for active/working population differs depending on the economic activity they perform. The maximum coverage of the minimum living costs for the working population was achieved by employees in the financial sector – 3,9 times, at the lowest level by those working in agriculture and forestry which covers the minimum living costs by 93.9%.

The average monthly pension was 775.9, as of 1 April 2010 or 19.9% compared with the same period of last year, which means covering the minimum living costs by 67,5% only, and by 56.9% in the first quarter of 2009.

According the same statistics, the average salary in Moldova is 3054.3 lei. Therefore, to be present in the specialized district court will cost 6.8% of the minimum living costs and 3.01% of the average wage per economy.

XI. CONCLUSIONS

1. The evaluation of the justice system for children, should be, generally, made from the perspective of various indicators and a system of specialized courts for children is just one indicator of justice for children.
2. There is a set of international standards adopted in the justice for children field, that shall be respected and perceived by each state, including by the Republic of Moldova.
3. The practice of other countries shows a different approach in ensuring the best interests of children and promoting child friendly procedures in the justice system and this can serve as valuable experience in building justice system for children in Moldova.
4. The Republic of Moldova is committed to respect international standards, stating relevant priorities in different policy documents.
5. The context of organization and functioning of the judiciary in Moldova would allow to provide a specialized approach regarding children in the justice system, with an accumulation of favorable conditions, including the possibility of specialized training for the actors in the justice system.
6. The legal provisions of the Republic of Moldova about the reaction to juvenile delinquency and the examination of cases involving children are mostly in compliance with the international standards. However, the everyday practice shows some deficiencies in the law enforcement/implementation. Thus, in Moldova there is no specialized court to address the specific needs of children. Administration of justice in relation to children is divided between several administrative and judicial organs without any real coordination of efforts, which hampers the efficient operation of the system. The current justice system is unable to address the special needs of the child-victim and child-witnesses. There is no single database and information on justice for children. The overwhelming majority of offenses are committed by juveniles who do not have an adequate family and social environment, who are not attending school, who do not have a job and are not supported through educational measures by parents, guardians or representatives of social services. The risk of committing an offense is particularly favored by neglect, domestic violence, abandonment, street work, drug abuse, prostitution and trafficking. Many workers in the field do not know the provisions of international instruments and international standards in the administration of juvenile justice, including the principles of restorative justice and deferrals. The public opinion is hardly aware of the negative effects that the harsh contact with law enforcement institutions and the application of punishments can have on the children. As a result, the society insists on tougher sanctions for children in conflict with the law as their primary means of rehabilitation, tending to stigmatize these children.
7. The statistical analysis shows a positive trend - a drop in the number of convicted children. Thus, in 2006, 1316 children were sentenced and in 2009 this number decreased to 477. In 2009, the district courts in the Chisinau municipality examined 129 criminal cases against children in conflict with the law were examined, which is 21,3% out of 605 criminal cases concerning children in conflict with the law examined (in main hearing) in the whole Moldova. In the same year, in the Balti municipality court 80 criminal cases against children in conflict with the law were examined, which is

13,2% of such category of cases. In 2009, in the Cahul court were prosecuted 29 criminal cases against children in conflict with the law, which is 4,7% of this category of cases. Thus, if a decision on specialized courts in criminal cases of children in conflict with the law is taken (Option I), in Chisinau alone could be created one specialized court, while in other regions it is necessary to specialize a certain number of judges.

8. There are a number of favorable premises for establishing a specialized system of justice for children, including the favorable opinion of the judiciary. Most of the judges who advocate for a system of specialized courts consider necessary the specialization of judges in the first instance court (89%).

9. According to another option (II), the specialized courts and the specialized judges in cases involving children could examine criminal cases in which juveniles are involved as perpetrators and criminal cases in which juveniles are victims.

10. Another option (III) provides for specialized courts in cases involving children in conflict with the law, criminal cases where children are victims of crimes, contraventions against children and certain types of civil cases where the child's interests may be affected. Only in this case, the creation of specialized courts in cases involving children in all districts of the country is justified.

11. Effective implementation of the concept of justice for children in any option implies the existence and effective functioning of certain mechanisms and categories of services, such as: those dealing with the protection of the child involved in the criminal justice system, adequate facilities for exceptional cases of detention; support to the teachers, psychologists, legal representatives and probation counselors, mediation and state guaranteed legal aid; mechanism of deferring cases to community services. Also, the cooperation and coordination between agencies in ensuring the accessibility and functionality of these services and mechanisms is crucial.

12. Option (IV) seems to be insufficiently justified, which is the establishment of specialized courts at the courts of appeal level in three regions of the country, which would examine criminal cases concerning children in conflict with the law because of logistical reasons and high costs for the participants in the process.

XII. RECOMMENDATIONS

I. Short-term (2011)

1. Updating the lists of specialized judges who could examine criminal cases concerning children in conflict with the law.
2. Monitoring by the Superior Council of Magistracy of the manner of compliance of the specialization of judges in the cases with children in conflict with the law.
3. Developing an Explanatory Decision by the plenary of the Supreme Court which would update the enforcement practice in criminal cases involving children in conflict with the law.
4. Strengthening the collaboration between courts, local public administration and community centers in order to delegate permanently psychologists and other specialists who would attend the hearings.
5. Effective implementation of extrajudicial procedures for dealing with children in conflict with the law, in compliance with children's rights. They should be implemented directly from the stage of first contact with the police and prosecutors in order to prevent the handling of the juvenile by the justice system when it is not strictly necessary. Encourage judicial authorities and police to apply extra-judiciary alternatives whenever possible, including in the advanced stages of the criminal proceeding. The extra-judiciary alternatives should be as diverse as possible, applied individually and oriented towards child's reintegration into society, giving him the chance to self-assertion and participation in the process.
6. Ensuring the effective functioning of mechanisms and categories of services required for the implementation of the concept of justice for children (mediation, probation, state guaranteed legal aid, community services and deferral mechanism of cases towards community services and so on).
7. Amending art. 481, para. (1) of the Criminal Procedure Code with the possibility of hearing the child witness by applying the special modalities provided in art. 110 of the Criminal Procedure Code.
8. Amend the Law on Witness Protection, art. 13, para. (1), by investing the prosecutor with the power to apply protection measures.
9. Art. 186, para. (9) Criminal Procedure Code needs to be supplemented with the phrase "except juvenile defendants."
10. The Criminal Procedure Code needs to be complemented with a new article:

Article 89¹ Teacher

(5) The teacher is a person who has higher education in pedagogy and is working in a school or educational institution. The teacher is appointed by the prosecutor or, where appropriate, by the court in the criminal case involving juveniles as suspects, accused, defendants, victims or witnesses.

(6) The teacher has the task of contributing to the protection of juvenile's psycho-emotional state during the trial proceedings he/she takes part in.

(7) The teacher applies working techniques which do not require the prior approval by the prosecutor or the court.

(8) The teacher shall, in carrying out his/her duties, fulfill the indications given by the prosecutor or the court.

Article 89². Psychologist

(3) The psychologist is a person who has higher education in psychology and is working in fields related to psychological assistance.

(4) The provisions of art. 89¹, para. 2) -5) Criminal Procedure Code shall apply accordingly.

11. In art. 479, para. 3 of the Criminal Procedure Code, the words "the investigating authorities" need to be replaced by "the prosecutor or the court."

II. In the medium term (2012, 2013)

1. Formation of specialized courts in criminal cases involving children (perpetrators and victims of crime) in Chisinau Municipality
2. Equipping the court specialized in criminal proceedings involving children with premises and facilities according to international standards in the field, including a working room for the psychologist, for conducting mediation.
3. Extending the powers of the judges specialized in cases involving children in order to examine also cases where children are victims of crime.
4. Development of primary psychological intervention programs, aimed to respect the best interests of the child, the family and society as a whole.
5. Strengthening the local partnerships between Courts, prosecution, internal affairs bodies, probation service, local government bodies and community services (including healthcare and social care and education), civil society associations in order to implement community programs for the treatment of juvenile delinquency.
6. Creating an information center on justice for children, which would facilitate the access of the professionals in the justice for children field to relevant materials and information sources field.
7. Organizing a coordinated program of continuous training for mediators, probation counselors, judges, prosecutors, lawyers, etc. in the justice for children field.
8. Develop and implement special programs for the protection of juveniles, victims of crimes, with given consideration to specific programs taken into account the category of beneficiaries.

III. Long-term (2015)

1. Ongoing research and assessment of the administration system of juvenile justice, so that relevant data and information are collected and analyzed needed to ensure the system's adaptability to the needs and interests of children offenders, victims of crime and the community as a whole.
2. Creating a system of maintaining disaggregated statistical data in the juvenile justice field.
3. Measuring and analyzing the effectiveness in long run of some recently developed systems in the juvenile delinquency field, such as restorative justice.
4. Developing and implementing the concept of creating specialized courts for cases involving children (criminal cases against children in conflict with the law, criminal cases where children are victims of crimes, contraventions in relation to children and certain types of civil cases where the child's interests may be affected).

DEVERSION OF THE CHILD FROM THE CRIMINAL JUSTICE SYSTEM

