

FEASIBILITY STUDY

ON SPECIALISED COURTS IN CASES INVOLVING CHILDREN IN THE REPUBLIC OF MOLDOVA

By Igor Dolea and Victor Zaharia, Institute for Penal Reforms

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Attachement: Scheme of the Mechanism of Diversion of the child from the justice system

I. THE SYNTESIS OF THE STUDY

This study is conducted by IRP upon the request of UNICEF-Moldova with the purpose of examining the relevance and the conditions of specialization of courts in cases involving children.

By using a combination of quantitative and qualitative methods, the key conclusions and recommendations of the study were formulated, which can be very useful for public policy elaboration by the competent authorities.

It is clear that the idea of specialization of courts in cases involving children is not new for Moldova, this idea is reflected in both national policy documents and in concrete actions implemented to achieve the objectives. Although the legislation is largely connected to international standards, the current practices do not guarantee the compliance with these standards.

There are adequate premises for ensuring a treatment according to the best interests of the child in the justice system through specialization of courts. In this regard there may be several options:

- (I) Creating specialized courts in criminal cases involving children in conflict with the law in Chisinau and specialization of judges in other courts;
- (II) Examination of criminal cases involving children in conflict with the law and those involving children as victims by the specialized court in Chisinau and by the specialized judges in the other regions;
- (III) Creating specialized courts for cases involving children (criminal cases against children in conflict with the law, criminal cases where children are victims, contravention cases involving children and certain types of civil cases where the child's interests could be affected).

These options can appear as alternatives, but can also be viewed as steps to promote the concept of justice for children, according to international standards. Importantly the decision of specialization shall be accompanied by legislative and institutional measures necessary for the operation of services (mediation, probation, state guaranteed legal aid, community and mechanism to relinquish cases to community services, etc.) which are indispensable for a child friendly treatment in the justice system.

In order to achieve the objective of specialization of courts, there are recommendations formulated for short, medium and long term, the realization of which requires cooperation and involvement of all state branches.

II. INTRODUCTION

This study is developed within the project "Promoting new elements of justice for children in the justice system of Moldova", implemented by the Institute for Penal Reform, with the support of UNICEF Moldova. The study is a part of the complex of activities conducted by the Institute for Penal Reform in the juvenile justice domain.

In recent years, activities have been conducted in order to promote alternatives to detention, strengthening legal aid system for children in the criminal justice system, promote diversification and mediation in criminal cases etc. Evaluation of the justice system for children, in general, should be done on the basis of a number of indicators, including the following:

1. Number of children apprehended and arrested during the past 12 months (per 100.000 children);
2. Number of children in detention (per 100.000 children);
3. Number of children in pre-trial detention (per 100.000 children);
4. Average period of pre-trial detention (until the sentence is delivered);
5. Average period of detention after sentencing;
6. Number of children who died in detention during the past 12 months (per 1000 children in detention);
7. Proportion of children in detention who are not completely separated from adult detainees;
8. Proportion of children in detention (out of the total number of children detained) who, during the past three months, were visited by parents, relatives or other persons;
9. Proportion of children sentenced to imprisonment (out of the total number of children in conflict with the law);
10. Proportion of children whose case was dropped before the delivery of the sentence (out of the total number of children in conflict with the law);
11. Proportion of children released from detention, to whom educative measures have been applied;
12. Existence of a mechanism that would guarantee inspections/independent monitoring of detention facilities; percentage of institutions that were subject to independent inspections during the past 12 months;
13. Existence of a complaint mechanism for children in detention, the percentage of the detention facilities in which there is a functioning complaint mechanism;
14. Existence of a specialized system of justice for children.
15. Existence of a national plan for the prevention of juvenile delinquency¹.

Thus, the existence of a specialized justice system for children is only one of multiple indicators in the domain of juvenile justice. The study aims to assess how cases of juvenile offenders are tried in terms of compliance of the national practice with relevant international standards, and to come up

¹ Manual for the measurement of juvenile justice indicators, United Nations, New York, 2010, pp. 6-7

with recommendations to improve these practices, including recommendation on creation of specialized courts for cases involving children. Activities were evaluated in the context of national legislation and international regulations, best practices and projects aiming at development of services relevant for juvenile justice.

In the research process, the following methods have been used: quantitative (questionnaire distributed to judges, prosecutors and probation counselors, analysis of official statistical data²) and qualitative (analysis of documents, analysis of data available from other credible national and international reports, interviews with decisions-makers, such as Vice-Chairman of the Supreme Court of Justice, Deputies of Prosecutor General, members of the Superior Council of Magistracy and actors of the Moldovan justice system, prosecutors, judges, representatives of LPA, probation counselors, defence attorneys specialized in cases involving juvenile offenders, policemen, representatives of UN agencies and civil society organizations). During the period August-November 2010 a sociological research was conducted based on a questionnaire (*please, see Appendix 1*); such questionnaires have been filled in by 57 prosecutors and 84 judges.

The Institute for Penal Reform is sincerely grateful to everyone who responded to our request and contributed to this study by providing data and information, through active participation in interviews and by filling in questionnaires, as well as by involvement in the formulation of conclusions and recommendations.

The study can be really useful for purposes of improving current practices and formulation of policies in this domain, for the Moldovan Parliament, Moldovan Government, Ministry of Justice, the Superior Council of Magistracy and the judiciary as a whole, the National Council for State Guaranteed Legal Aid; General Prosecutor's Office of the Republic of Moldova, National Council for the Protection of Children Rights, National Institute of Justice, civil society, including NGOs active in the field protection of human rights, NGOs active in the social and legal domains, embassies, foreign missions and international governmental organizations accredited in Moldova and other stakeholders.

² It should be noted that there is no official disaggregated statistical data regarding children in the justice system (e.g. the number of children who are victims and witnesses of crime);

III. INTERNATIONAL AND EUROPEAN STANDARDS AND BEST PRACTICES REGARDING REACTION TO JUVENILE DELINQUENCY AND TRYING CASES INVOLVING CHILDREN

III. 1. European and International Standards:

Justice for children can be defined in the following manner: principles, regulatory and legal framework, procedures, institutions, professionals, methods and techniques used by them specifically meant for children involved in the justice system. All the above-mentioned must be child-friendly. In addition to protection, justice for children also means prevention, including eradication of causes that lead to crime.

According to the Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice³ "Child-friendly Justice" refers to justice systems that guarantee compliance with and efficient implementation of all the rights of children to the highest extent possible, taking into account the principles listed below⁴ and ensuring appropriate consideration for the child's level of maturity and understanding of the circumstances of the case. In particular, this is justice which is accessible, age appropriate, rapid, tailored to and focused on the needs and rights of children, including the right to a fair trial, the right to participate in and understand the proceedings, the right to private and family life and the right to integrity and dignity"⁵.

"The system of justice for children", in addition to courts which examine cases involving children, also includes official authorities such as police, prosecution, legal profession, probation service and penal institutions. The system operates in cooperation with relevant authorities in the fields of healthcare, education, social welfare and non-governmental bodies in the field of victim and witness protection. Juvenile justice system should be seen as a component of a broader strategy for prevention of juvenile delinquency which takes into account the wider context of family, school, neighborhood and circle of acquaintance within which the offense occurs⁶.

Traditional criminal justice system alone is unable to offer appropriate solutions for the treatment of juvenile offenders, due to the fact that their social and educational needs differ from those of adults⁷. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the "Beijing Rules") provide that:

³ Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (Adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies);

⁴ See Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, Chapters III and IV;

⁵ Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, Chapter II, lit. c);

⁶ Para.2, Recommendation Rec(2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, adopted by the Committee of Ministers on 24 September 2003.

⁷ Preamble, Recommendation Rec(2003)20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, adopted by the Committee of Ministers on 24 September 2003.

“Efforts shall be made to establish, in each national jurisdiction, a set of laws, rules and provisions specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice and designed:

- (a) To meet the varying needs of juvenile offenders, while protecting their basic rights;
- (b) To meet the need of society (including victims⁸);
- (c) To implement the following rules thoroughly and fairly”⁹.

The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence¹⁰. Thus, the "principle of proportionality" is a fundamental one. This well-known principle is applied for moderating punitive sanctions. For juvenile offenders it is important to take into account not only the seriousness of the offense, but also personal circumstances of the offender. The latter (social status, family situation, damage caused by the crime or other factors that influence personal circumstances) should be taken into account when meting out the punishment (e.g., the effort the offender to compensate the victim or the offender's desire to return to a healthy and useful lifestyle).

responses to juvenile delinquency should be multidisciplinary and multi-agency in their approach and should be so designed as to tackle the range of factors that play a role at different levels of society: individual, family, school and community¹¹. Some categories of juvenile offenders, such as members of ethnic minorities¹², young women and those who commit crimes in groups may need special intervention programs¹³.

Convention on the Rights of the Child¹⁴ in Art. 3 provides for the following: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, *the best interests of the child shall be a primary consideration...*". According to the Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice, "...In assessing the best interests of the involved or affected children: *a.*

⁸ See para.3, Recommendation no. r (87) 20 of the Committee of Ministers to member states on social reactions to juvenile delinquency (adopted by the committee of ministers on 17 September 1987).

⁹ Rule 2.3, UN Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") recommended for adoption by the seventh UN Congress on Prevention of Crime and Treatment of Offenders, held in Milan from 26 August to 6 September 1985 and adopted by the General Assembly in resolution 40/33 of 29 November 1985.

¹⁰ United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules").

¹¹ Preamble, Recommendation Rec (2003) 20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, adopted by the Committee of Ministers on 24 September 2003.

¹² Recommendation Rec(88)6 on social reactions to juvenile delinquency among young people coming from migrant families Adopted by the Committee of Ministers on 18 April 1988 at the 416th meeting of the Ministers' Deputies.

¹³ Recommendation Rec(2000)20 on the role of early psychosocial intervention in the prevention of criminality Adopted by the Committee of Ministers on 6 October 2000 at the 724th meeting of the Ministers' Deputies.

¹⁴ Convention on the Rights of the Child, adopted by the United Nations General Assembly on November 20, 1989 in New York, entered into force on 20 September 1990. Moldova acceded to the Convention through the Parliament Decision no. 408-XII of 12.12.1990. In force for Moldova as of 25 February 1993. Published in the official edition of "International Treaties", 1998, Volume I, p. 51.

their views and opinions should be given due weight; b. all other rights of the child, such as the right to dignity, liberty and equal treatment should be respected at all times; c. a comprehensive approach should be adopted by all relevant authorities so as to take due account of all interests at stake, including psychological and physical well-being and legal, social and economic interests of the child"¹⁵. It is the obligation of the judicial authority to consider whether it has sufficient information at its disposal in order to take a decision in the best interests of the child¹⁶. Article 37 of the Convention states: "... No child shall be deprived of his or her liberty unlawfully or arbitrarily. *The arrest, detention or imprisonment of a child* shall be in conformity with the law and *shall be used only as a measure of last resort* and for the shortest appropriate period of time...".

Direct provisions on the trial of cases involving children in conflict with law are contained in Art. 40 of the Convention on the Rights of the Child: "States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society... Every child alleged as or accused of having infringed the penal law has at least the following guarantees: to be presumed innocent until proven guilty according to law; to be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence; to have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians; not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality; if considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law; to have the free assistance of an interpreter if the child cannot understand or speak the language used; to have his or her privacy fully respected at all stages of the proceedings.

States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular: ... Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence".

¹⁵ Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, Chapter III, Fundamental Principles, B. Best interests of the child;

¹⁶ European Convention on the Exercise of Children's Rights, Strasbourg, 25 January 1996, art.5.

Rights and needs of children in court proceedings: In general, efforts shall be made to treat cases of juvenile offenders avoiding, as far as possible, judicial proceedings¹⁷. If the case of a young offender has not been subject to extrajudicial procedures, it shall be examined by a competent authority (court, tribunal, commission, council, etc.) according to the principles of a just and fair trial.

Each stage of criminal proceedings must fall within strict limits in order to avoid delays and ensure a response, as quickly as possible, to the crimes committed by juveniles. In any case, measures meant to expedite the administration of justice and to increase its efficiency must be balanced against the notion of reasonable time of proceedings¹⁸.

Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings¹⁹. The proceedings shall ensure best protection of the interests of the young offender²⁰ and shall be conducted in an atmosphere of understanding, allowing the offender to participate and to express himself/herself freely²¹.

“Participation”, which also refers to juvenile victims or witnesses²², means the right of any child to be informed about his/her rights²³, the right to be provided appropriate ways of access to justice and the right to be consulted and heard in proceedings involving or affecting him/her. This includes giving due weight to the children’s views bearing in mind their maturity and any communication difficulties they may have in order to make this participation meaningful²⁴.

Regardless of whether the child involved in the justice system is in conflict with the law, or whether he/she is a witness or victim of the offense, he/she should be treated with dignity, care, sensitivity, fairness and respect throughout any procedure or case, with special attention for their personal situation, well-being and specific needs, and with full respect for their physical and psychological integrity. This treatment should be given to them, in whichever way they have come into contact with judicial or non-judicial proceedings or other interventions, and regardless of their legal status

¹⁷ Rule 11, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”).

¹⁸ Para.14 Recommendation Rec (2003) 20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, adopted by the Committee of Ministers on 24 September 2003.

¹⁹ Rule 7, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”).

²⁰ Para.14 Guidelines for Action on Children in the Criminal Justice System, Recommended by Economic and Social Council resolution 1997/30 of 21 July 1997.

²¹ Rule 14, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”).

²² Resolution of the UN Economic and Social Council on Justice in matters involving child victims and witnesses of crime, adopted on 22 July 2005 at the 36th plenary indicate as fundamental principles: dignity, non-discrimination, the best interests of the child and the right to participation;

²³ See Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, Chapter IV, child-friendly justice before, during and after judicial proceedings, A. General elements of child-friendly justice, 1. Information and advice;

²⁴ Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, Chapter III, Fundamental Principles, A. Participation;

and capacity in any procedure or case²⁵. Cases involving children should be dealt with in non-intimidating and child-sensitive settings²⁶. As far as appropriate and possible, interviewing and waiting rooms should be arranged for children in a child-friendly environment.

Court sessions involving children should be adapted to the child's pace and attention span: regular breaks should be planned and hearings should not last too long. To facilitate the participation of children to their full cognitive capacity and to support their emotional stability, disruption and distractions during court sessions should be kept to a minimum. Language used should be appropriate to his or her age and level of understanding. Whenever children are being heard or giving evidence in judicial or non-judicial proceedings or other interventions, where appropriate, this should preferably take place in camera. As a rule, only those directly involved should be present, provided that they do not obstruct children in giving evidence²⁷. In principle, no information that may lead to the identification of a juvenile offender²⁸ or juvenile witness or victim of a crime²⁹ shall be published.

In all judicial and non-judicial proceedings or other interventions, children should be protected from harm, including intimidation, reprisals and secondary victimization. Special precautionary measures should apply to children when the alleged perpetrator is a parent, a member of the family or a primary caregiver³⁰. Direct contact, confrontation or interaction between the child victim or witness and the alleged perpetrators should, as far as possible, be avoided³¹, except when it is requested by the child victim³².

The rights of children shall be secured without discrimination on any grounds such as sex, race, colour or ethnic background, age, language, religion, political or other opinion, national or social origin, socio-economic background, status of their parent(s), association with a national minority, property, birth, sexual orientation, gender identity or other status, and specific protection and assistance shall be granted to more vulnerable children, such as migrant children, refugee and

²⁵ Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, Chapter III, Fundamental Principles, C. Dignity;

²⁶ See Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, Chapter IV, child-friendly justice before, during and after judicial proceedings, D. Child-friendly justice during judicial proceedings, 5. Organization of the proceedings, child-friendly environment and child-friendly language;

²⁷ See Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, Chapter IV, child-friendly justice before, during and after judicial proceedings, A. General elements of child-friendly justice, 2. Protection of private and family life;

²⁸ Rule 8, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules").

²⁹ Resolution of the UN Economic and Social Council on Justice in matters involving child victims and witnesses of crime, adopted on July 22, 2005, Chapter X – the Right to Privacy;

³⁰ See Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, Chapter IV, child-friendly justice before, during and after judicial proceedings, A. General elements of child-friendly justice, 3. Safety (Special Preventive Measures);

³¹ Resolution of the UN Economic and Social Council on Justice in matters involving child victims and witnesses of crime, adopted on July 22, 2005, Chapter XII - The right to safety, Chapter XIV - the right to special preventive measures;

³² See Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, Chapter IV, child-friendly justice before, during and after judicial proceedings, D. Child-friendly justice during judicial proceedings, 6. Evidence / statements by children;

asylum seeking children, unaccompanied children, children with disabilities, homeless and street children, Roma children, and children in residential institutions³³.

In all cases except those involving minor offences, before the competent authority renders a final disposition prior to sentencing, criminal record of the juvenile 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 authority³⁴. Social inquiry reports (social reports or pre-sentence reports) are an indispensable aid in most of the cases of juvenile offenders tried in court. The competent authority shall be informed of important facts about the juvenile, such as his/her social and family history, school situation, his/her experience in education etc.

The disposition of the competent authority shall be guided by the following principles: the reaction taken shall always be in proportion not only to the circumstances and the gravity of the offence but also to the circumstances and the needs of the juvenile as well as to the needs of the society; restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum; deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response; the well-being of the juvenile shall be the guiding factor in the consideration of her or his case. The competent authority shall have the power to discontinue the proceedings at any time³⁵.

In view of the varying special needs of juveniles as well as the variety of measures available, appropriate scope for discretion shall be allowed at all stages of proceedings and at the different levels of juvenile justice administration, including investigation, prosecution, adjudication and the follow-up of dispositions³⁶. Efforts shall be made, however, to ensure sufficient accountability at all stages and levels in the exercise of any such discretion. Those who exercise discretion shall be specially qualified or trained to exercise it judiciously and in accordance with their functions and mandates³⁷.

Reaction to juvenile delinquency: Parents (or guardians and trustees) should be encouraged to be aware of and accept responsibility which they have in relation to criminal behavior of their children. It is required that they take part in court hearings (save cases when it is not productive) and, whenever possible, it is necessary to provide them help, support and guidance. Parents and

³³ Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice, Chapter III, Fundamental Principles, D. Protection from discrimination;

³⁴ Rule 16, United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules").

³⁵ Rule 17, United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules").

³⁶ Rule 6, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules").

³⁷ Rule 6, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules").

guardians should be required to attend trainings and consultations in order to ensure that the child attends school thus helping official authorities to implement community sanctions and measures³⁸.

No juvenile shall be removed from parental supervision, whether partly or entirely, unless the circumstances of her or his case make this necessary³⁹. Placement of a juvenile in an institution shall always be a measure of last resort and the duration thereof shall be as short as possible. Where possible, alternatives to remand in custody should be used for juvenile suspects, such as placements with relatives and stimulating families or placement centers to accept the child. Custodial remand should never be used as an impending punishment, as a form of intimidation or serve as a substitute for child protection or mental health measures⁴⁰. The competent authority may conduct trial in various forms, with great flexibility, in order to avoid, to the extent possible, placement in an institution. Such measures, many of which can be combined, are as follows:

- a) Ordering support, guidance and supervision;
- b) Probation;
- c) Ordering of intervention of community service;
- d) Fines, compensation, restitution;
- e) Ordering an intermediate or another regime;
- f) Ordering participation in certain meetings of orientation groups and other similar activities;
- g) Ordering placement with a family or a community center or in some other educational environment;
- h) Other relevant decisions.

Any recourse to extra-judicial means involving referral to community services or other relevant services requires the consent of the person concerned or the consent of his/her parents or guardian⁴¹. Reaction to juvenile delinquency shall be of a planned and comprehensive character⁴², coordinated and realized by local partnerships which include key public authorities: police, probation, youth welfare services, judicial authorities, employment agencies, educational institutions, health care authorities and ensuring housing, as well as volunteer and private sector. Such partnerships shall undertake for achieving the clearly defined purpose of:

- providing initial and continuous training;
- planning, financing and rendering of services;

³⁸ Para.10 Recommendation Rec (2003) 20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, adopted by the Committee of Ministers on 24 September 2003.

³⁹ Rule 18, United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules").

⁴⁰ Para.17 Recommendation Rec (2003) 20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, adopted by the Committee of Ministers on 24 September 2003.

⁴¹ Rule 8, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules").

⁴² Recommendation no. R (87) 20 of the Committee of Ministers to Member States on social reactions to juvenile delinquency.

- setting standards and monitoring implementation thereof;
- sharing information (in accordance with legal requirements regarding data protection and professional secret, taking into account the specific functions of the respective authorities); and evaluating the efficiency and distribution of information regarding best practices⁴³.

Efforts should be made and appropriate mechanisms established to promote, on both a multidisciplinary and an interdisciplinary basis, interaction and co-ordination between economic, social, educational and health agencies and services, the justice system, youth, community and development agencies and other relevant institutions⁴⁴. United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”) provide for the following: “Sufficient attention shall be given to positive measures that involve the full mobilization of all possible resources, including the family, volunteers and other community groups, as well as schools and other community institutions, for the purpose of promoting the well-being of the juvenile, with a view to reducing the need for intervention under the law, and of effectively, fairly and humanely dealing with the juvenile in conflict with the law”. These interventions are to be reflected in any national policy document⁴⁵.

III. 2. The practice of other states:

Australia registers a considerable decrease in the number of cases heard by the courts for children, because of efforts to diversify at early stages of the procedure. In all regions, there are specialized courts for cases involving children⁴⁶. The most common diversification measures used are: family conferences; programs for drug and alcohol addicts; mobile teams in the field of juvenile justice; special programs for natives and indigenous persons, social workers’ programs for vulnerable families; programs carried out in schools; mentors’ programs (elderly brother/sister) etc.⁴⁷ Due to keeping a complex set of disaggregated statistical data (the age of the offenders, types of committed offenses, and the reasons and purpose of committing the crime.), it was possible to permanently adapt the intervention programs in cases involving child offenders. Currently, there is a tendency to increase the focus on child victims.

⁴³ Para.21 Recommendation Rec (2003) 20 of the Committee of Ministers to member states concerning new ways of dealing with juvenile delinquency and the role of juvenile justice, adopted by the Committee of Ministers on 24 September 2003.

⁴⁴ Para.60 United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), Resolution 45/112 December 14, 1998, (the 68th Plenary Session)., Chapter IV, child friendly justice before, during and after court proceedings, A. General elements of child-friendly justice, 5.Multidisciplinary approach Guidelines Committee of Ministers of the Council of Europe for child friendly justice;

⁴⁵ Para 2 of the European Parliament resolution of 21 June 2007 on juvenile delinquency, the role of women, the family and society.

⁴⁶ http://www.aic.gov.au/criminal_justice_system/courts/juvenile.aspx;

⁴⁷ Juvenile's contact with the criminal justice system in Australia. Kelly Richards, Australian Government, Australian Institute of Criminology, p 68-94; <http://www.aic.gov.au/documents/E/F/0/%7BEF09BB44-FC3D-41BD-81CD-808DE9D0DF99%7Dmr07.pdf>;

Canada enacted the Act on Criminal Juvenile Justice in April 2003. The purpose of this document is to reduce the rate of youth incarceration and ensure community responses to crimes and misdemeanours. It is intended to involve various community services in the delinquency treatment⁴⁸. Thus, "serious justice should be applied in serious cases" and for juvenile cases measures such as to exclude children from the traditional justice system and the involvement of community services are preferred. Thus, it is recommended to the police and prosecutors to exclude children from the traditional justice system through conferences with the participation of victims, parents and community members⁴⁹. As fundamental justice principles in cases involving children are considered the following: juvenile offenders must be held and treated separately from adults; rehabilitation and not repression must be the basis for legislative and judicial intervention in cases involving children; the justice system should avoid at maximum extent possible to reveal the identity of the juvenile as it may harm the rehabilitation process; the justice system must be based on observing the best interests of the child⁵⁰.

France created specialized courts for cases involving children in 1945, in tandem with a specialized service that should take care of children for "educational supervision" which later became the Judicial Youth Protection Service (Protection Judiciaire de la Jeunesse). Starting from 1958, the educational protection measures can be undertaken without the child to have had committed a crime. The prosecutor has advanced discretionary power. A special attention is paid to victims' interests. The judges of the specialised courts for children are legally required to ask for a social questionnaire or a personality questionnaire before the hearing takes place. The length of the hearing might last from 10 days and one month. The judge for children is assisted by two assessors and also has the competence to hear cases in which juveniles are in danger (in civil proceedings)⁵¹. The Act on adapting the justice to the criminality's developments from March 2004 reiterated the specialization of all those who work with juvenile offenders⁵². Legislation is being constantly modified, receiving recommendations on child-friendly justice⁵³.

Germany has had specialised courts from the beginning of the twentieth century (1908, Berlin, Frankfurt am Main). In 1923 was adopted the first Act on juvenile justice, which set specific procedural rules for cases involving juveniles and a number of alternatives to imprisonment (later amended in the Nazi era, a new document was adopted in 1953). Currently, the system experiences a specialization of criminal justice actors. The cases are tried by a single judge, a judge assisted by assessors or a panel of judges⁵⁴. It is a mandatory requirement that the judge and the prosecutor also

⁴⁸ The evolution of Juvenile Justice in Canada. The International Cooperation Group - Department of Justice Canada, p 30; <http://www.justice.gc.ca/eng/pi/icg-gci/jj2-jm2/jj2-jm2.pdf>;

⁴⁹ Canada's Juvenile Justice Law and Children's Rights. Nicholas Bala, p 3, http://www.ibcr.org/editor/assets/conference/13bala_eng.pdf

⁵⁰ Canada's Juvenile Justice Law and Children's Rights. Nicholas Bala, p 5, http://www.ibcr.org/editor/assets/conference/13bala_eng.pdf

⁵¹ <http://www.justice.gouv.fr/justice-des-mineurs-10042/> ;

⁵² See: For a Gender Perspective Within the Juvenile Justice System, Carroci Editore SpA., Rome, 2007, p.27-56.

⁵³ For example, by decree no. 2009-572 on the child in court hearings, the judge must ensure that the child has understood his rights and shall be assisted by a lawyer during the hearings, see:

<http://www.textes.justice.gouv.fr/decrets-10181/decret-relatif-a-laudition-de-lenfant-en-justice-17300.html> ;

⁵⁴ See: Youth Courts Act in the version promulgated on 11 December 1974; http://www.gesetze-im-internet.de/englisch_jgg/englisch_jgg.html#p0150

have teaching experience⁵⁵. Hearings are closed, not to lead to stigma and harm the "educational" interests. The meeting must be attended by the so-called "social worker" of the court. He shall draft the social questionnaire and participate in meeting to characterize the personality of the offender and help the judge to identify the best penalty if the case may be⁵⁶.

Italy tries to combine the criminal reaction with the assistance and educational one. This is made possible due to the existence of a constitutional judge appointed to chair ad-hoc criminal proceedings in cases involving juveniles. The judge for juveniles is assisted by two other judges, experts in psychology, anthropology, pedagogy, etc. This approach intends to be an educational one rather than a punitive and repressive one. The court decisions are implemented within the context of a wide range of educational and social services, to support youth and children⁵⁷.

New Zealand addresses the issue from the perspective of restorative justice, using a variety of methods, including family conferences. There are specialized courts, courts for Youth, which include specialized judges who hear cases of children in conflict with the law and who have the attribution to take decisions departing from the interests of the victim, but also the perpetrator and the community as a whole. The hearings are closed and if one wants to publish certain information, it should be checked with the judge. The juveniles are assisted by a lawyer. The procedure is less formalized than in the courts for adults in order to stimulate effective participation of children and not to subject them to stress. Some categories of cases (e.g. murder) are heard by the higher courts. There are multidisciplinary groups composed of legal, educational, health and other services, called the Teams for Juvenile Delinquency, which are meant to ensure coordination between various agencies in the treatment of juveniles (both before and after delivery of the decision in a particular case)⁵⁸.

In **Romania**, according to the Law on judicial organization no. 304/2004 specialized courts for juveniles and family are to be created. Currently, there is only one specialized court, the Brasov Court⁵⁹. However, the experience of this court could represent a model for specializing courts in cases involving children in Moldova. In terms of material jurisdiction, the specialized court shall hear the following categories of cases:

a) criminal:

- all the crimes within the jurisdiction of the first instance court, where crimes are committed by juveniles or involve juveniles as injured parties;

⁵⁵ See: For a Gender Perspective Within the Juvenile Justice System, Carroci Editore SpA., Rome, 2007, p.57-63.

⁵⁶ Juvenile Justice in Germany, Frieder Dunkel.

<http://www.rsf.uni-greifswald.de/fileadmin/mediapool/lehrstuehle/duenkel/JuvenileJustice.pdf>;

⁵⁷ See: For a Gender Perspective Within the Juvenile Justice System, Carroci Editore SpA., Rome, 2007, p.109-111.

⁵⁸ For details, see: <http://www.justice.govt.nz/courts/youth/about-the-youth-court>

⁵⁹ It was established by the Order of the Minister of Justice no.3142/C/22.11.2004 issued under Article 130 paragraph 2 of the Law on Judicial Organization no.304/2004 and GD 736/2003 in force at that date, on the organization and functioning of the Ministry of Justice. According to the aforementioned Order, TMF started to work effectively starting from 22.11. 2004. see: <http://portal.just.ro/InstantaPrezentare.aspx?idInstitutie=1372>

- starting with November 25, 2010, recourses filed against the decisions issued by first instance courts judges in criminal cases in which either the offenses were committed by juvenile defendants or offenses were committed against a juvenile injured party, in criminal cases where the criminal action is initiated upon the complaint of the injured party.

b) civil:

- request on remedying damages caused through judicial errors committed in criminal cases (where the case involves juvenile defendants or juvenile injured parties);
- request on declaring the adoption null, consenting or terminating the adoption;
- requests for recognizing and consenting the coerced enforcement of judgments issued in foreign countries - *exequatur*;
- actions and requests based on certain provisions of special laws such as the protection and promotion of children's rights, the legal status of adoption;
- requests for pre-hearing motions based on the provisions of art. 94, par. 3 of the Law no. 272/2004 (where there are reasonable grounds to consider a situation of imminent danger for the child due to abuse and neglect);
- appeals and recourses against the decisions of first instance courts in cases involving juveniles and family relationships (for example, appeals filed against decisions declaring the marriage dissolved, which set out patrimonial or personal relationships between parents and children, establishing the filiation or the residence of the juvenile, relationships on the status of the common property between spouses during or after divorce)⁶⁰.

In this court there are 6 judges and 6 court clerks. The hearings are held in courtrooms equipped with technical equipment and other facilities, which enable the hearings to be conducted in a child friendly atmosphere. The court has an office for communication and public relations, as well as a phone line for assisting children. In the other courts, there are specialized panels. The prosecution and probation are also specialized. The staff working with children receives specialized training.

In **Russia**, there is a draft law on the juvenile justice system⁶¹. Based on a decision of the Plenum of the Supreme Court of Justice⁶², specialized panels for hearing cases of children in conflict with the law have been created. Although there is strong resistance, including from the judiciary system, in some regions (Taganrog and Sahti towns, Egorlîc district of Rostov region), since 2004, they managed to implement separate child friendly procedures. In these regions, specialized courts are located in separate buildings. The facilities (judge's office, the judge's assistant with attributions of social worker, courtrooms) are adapted to the special needs of children. There are offices for the psychologist, offices for conducting mediation sessions and for group activities. Compared to adult

⁶⁰ See: <http://portal.just.ro/InstantaInformatiiStatistice.aspx?idInstitutie=1372>

⁶¹ For details, see: <http://www.juvenilejustice.ru/documents/d/przak/fzpoekt>

⁶² Постановлением Пленума Верховного Суда РФ "О судебной практике по делам о преступлениях несовершеннолетних" от 14 февраля 2000 г.7.

courtrooms, there are no metal cages. In order to prevent delinquency regular meetings take place with parents and community stakeholders⁶³.

Portugal has specialized courts for several categories of cases, including cases involving children in conflict with the law which are competent to decide when the child is between 12 and 16 years old, in the following situations: facing difficult situations to adapt to normal social life, involvement in begging, vagrancy, prostitution, abuse of alcohol or drugs, committing group crimes or misdemeanours. Cases involving children up to 12 years shall be heard by specialized courts, unless the parents or legal representatives will refuse the resolution of the case through non-judicial measures⁶⁴.

The U.S. has a variety of models for treating juvenile delinquency, the subjects of the federation being entitled to decide their own model. In Pennsylvania, for example, there are specialized courts for cases involving children in conflict with the law. All other related services are organized in addition to court hearings and are subordinated to the specialized judge for cases involving children. Collaboration with community agencies is crucial in successful treatment of juveniles.

Several states do not have separate systems of juvenile justice, such as Denmark, Iceland, Finland, Norway and Sweden, but have special rules to be applied in cases of children in conflict with the law in the justice system.

⁶³ <http://www.juvenilejustice.ru/documents/Materialproektov/juvkonf2/regtex>

⁶⁴ http://ec.europa.eu/civiljustice/org_justice/org_justice_por_en_special.pdf

IV. THE NEED OF APPROACHING THE PROBLEM OF THE SPECIALIZATION OF THE JUDICIARY IN THE REPUBLIC OF MOLDOVA AND THE UNDERTAKEN COMMITMENTS FOR ENSURING THE RIGHTS OF CHILDREN

In the Republic of Moldova, there are still many obstacles to the full development of the child's personality, a situation that is being observed for years⁶⁵. As a result of poverty, school dropout, lack of parental control and migration, limited educational and vocational training opportunities, lack of appropriate employment as the case may be, use of drugs and psychotropic substances, harmful influence of adults, underdeveloped social control network, violence and abuse⁶⁶, children drift into deviant behaviour, which results in an antisocial or social-dangerous behaviour, by committing crimes and misdemeanours. At the same time, the available social services are limited and inaccessible in certain areas and cannot meet the real needs⁶⁷.

In the specific area of justice, there is a developed legal framework, but neither the Ministry of Justice, nor the Ministry of Internal Affairs have developed any policies and strategies on children⁶⁸. In general, the law provides that children convicted for minor crimes should be referred to educational and medical institutions and not to detention facilities, if this is appropriate for their situation. The legislation is considered to be consistent with international standards in the field. However, governmental structures often seem to prefer residential care. Although the probation service has been created and certain efforts have been made for specialization of its employees in cases involving children, this service, however, was unable to obtain a clear status; moreover, there is the risk of its integration of its competences in, or, even worse, dilution thereof into the prison service. No NGO has proven any capacity for informal care. For example, the Institute for Penal Reforms has created a network of community justice centres for post-prison social reintegration, but the funding of the system is uncertain. Also the cooperation of governmental and nongovernmental structures seems to be superficial. This situation is also found by the UN Committee on Child's Rights, which recommends to the Republic of Moldova, *inter alia*, to improve coordination efforts

⁶⁵ Report on human rights in Moldova in 2006, the Center of Human Rights, 2007, p17 to 27.

⁶⁶ See: Summary record of the 1383rd meeting, Consideration of reports of States parties, Second and third periodic reports of the Republic of Moldova, CRC/C/SR.1383, 27 January 2009;

List of issues to be taken up in connection with the consideration of the second and third periodic reports of the Republic of Moldova (CRC/C/MDA/3) Implementation of the Convention on the Rights of the Child, CRC / C / MDA / Q / 3, 17 October 2008;

Written replies by the Government of the Republic of Moldova concerning the list of issues (CRC/C/OPAC/MDA/Q/1) to be taken up in connection with the consideration of the initial report of the Republic of Moldova under article 8, paragraph 1 of the Optional protocol to the Convention on the rights of the child on the involvement of children in armed conflict (CRC/C/OPAC/MDA/1) CRC/C/OPAC/MDA/Q/1/Add.1, 29 December 2008.

⁶⁷ See: Appendix C, Map of known social services for children in child care rating system in Moldova, final report, Every Child, Oxford Policy Management, UNICEF, 2009, p123-124.

⁶⁸ Assessment of child care in Moldova, final report, Every Child, Oxford Policy Management, UNICEF, 2009, p98.

between various agencies responsible for child protection⁶⁹, but also to consider the possibility of establishing specialized courts in all regions of the country and appoint specialized trained judges⁷⁰, to ensure that all juvenile justice professionals are trained in the light of relevant international standards, to examine the possibility of alternatives to detention such as diversion, reconciliation and mediation⁷¹. Obligation to form a separate justice system for children is reflected in many national policy documents.

- **National Action Plan on Human Rights for 2004-2008** provided as relevant actions in a separate chapter on the rights of the child "the improvement of judicial intervention procedures in cases where children are involved; the adjustment of general education and vocational training programs, psychosocial rehabilitation programs for the work with children involved in the justice system, with those in detention; improving the collection of statistical data about children and families and systematic analysis of segregated data for all areas covered by the Convention on the Child's Rights, with a focus on groups of risk; systematic training of professionals working for and with children (judges, lawyers, employees of law enforcement agencies, civil servants, teachers, health workers, social workers, representatives of non-governmental organizations) in the child rights' field"⁷².
- In 2007 the Parliament approved the **National Strategy for Strengthening the Judiciary System** in the context of the Government's activity program on European integration⁷³. "Improving the juvenile justice system" is one of the nine components of the Strategy⁷⁴. Four specific objectives/activities have been identified: assessing the necessary number of staff and premises; improving the legal framework to increase procedural guarantees granted to juveniles and to simplify procedures; specializing judges and training other staff categories of the judiciary; creating infrastructure for proper functioning in good conditions of juvenile justice⁷⁵. This also provides for improved handling of cases where children are involved as victims or suspects.
- **National Development Strategy for 2008-2011** reiterates these objectives, mentioning as priority actions "the assessment of the necessary number of staff and premises for hearing in

⁶⁹ Para. 11 Concluding observations: Republic of Moldova, Consideration of reports submitted by states parties under article 44 of the Convention, CRC/C/MDA/CO/3, 20 February 2009.

⁷⁰ Reiterated Recommendation, originally formulated in 2002, see para. 52 (a), Concluding observations of the Committee on the Rights of the Child: Republic of Moldova, analysis of reports submitted by States Parties under Article 44 of the Convention, CRC/C/15/Add.192, October 4, 2002.

⁷¹ Para.73, Committee on the Rights of the Child, Examination of reports submitted by States Parties under Article 44 of the Convention, Final findings, the second and third periodic reports of the Republic of Moldova, CRC/C/MDA/CO/3, 2009 (Concluding observations: Republic of Moldova, Consideration of reports submitted by states parties under article 44 of the Convention, CRC/C/MDA/CO/3, 20 February 2009).

⁷² Parliament Decision no. 415 of 24.10.2003, approving the National Action Plan for Human Rights 2004-2008, public on 28.11.2003 in the Official Monitor no. 235, art. no. 950.

⁷³ The National Strategy for Strengthening the Judicial System and the Action Plan for the implementation of the Strategy for Strengthening the Judicial System, approved by the Parliament's decision no.174-XVI of 19 July 2007.

⁷⁴ Ibid., Annex, paragraph 7.

⁷⁵ Ibid., paragraph 7 (d).

the best conditions the cases where juveniles are involved - victims or offenders; improving the legislative framework in the field of juveniles' rights protection through the development of consistent regulatory proposals to simplify procedures and increase the guarantees granted to juveniles, creation of infrastructure for the proper functioning of juvenile justice, through the specialization of judges and other staff categories of the judiciary and creating a documentation and information centre accessible to professionals in the field of juvenile justice"⁷⁶.

- Priority actions in juvenile justice field are also included in **the National Action Plan on Human Rights for 2011-2014**⁷⁷, including "Improving the juvenile justice system: the training of judges and prosecutors on expanding the application of alternative measures to detention; ensuring the implementation of legal provisions that require the criminal investigation bodies and courts to request from the probation to prepare the pre-sentence psychosocial assessment of the suspect, accused or defendant's personality; monitoring the implementation of the legislation in cases involving juveniles and drafting recommendations on the violations found; organization of continuous training for all the actors involved in the criminal trial with the participation of the juvenile (judge, prosecutor, attorney, probation counsellor, criminal investigation officer, teacher, etc.) by conducting mixed seminars focused on juvenile justice standards and procedures, skills and knowledge specific for working with juveniles, developing community services for preventing juvenile delinquency."

Thus, the national policy documents include relevant actions for specialization of courts in cases involving children, but they do not provide sufficient actions and a strategic approach to achieving the specialization goal. Whatever the political option may be regarding the option for specialization, this will be reflected in a specific action plan that would include measures and actions to achieve, deadlines and responsible institutions and the necessary costs for undertaking the necessary steps aimed at specialization of courts in cases involving children.

⁷⁶ National Development Strategy for 2008-2011, adopted by Law no.295-XVI of 21 December 2007, paragraph 1.2.3.

⁷⁷ Draft approved by Government's Decision, 2 September 2010.

V. THE GENERAL CONTEXT OF THE FUNCTIONING OF THE JUDICIAL AUTHORITIES IN THE REPUBLIC OF MOLDOVA FROM THE PERSPECTIVE OF SPECIALIZED TRAINING

Effective actions for specialization of courts were initiated in 2004, when the Superior Council of Magistracy adopted a decision by which it obliged the chairpersons of the courts to appoint one or more judges specialized in examining the cases involving juveniles suspected of committing a crime. The same year, the General Prosecutor disposed that in each rayon is appointed a prosecutor to administer cases involving juveniles. Apparently, the decisions had a positive impact on the manner the juveniles are treated in the juvenile justice system. However, the impact is limited, partially, because these decisions are not always observed. Following the monitoring the following opinions of the procedural actors was found (Chart 1,2.):

Judges responded:

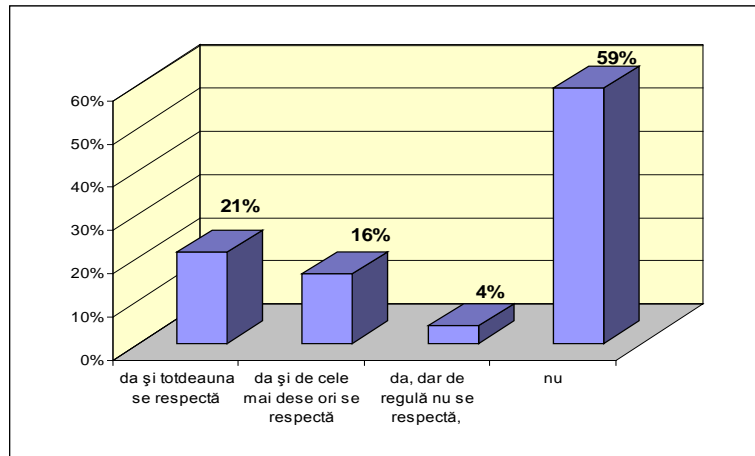


Chart 1. Is there a specialization of cases with children in conflict with the law, in the institution you are working in?

Prosecutors responded:

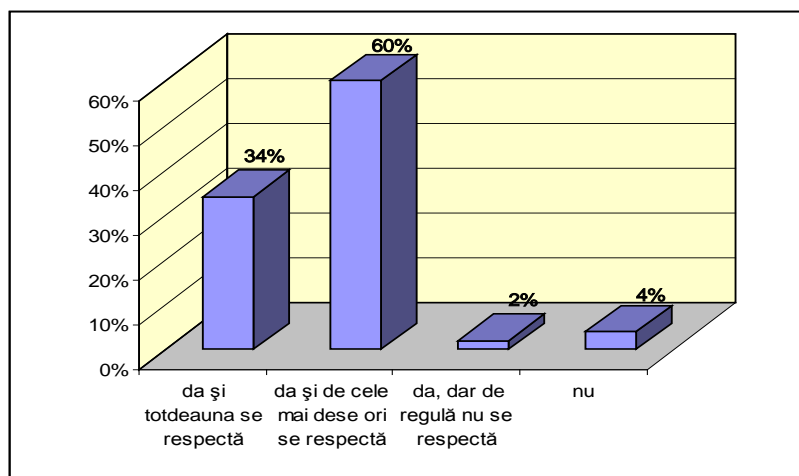


Chart 2. Is there a specialization of cases with children in conflict with the law, in the institution you are working in?

The Republic of Moldova judiciary system inherited some elements of the Soviet system of judicial organization. In the USSR, the judiciary together with the executive and legislative branches, formed a single governing subject, subordinated to the Communist Party. At that time, the Moldovan judiciary system consisted of two tiers of courts constituted of local courts and the Supreme Court of the Moldovan Soviet Socialist Republic, which was subordinated to the Supreme Court of the USSR. Court decisions could have been challenged through recourse and extraordinary appeals. The courts had an active role in investigating cases.

In 1994, the Concept on judicial and legal reform was adopted, with a double purpose: to create a new status and a set of new functions for courts, as well as to amend the status of judges. The Constitution of the Republic of Moldova, adopted in 1994, establishes the legal basis for the organization and functioning of the judiciary, with 4 levels of courts of general jurisdiction. The amendments to the Constitution, on 21 November 2002, eliminated the second level courts (tribunals) and several courts of appeal were created, instead of only one existing before. There are also specialized courts, such as Economic District Court and the Economic Court of Appeal and Military Court.

V.1 The structure of the judicial system in the Republic of Moldova

The Republic of Moldova has a judicial system of courts of general competence structured in three levels, comprising district courts, courts of appeal and the Supreme Court of Justice.

- **District courts** - examine all first instance cases - civil, criminal and administrative – that are not assigned by law to other courts. The cases are usually considered by a single judge, except for extremely complicated criminal cases, cases of major social importance or those involving the commission of exceptional serious crimes, for which the law provides for life imprisonment, examined by a panel of three judges.

Since 2003, the position of instructional judge has been instituted, who is responsible for the pre-trial proceeding in criminal cases, such as authorising the search, tapping or deciding on pre-trial detention.

- **Courts of appeal** - have competence to examine appeals and recourses against district courts' decisions. In case of appeal, the court reconsiders both the law, as well as the facts, while in recourse is examined only the application of the law by lower courts. Also, courts of appeal have jurisdiction to consider in the first instance cases related to intellectual property or which involve the commission of certain offenses referred to in articles 135-144, 278, 279, 283, 284, 337 to 343 of the Criminal Code.

The cases are examined by panels of 3 judges. Each court has a president and a deputy-president. The courts of appeal are located in five regions of the country (Chişinău, Bălţi, Bender, Cahul and Comrat).

- **The Supreme Court** is "the supreme court which ensures correct and uniform application of laws by all courts". The Supreme Court of Justice examines appeals against courts of appeals' decisions and requests for revision against judgments appealed through extraordinary means of appeal. The Supreme Court of Justice has the competence to examine in the first instance crimes committed by the President of the Republic of Moldova.

V. 2. Eligibility criteria for the position of judge

All candidates for the position of judge must meet the following general requirements:

- be exclusively Moldovan citizens;
- have full legal capacity;
- have a law degree, graduates of the National Institute of Justice;
- have no criminal record;
- enjoy good reputation;
- know the state language;
- hold a medical health certificate that confirms that they are medically fit for exercising the position of judge.

The law also provides that up to 20% of the functions of judge, during a period of 3 years after the creation of the National Institute of Justice is to be filled by candidates who have not graduated from the NIJ, but meet the general requirements, have 5 years of relevant experience and pass a qualification exam before the Qualification Board of the Supreme Council of Magistracy. The candidates for judge for the court of appeal should have work experience as a judge for at least 6 years, and candidates for judge for the Supreme Court of Justice - at least 10 years.

Judges of district courts, courts of appeal, economic and military courts are appointed by the President of the Republic of Moldova, upon the Superior Council of Magistracy's proposal, for a term of five years and, after this period, may be appointed until mandatory retirement at the age of 65.

The president, deputy-presidents, deputy-presidents of the boards and other judges of the Supreme Court of Justice are appointed by the Parliament, also upon the Superior Council of Magistracy's proposal.

V. 3. Professional training

▪ Universities

Since 2005, the Republic of Moldova started to implement the Bologna Process, which is part of the Bologna Declaration on the European Higher Education Area from 1999 and aims to unify standards for higher education in Europe. At the State University of Moldova, the students are offered a program for undergraduate studies for four years, with the option to study additional 1.5 years to get a master's degree according to the Bologna Process. The implementation of the Bologna Process

determined changes to the curriculum for the Moldovan law faculties, regarding the separation of courses in compulsory and optional ones and introduction of credits and curricula for courses.

Elements of juvenile justice in the higher education institutions can be found in the "Juvenile Justice" course (Criminal Procedure and Criminology Chair), held for master students (the Law Faculty of the State University of Moldova has been analysed). The main topics of the course are based on the fundamental concepts of juvenile justice; international instruments and mechanisms in juvenile justice field; application of alternatives in juvenile justice field; actors of the juvenile justice system and their interaction with children; detention of children in conflict with the law; prevention of juvenile delinquency.

▪ **Initial and continuous training in the National Institute of Justice**

The National Institute of Justice (NIJ) is administered by a Board consisting of 13 members, 7 of whom are judges elected by the Superior Council of Magistracy, 4 members are appointed by the General Prosecutor, a member by the Ministry of Justice, and a law professor. The Council members have a four years mandate and may be renewed only once. The Council appoints an executive director to administer the institution. The admission contest for future judges and prosecutors is carried out by the Commission for the admission exams. The National Institute of Justice conducts an initial 18 months training program for candidates to the position of judges, prosecutors, and others who work in the judiciary. The NIJ's curriculum provides for activities in classrooms and a 6 months internship in a district court under the supervision of the president of the court.

Starting with January 1, 2008, judges are required to complete at least 40 hours of continuous legal training each year. Participation in continuous legal training is also a major criterion for promotion of judges. NIJ has the duty to organize the continuous legal training. The Superior Council of Magistracy appoints, depending on the proposed topic, judges to participate in certain courses. The curriculum includes a wide range of topics, including juvenile justice, ECHR case law, civil and criminal procedural law, practical skills to solve case studies, reasoning of judgments, and those related to the Code of Ethics.

The Law on the National Institute of Justice establishes one special competence and namely the attribution to train candidates to the position of judges and prosecutors, improving the professional training of acting judges and prosecutors and others who contribute to the act of justice. The Institute is not part of the national education system and is not subject to the legal provisions on accreditation and licensing of educational institutions and those from science and innovation field.

The National Institute of Justice provides for the trainees the course "Juvenile Justice" which contains reference to the following general concepts regarding juvenile justice; international standards in the field of juvenile justice; educational and ethical elements in juvenile justice; peculiarities in conducting criminal investigation on cases of children in conflict with the law in courts; application of coercive procedural measures; alternatives to juvenile justice; peculiarities of the handling of cases involving children who are not subject to criminal liability.

Continuous training of judges is regulated in the Law on the National Institute of Justice. According to Article 19 Judges are required to complete at least 40 hours of continuous education annually. This requirement was introduced on January 1, 2008. NIJ presents to the Superior Council of Magistracy,

certificates of participation for judges who participate in training courses. The Superior Council of Magistracy is responsible for maintaining records of district court and courts of appeal judges.

Judges have a legal and ethical obligation to continue their studies in order to properly exercise their attributions and maintain their qualification at high level. Within the conducted research where more prosecutors and judges have been interviewed, the main training fields in the area of juvenile justice were highlighted. The majority of the prosecutors mentioned the major importance to increase the number of trainings in the field of Psychology - 24%. According to the opinion of judges, at the time being, the courses on procedures and technics of child hearing should constitute the main focus – 24 %.

Prosecutors responded:

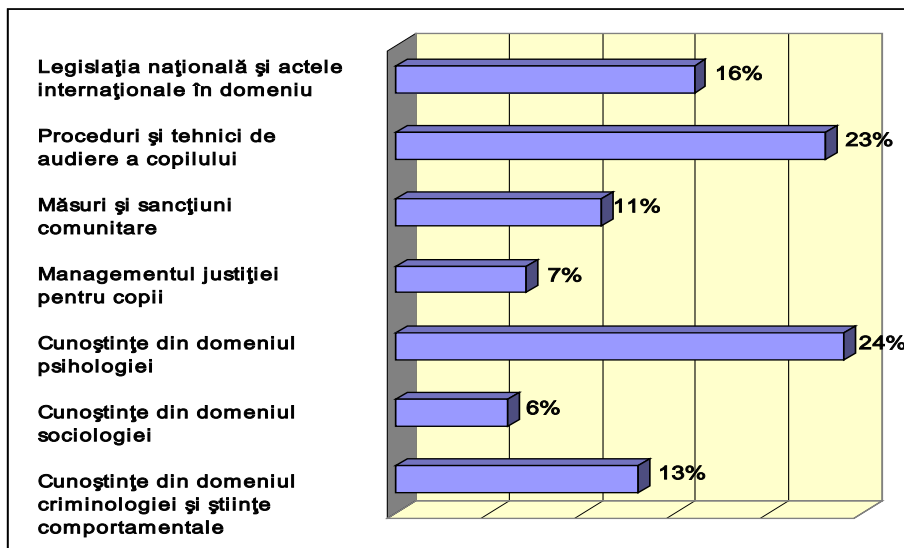


Chart 3. Priority-fields in the initial and continuous training of prosecutors

Judges responded:

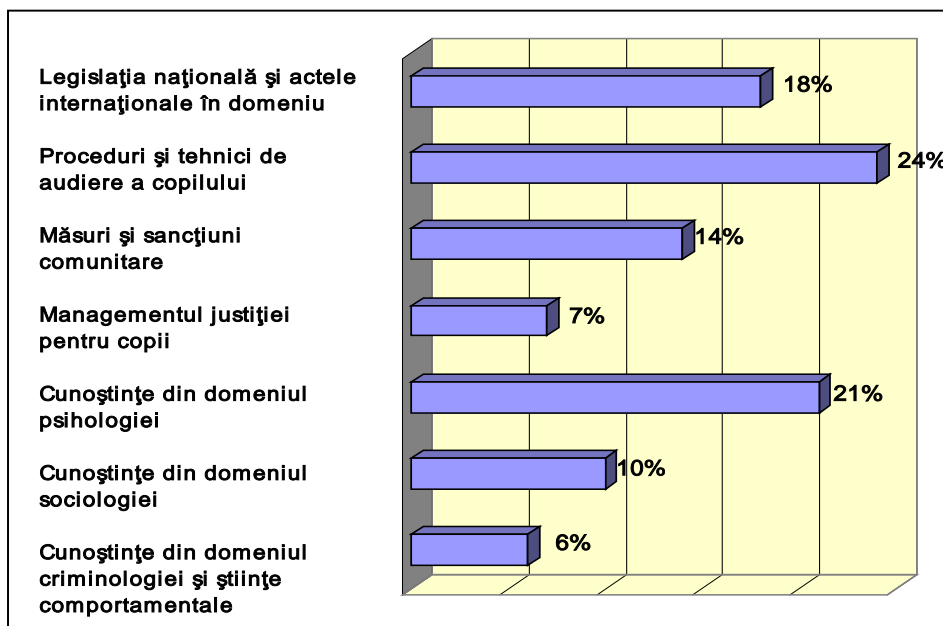


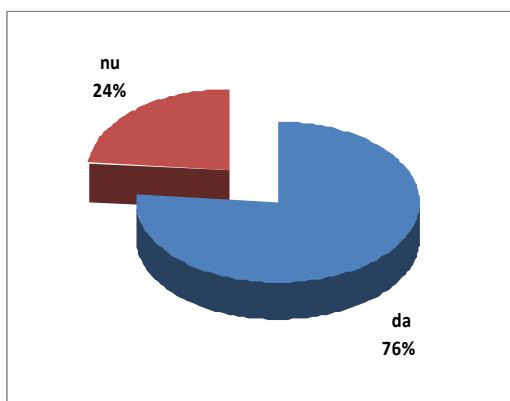
Chart 4. Priority-fields in the initial and continuous training of judges

Continuous training courses are offered free of charge for judges. In November 2009, UNICEF organized a training of trainers in two stages. The course addressed several topics related to:

- interactive teaching, methods and models;
- international norms and standards on juvenile justice;
- treatment of young people in difficult situations and in conflict with the law, preventing violations of the law among young people; peculiarities of adult education;
- interpersonal communication;
- national criminal procedure law and its compliance with international standards;
- peculiarities of hearing criminal cases involving juveniles; criminal investigation in cases involving juveniles;
- national criminal legislation and its compliance with international standards;
- sentencing of juveniles; the principle of proportionality;
- application of coercive procedural measures for juveniles; hearing the juvenile in conflict with the law; peculiarities and special requirements; issues related to the execution of criminal sanctions by juveniles;
- victimology, the psychology of the victim, the causes of the victimologic behaviour of the children in conflict with the law; psychological aspects of communication with the minor, emphasizing the personality of juveniles.

In May 2010 the training course, *"The prosecutor and judge in the juvenile justice system"* was organized. In general, the course topics have common points with those of the training of trainers, such as: international standards and norms on juvenile justice; juvenile justice - national regulations; criminal investigation in cases involving juveniles; national criminal-procedural law and its compliance with international standards; peculiarities of hearing criminal cases involving juveniles; setting the penalty for juveniles; the principle of proportionality; restorative justice for juveniles; hearing the juvenile in conflict with the law; peculiarities and special requirements; tactical-psychological peculiarities of integrating juveniles; cognitive behavioural peculiarities of juveniles; socio-psychological aspect of the victim's behaviour; peculiarities of keeping juveniles in prisons.

Prosecutors responded:



Judged responded:

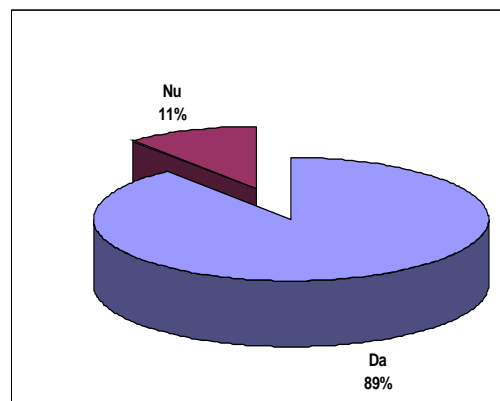


Chart 5./Chart 6. Do you think a course in the juvenile justice field would be necessary?

The Ministry of Justice and UNCEF have elaborated an activity plan in the field of training specialized judges, for August 2010 – 15 June 2011, where it was proposed as an objective the elaboration and implementation of a compulsory module of continuous training in the field of juvenile justice. In order to implement this module, it was proposed to select national trainers, including from those recently trained in the field of juvenile justice, who will form a working group in order to elaborate the agenda and establish the number of beneficiaries of the course coordinated with the GPO and SCM. Also, it was proposed to elaborate and draft a compendium of ECHR decisions in cases on juveniles, and other papers necessary to specialized judges. As to the elaboration of the curriculum for continuous training the idea of creating a permanent counselling commission or a council made of judges who a rich experience, who have similar activities with those of the trainees of the training courses.

However, the results of the questionnaires show that there is space for improving the continuous training curriculum, both for judges and prosecutors (Chart 7, 8).

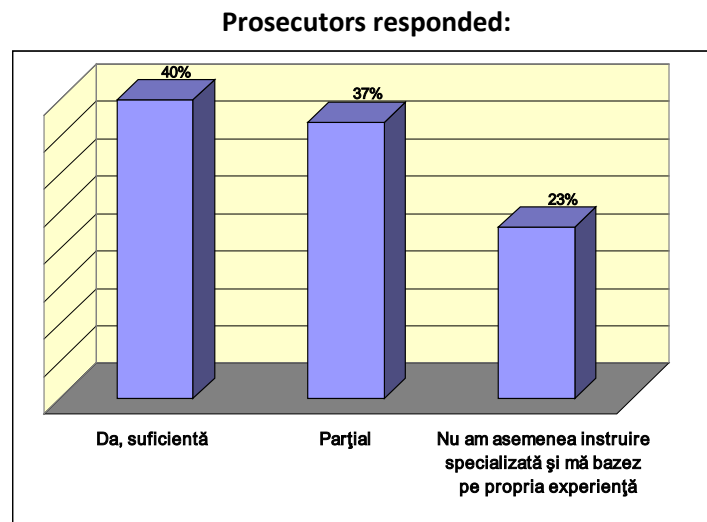


Chart 7. If you ever carried out criminal investigation against children, have you received specialized training in the justice for children field?

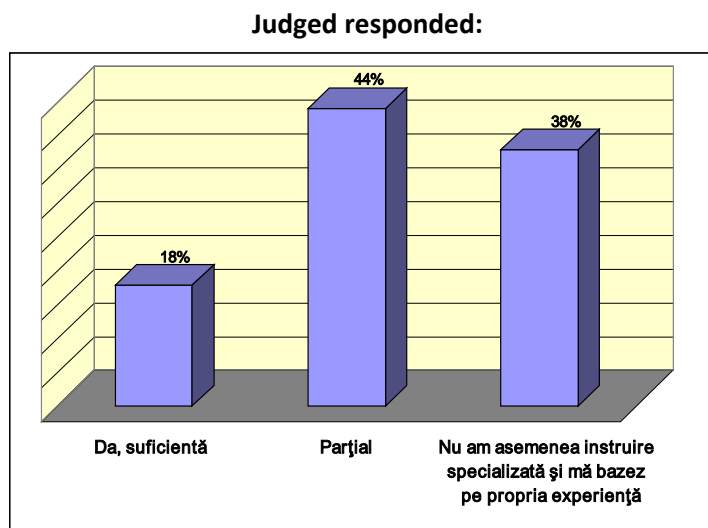


Chart 8. If you ever examined cases against children in conflict with the law, have you received specialized training in the justice for children field?

VI. LEGAL PROVISIONS ABOUT THE REACTION TO JUVENILE DELINQUENCY AND THE EXAMINATION OF CASES INVOLVING CHILDREN

The Criminal Code of 1961 - contained certain provisions regarding children. According to article 10 of the Criminal Code, the criminal liability age was 16. For certain categories of offenses criminal juveniles can be held liable from 14 years of age. The list of offenses for which criminal liability starts at 14 years of age was expressly stipulated in the Criminal Code.

Persons of 14 and 16 years of age were subjected to criminal liability if committing a homicide (Articles 88-91 and 93), intentional bodily injuries that resulted into a health disorder (Articles 95-98 and the second part of Article 100), rape (Article 102), burglary (Article 121), robbery (Article 120), theft (Article 119), theft in large proportions from owner wealth (Article 123/1), aggravated or especially aggravated hooliganism (the second and third part of Article 218), intentional destruction of or damage to their owner's property (Article 127), theft of drugs (Article 225/2), theft of firearms, ammunition or explosive substances (Article 227/1) and for committing intentional actions that can cause a train derailment (Article 83). However, if the court considers that the correction of the person aged under 18 who committed a crime which does not have a great social danger, is possible without criminal sentence, it could apply to that person coercive educational measures provided of Article 60 of the Code, which is not a criminal punishment. The child may be released from criminal liability and should be sent to the Commission to examine the issue of applying minor coercive educational measures.

When establishing a prison sentence for a child (Article 23 paragraph 2) it was necessary to take into account that persons sentenced to imprisonment for crimes committed at the age of eighteen, may be applied to Early release on parole or replacement of punishment executed by another milder punishment. The Code provided as a mitigating circumstance of a crime by a juvenile (article 37 paragraph 1 point 6). Also, the code stipulated for preterm release before the end of punishment and replacement by another more lenient punishment, if the person have committed the crime at the age of eighteen (Article 52): Early release on parole and replacement of non-enforced part of the punishment with a milder punishment could be applied to a convict if the offense was committed at the age of eighteen and if by exemplary behaviour and honest attitude toward work and learning, he/she proved to have been corrected. Early release on parole and replacement of non-enforced part of the punishment with a milder punishment could be applied by the court at the proposal of the institution of execution of the sentence and the committee for juvenile or supervisory committee at the local administration level.

Early release on parole or replacement of the non-enforced part of the punishment with a milder punishment might be applied to those convicts who committed the crime at the age of eighteen, having effectively served at least one third of the sentence. Children can be subjected to early release on parole or replacement with a milder punishment after having effectively served at least half of the punishment term established for conviction to imprisonment for a term of at least five years for an intentional crime committed at the age of eighteen; children who served in a place of detention for an intentional crime and who prior to expiry or ceasing of the conviction re-offended being at the age of eighteen by committing an intentional crime, for have been sentenced to

imprisonment; children who have re-offended while serving the sentence in prison and being at the age of eighteen.

Applying conditional early release or replacement of the non-enforced punishment with a milder punishment, the court may put in charge a particular work-collective/group or a particular group of people, with their consent, the obligation to supervise the person during the probation period for the unexecuted part of the punishment imposed by the court, following that they take care of her education. Article 60 stipulated that children can be applied compulsory measures of educational nature, provided that they apologize publicly or in another form to the victim as established by the court; reprimand or severe reprimand; warning; order that the child, who reached the age of fifteen, repairs the damage caused, if the juvenile has its own income and if the damage does not exceed the minimum wage; or work in order to repair the damage caused to the property if this is less than the minimum wage; in case the damage caused exceeds the minimum wage, repairing the damage is done by way of a civil action, placing the child in the custody and strict supervision of parents or persons replacing them, or under the surveillance of a collective of workers, of civil society, with their consent or in the supervision of some citizens at their request; placing the juvenile in a special education institution or in a treatment, education and correction institution.

The Criminal Code of 2002 - has tended to give a new approach to the situation of the child in conflict with the law. Stipulating that the criminal liability age is 16 years old, the criminal code listed categories of crimes for which the criminal liability will begin at the age of 14, the offenses are the following articles 145, 147, 151, 152 para. (2), Art. 164 , 166 para. (2) and (3), Art.171, 172, 175, 186-188, 189 para. (2), (3) and (4), art.190 par. (2) and (3), Art.192 para. (2), Article 195, paragraph 196. (4), art.197 par. (2), art.212 par. (3), article 217 para. (4). b) art.2171 par. (3) and para. (4) b) and d), art.2173 par. (3) letters a) and b), art.2174, art.2176 par. (2), 260, 268, 270, 271, 273 para. (2) and (3), article 275 280, 281, 283-286, 287 para. (2) and (3), art.288 par. (2), art.290 par. (2), art.292 par. (2), art.305, paragraph 317. (2), art.342, 350.

The Criminal Code provides for the release from criminal liability of juveniles. According to art 79, the non-age (the juvenile-age) is an exceptional circumstance allowing the application of a milder penalty than that prescribed for in the law. Given the exceptional circumstances, and reasons related to the offense, the offender's role in committing the offense, his behaviour during and after committing the offense, other circumstances that essentially reduce the seriousness of the offense and its consequences, and the active contribution of the participant in group-crimes to its discovery, the court may impose a sentence below the minimum provided for in the criminal law for that offense, or apply a milder sentence, of another category, or may not apply mandatory additional punishment. The juvenile-age of the person who committed the crime is considered an exceptional circumstance. Article 93 of the Penal Code states that juveniles convicted of committing a minor, serious or less serious crime may be released from punishment by the court if it is found that the purpose of punishment can be achieved by placing him/her in a special education and rehabilitation institution or in a treatment and correction institution, as well as by application of other coercive educational measures provided for in Article 104.

Hospitalization of juveniles in a special education and rehabilitation institution or in a treatment and correction institution shall be decided by the court for a period of not more than reaching 18 years

old. Extension of the stay in these institutions after the age of 18 is allowed until completing the general education or graduating from the vocational school.

Coercive educational measures such as warning, surveillance under the custody of the parents, persons replacing them or specialized state bodies and order to repair the caused damage can be applied against children. In applying these measures should be taken into account the child's material condition; order to attend a psychological rehabilitation treatment; hospitalization, by the court, in a special education and rehabilitation institution or curative and correction institution. The Criminal Code provides for the possibility of reconciliation with the child who has committed a minor, serious or less serious criminal act.

The Criminal Code provides for the criminal liability for offenses against family and children in a separate chapter VII, crimes such as incest (art.201); disclosing adoption secrets (art.201); abuse of the people parents and other persons during the children adoption (art. 2005); child trafficking (206) illegally taking children out of the country (art. 207); attracting juveniles in criminal activity or encouraging them to commit immoral acts (art.208) pornography (art. 208¹); involving juveniles in the illegal consumption of drugs, medicines and other substances with narcotic effects.

However, after three years since the adoption of the Criminal Code significant gaps in the sentencing of children were found. This prompted the Parliament to come up with substantial changes to the Criminal Code.

The 2006 amendments to the Criminal Code promoted the tendency towards decriminalization of the Code by reducing the sentencing levels. Importantly, there was a decrease in the sentencing levels by amending art 70 of the Criminal Code. Thus, according to Article 70 when establishing the prison sentence for a person who, at the time of commission of the offense, has not reached the age of 18, the maximum term of imprisonment shall be halved. When establishing the final punishment in cases of cumulation of crimes, the imprisonment term shall not exceed 12 years and 6 months, and in cases of cumulation of sentences - shall not exceed 15 years. Upon individualization of the punishment against a child shall be applied the provisions of Art 75 of the Criminal Code according to which "for committing a minor or less serious offence, the prison sentence applies only if other educational measure are not sufficient for the correction of the juvenile. Art 79 provides for the fact that: the juvenile-age of the person who committed the crime is considered an exceptional circumstance.

By amending the Criminal Code, the minimum sentencing level was excluded for an essential category of sanctions, by this giving the possibility to impose minimum sentences prescribed in the code. For example, the sanction for the following articles: Article 150 (1), Article 158 (1), Article 192 (2), Article 196 (3), Article 224 (2), Article 227 (2), 228, 229, 230, 234, Article 245 (1), Article 246, Article 248 (2), Article 250 (2), Article 257 (3), Article 2611 (2), Article 262, Article 292 (1), Article 297, Article 302 (1), Article 314 (2), Article 317 (1), Article 321, Article 325 (1), Article 326 (1), Article 334 (2), Article 341 (1), Article 364 (4) of Article 365 (1), Article 366 (2), Article 367 (1), Article 368 (1), Article 369 (2), 370 (1), Article 374 (2), Article 375 (1) and Article 377 (2), the words "from 2 to 5 years" was replaced by "up to 5 years." In September 2010 the criminal liability for domestic violence was introduced in the Criminal Code.

The Criminal Procedure Code of 1961 – did not contain special sections referring to children in conflict with the law. However, there were some articles related to children, regarding the termination of proceedings due to submitting evidence/materials for consideration to the committee for juveniles (Art. 56), and to the legal representatives (Article 50). The Code provided for the participation of the teacher in cases involving juveniles, who participated in procedural actions and as a rule during the hearing of the accused juvenile (Article 132, paragraph 5) having the right to ask questions, upon investigator's consent. When it comes to the hearing of a juvenile witness, the Code provided for a separate article (139) which demanded the need for summoning of the teacher and the legal representatives. These provisions were also applied in Court.

The Criminal Procedure Code of 2003 - comes with key reforms containing a separate chapter on children in conflict with the law. The Code provided for certain principles that refer to children involved in criminal justice system. For example: Article 10. Rights, freedoms and human dignity requires that in cases when a juvenile victim or witness is before the court, actions will be taken to meet his interests.

Article 18 of the Criminal Procedure Code named "*Publicity of the trial*" provides for that the access to the hearing room can be prohibited to mass-media and the public by a reasoned court order, for the whole process or for a part of the process when the interests of the juveniles or the protection of the private life of the parties in the process ask for it. In the process of a juvenile victim or witness, the court will hear his statements in a closed hearing provision also introduced in 2007. The results of the sociological research demonstrate a frequent use of these provisions (Chart 9/10).

Judges responded:

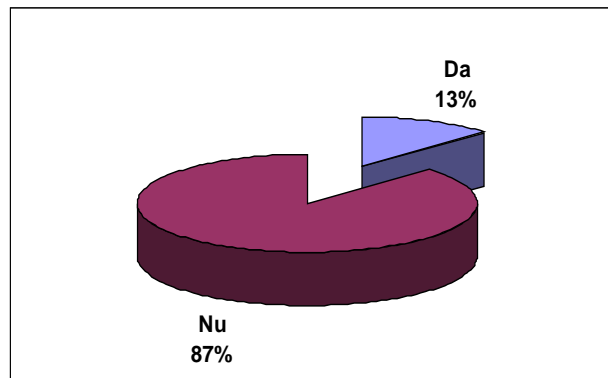


Chart 9 Did it happen to have public court hearings with children in conflict with the law involved?

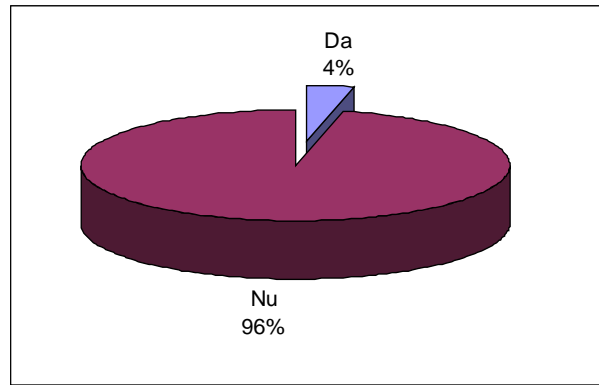


Chart 10. Have the representatives from mass-media ever attended Court hearings against children in conflict with the law?

A rule introduced by Law no. 235-XVI of 08. II. 2007 was to recognize, in Article 20 of the Criminal Procedure Code entitled "Carrying out the trial within a reasonable time" as a criterion for assessing reasonable time to resolve the criminal case, in spite the provision that was originally and prosecution and adjudication of criminal cases are suspected, accused, defendants remand prisoners and juveniles are urgent and preference.

According to Article 6 of the Criminal Procedure Code is established that legal representatives are parents, adoptive parents, tutors, trustees and representatives of institutions under the supervision of which is the suspect, accused, defendant, and convict. At the same time it should be noted that in art. 91 of the Criminal Procedure Code the status of the legal representative of a juvenile witness, is regulated, he has a right to know about citing the criminal investigation body or the court of the person whose interests they represent, to accompany and assist the procedural actions with his participation.

The legal representative of a juvenile witness, taking part in investigative work, is entitled: by permission of the criminal investigation body or the court, to address the person whose interests they represent with questions, comments, guidance, submit requests, make objections against actions of the investigating authorities and request its inclusion in the minutes, object against the actions of the chairman of the hearing, to be informed on the minutes of the procedural actions that he and the person whose interests he represents participated in, the case time and require completion of his or her objections inclusion in the minutes, invite a lawyer for the person whose interests he is representing.

The traditional apprehension period of 72 hours as initially established for all categories of suspects was limited to 24 hours for the children, as of 2007. In the case of apprehension of a child, the person conducting the investigation is obliged to immediately inform the prosecutor and the juvenile's parents or persons replacing them. According to art 173 para. (5) of the Criminal Procedure Code if children, other persons or assets remain without supervision after the apprehension of the person, the prosecution is obliged to take protection measures provided in Article 189 of the Criminal Procedure Code.

Preventive measures are available that can be applied to children and to the child only is placing him on supervision. This means undertaking a written obligation by a parent, tutor, trustee or by another trustworthy person and by the head of the special school the child studies in, in order to ensure his/her presence when summoned to the criminal investigation body or Court, as well as to counteract illegalities. In this regard, the prosecutor or the court requests the guardianship authority information about persons who are to be sent to the child under supervision to convince that they are able to supervise him. Transmission surveillance shall be made only at the written request of persons who can provide supervision. If the person who has been sent supervised child has infringed its obligations, it may be subject by the judge or, where appropriate, by the court of a judicial fines in the amount of 10 to 25 conventional units. Article 186 of the Criminal Procedure Code establishes that for the accused juveniles the custody period may be extended only up to 4 months.

Article 189 of the Criminal Procedure Code, in its turn, provides that when an apprehended or arrested person has under his/her protection children, people recognized irresponsible, persons under guardianship or persons who, because of age, illness or other reasons, need help, the competent authorities should be informed in order to take the due protection measures. The obligation to inform about the need for protection measures lies on the body that carried out the arrest or apprehension. According to art 270 of the Criminal Procedure Code it is the competence of the prosecutor to examine the criminal investigation in juvenile cases. The Code also provides for rules which aim to ensure the efficiency of criminal proceedings involving children. Article 345 of the Criminal Procedure Code establishes that the preliminary hearing shall begin no later than 20 days from the date of the allocation of the case, except for in flagrante delicto. The preliminary hearing in cases in which the defendants are juveniles or are arrested is urgent and should be held by priority, before the expiry of the previously established arrest period. The sociological research shows a general compliance with the deadlines (Chart 11/12).

Prosecutors responded:

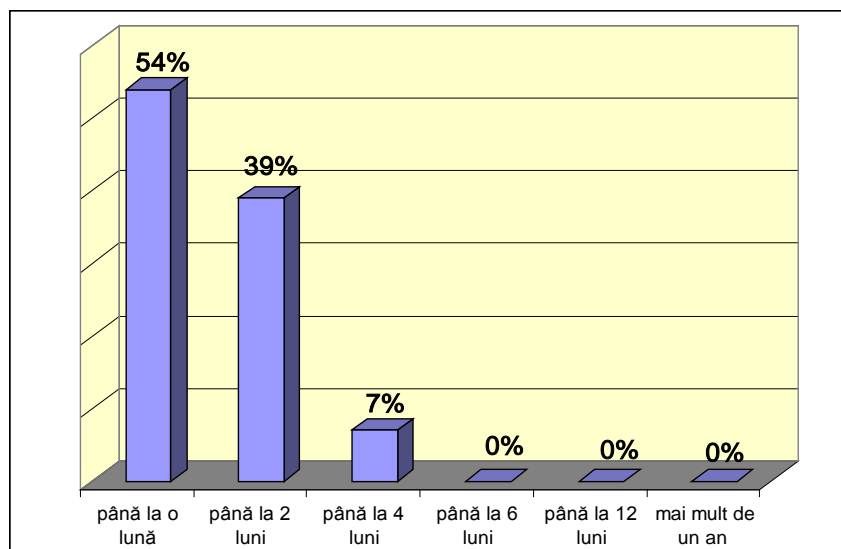


Chart 11. The average period of the entire criminal investigation in cases involving children in conflict with the law?

Judges responded:

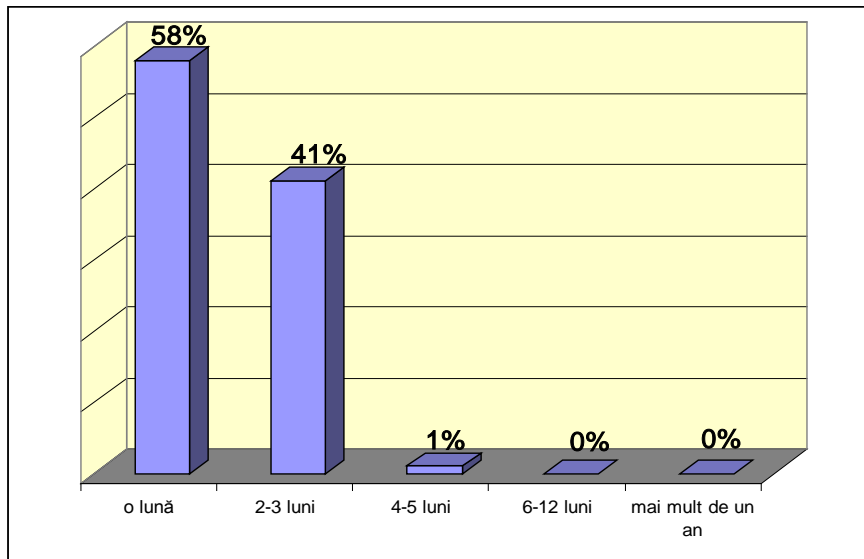


Chart 12. The average period of trial/examination in cases involving children in conflict with the law

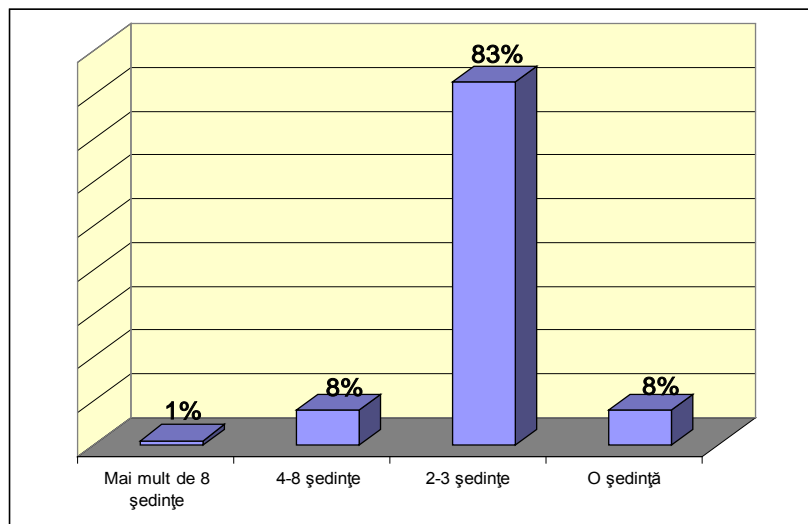


Chart 13. The duration of the trial in cases involving children in conflict with the law

However, the major achievement of the 2003 criminal procedure law was to regulate the procedure in cases involving children. The provisions apply to cases involving persons who, at the time of committing the crime, haven't reached the age of 18. As a rule, the hearing of the case against the juvenile is not public. Article 475 of the Criminal Procedure Code sets out certain additional circumstances to be established in cases involving children, such as: age (day, month, year of birth), the living condition and family education, the degree of intellectual, volitional and psychological development, character and temperament, interests and needs; the influence of the adults or other juveniles on the juvenile; the causes and conditions that contributed to the commission of the offense.

In case it is found that the child suffers from a mental debility, which is not related to a mental illness must also be established whether he was fully aware of the commission of the act. In order to

establish these circumstances, shall be heard the parents, teachers, educators and others who could provide the necessary information, shall be requested a social investigation, presentation of the required documents and shall be perform all the other criminal investigation and judicial measures. At the same time, according to art. 476 of the *Criminal Procedure Code* if during the criminal act, together with the child have also participated adults, the case shall be split, as much as possible, forming a separate file. If the separation is not possible, the provisions of this chapter shall apply only to the juvenile.

Upon apprehension and application of preventive measures against the child, according to art 477 Criminal Procedure Code, shall be examined, for every case, the possibility of placing the child under supervision. Apprehension as wells as the pre-trial arrest of the child can be applied only in exceptional cases when they have committed serious crimes of violence, especially serious or exceptionally crimes. The prosecutor and the parents or other legal representatives of the child shall be immediately notified about the apprehension and pre-trial detention of the juvenile, and this shall be recorded in the arrest record. Summoning of the child who is not in custody, to the criminal prosecution body or the court is done through his parents or other legal representatives, and if the child is in a special institution for juveniles, through the administration of that institution. The hearing of child should not last more than 2 hours without interruption, and in total should not exceed 4 hours per day.

Upon hearing a juvenile suspect, accused or defendant, the participation of the defense attorney, teacher or psychologist is required. The teacher or psychologist has the right to ask questions and at the end of the hearing, to look into the minutes of the hearing or, if appropriate, see the written statements of the child and make written comments on their completeness and correctness. These rights are explained to the teacher or psychologist before the hearing.

Participation in the criminal proceeding to the legal representative is mandatory. The participation of the legal representative starts from the moment of apprehension, pre-trial detention, or from the first hearing. Upon the commencement of his participation the legal representative, he shall be handed written information about his/her legal rights and obligations. The legal representative may be removed from the criminal proceeding and replaced by another, when possible, if there are grounds for believing that his actions harm the interests of the child. The body conducting the criminal investigation or, when appropriate, the court shall adopt a reasoned judgment about removing the legal representative of the juvenile and replacement with another representative. In the hearing of the child shall participate the legal representative and, when appropriate, his/her representative. On completion of the investigation against a child, the prosecution, by a reasoned order, may not show the accused some of the criminal investigation evidence if, in his/her opinion, this might have a negative impact on the child, but presents this evidence to the legal representative of the juvenile.

Particularly important are the diversion procedures stipulated in the Criminal Procedure Code. The Code provides for the procedure to cease the criminal process by exempting the child from criminal liability, if during the criminal investigation on less serious crimes can be established that this offence was committed for the first time and his/her correction can be obtained without holding him/her criminally liable. In case of placing the child in a special education and rehabilitation institution or in a

treatment and rehabilitation institution, the prosecutor's request shall be examined by the investigating judge.

The termination of the criminal proceedings is not allowed if the juvenile or his legal representative disagrees. When adopting a sentence against a child, the court should consider the exemption of punishment enforcement. When a juvenile is exempted from the criminal punishment by being placed in a special education and rehabilitation institution or in a treatment and rehabilitation institution, and by application of coercive educational measures, the court shall inform the respective specialized state body and makes it in charge of supervising/controlling the behavior of the convicted juvenile. The Court may adopt a sentence, ordering the exemption of the child from criminal punishment and applies measures of educational nature.

When adopting a sentence, the Court may decide the placement of the child in a special education and rehabilitation institution or in a treatment and rehabilitation institution until the child reaches the legal age, but for a period not exceeding the maximum term of punishment as written in the Penal Code for the committed crime. Being in the special education and rehabilitation or treatment and rehabilitation institution may be terminated before the child reaches the legal age if he/she is corrected and doesn't need influence by this measure. Extension of stay in institutions mentioned person is permitted after reaching majority until she completed the general education or vocational training.

The question of termination or prolongation of stay in institutions mentioned person shall be settled pursuant to approach the specialized state body providing correct child by the judge of the court which passed the sentence or court jurisdiction of which the child is resident in within 10 days of receipt of the request. We can confirm with a high probability, that the above legislative reforms have led to limiting the number of children involved in the criminal justice system. In table it can be observed dynamics conviction children by type of punishment.

Table 1. The number of convicted juveniles by type of punishment, 2002-1009

| | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 |
|-------------------------------|-------|-------|-------|-------|-------|-------|-------|------|------|------|
| Total convicted | 1 934 | 1 894 | 2 160 | 2 099 | 1 774 | 1 888 | 1 316 | 662 | 445 | 477 |
| Imprisonment | 190 | 227 | 294 | 255 | 194 | 224 | 227 | 124 | 100 | 107 |
| Fine | 258 | 270 | 380 | 421 | 162 | 142 | 116 | 54 | 49 | 39 |
| Conditional conviction | 1 042 | 1 018 | 1 261 | 1 302 | 1 209 | 1 236 | 624 | 321 | 173 | 228 |
| Unpaid work | - | - | - | - | - | 234 | 320 | 154 | 108 | 93 |
| Other | 444 | 379 | 225 | 121 | 209 | 52 | 27 | 29 | 14 | 10 |

Source: National Bureau of Statistics // www.statistica.md

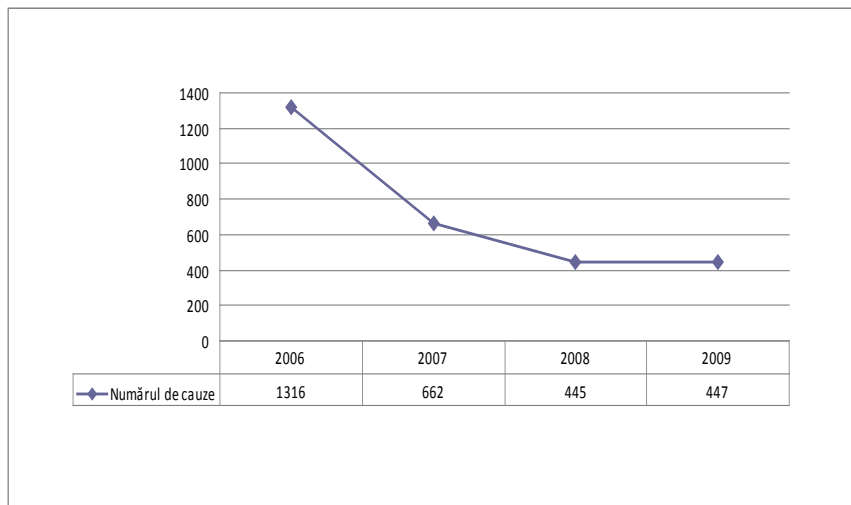
****Does information does not include data from the districts on the left side of the Nistru river.***

As one can see during 10 years the total number of children sentenced was reduced approximately by 400% .However the penalty of imprisonment remained high over the years.

VII. THE EXAMINATION OF CASES INVOLVING CHILDREN IN CONFLICT WITH THE LAW (IN NUMBERS)

If in 2006 there were 1296 criminal cases against children examined, then in 2009 this number dropped to 605. The statistics analysis shows a significant decrease in the number of children sentenced during 2006-2009. In 2006, 1316 children were sentenced and in 2009 the number was reduced to 477 (Table 2).

Table 2. Number of criminal cases against children, examined in the district courts (first instance courts) of the Republic of Moldova



In order to ensure an useful picture for achieving the set objectives, the analysis was divided into two sections: the first section highlights the percentage of cases examined by district courts in the Central region, North, South, Gagauzia and Transnistria, the second section includes an analysis of number of causes examined by district courts in the jurisdiction of the Courts of Appeal of the Republic Moldova (Chisinau, Balti, Cahul, Comrat Bender).

a) The situation on the examination of criminal cases against children in the Chisinau municipality.

The research conducted leads to the conclusion that the main workload of criminal cases is examined in the Chisinau municipality courts (Table 4/5). Thus, according to data elucidated during the period 2006-2009 the district courts from the Chisinau city examined the following number of cases: 2006 - 306 criminal cases, i.e. 23.6% of all cases examined in the country (1296 cases in the country), 2007 - 283 criminal cases, i.e. 25.3% (1117 cases in the country), 2008 - 203 causes, i.e. 24.6% (824 cases in the country), 2009 - 129 cases, or 21.3% (605 cases in the country). As one can see one fourth of the total number of cases against children in conflict with the law in the whole country are examined in the Chisinau municipality.

Table 3. Number of criminal cases against juveniles examined in the district courts (first instance) of Chisinau city (2006-2009)

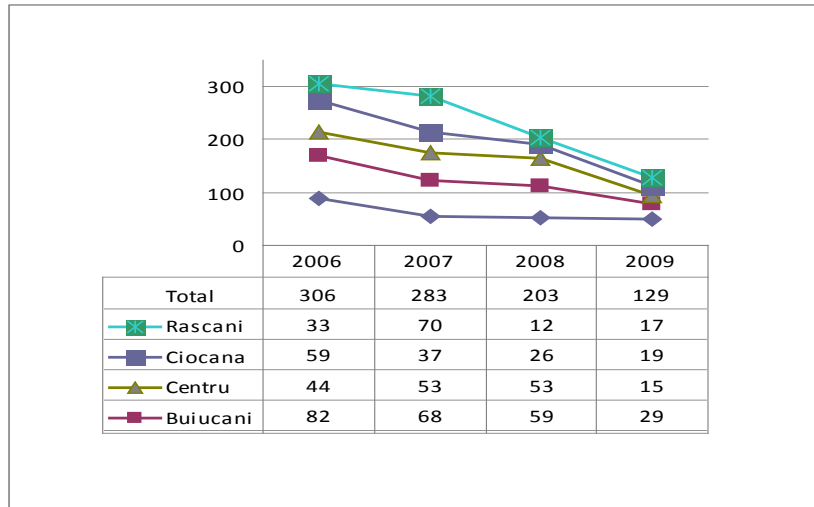
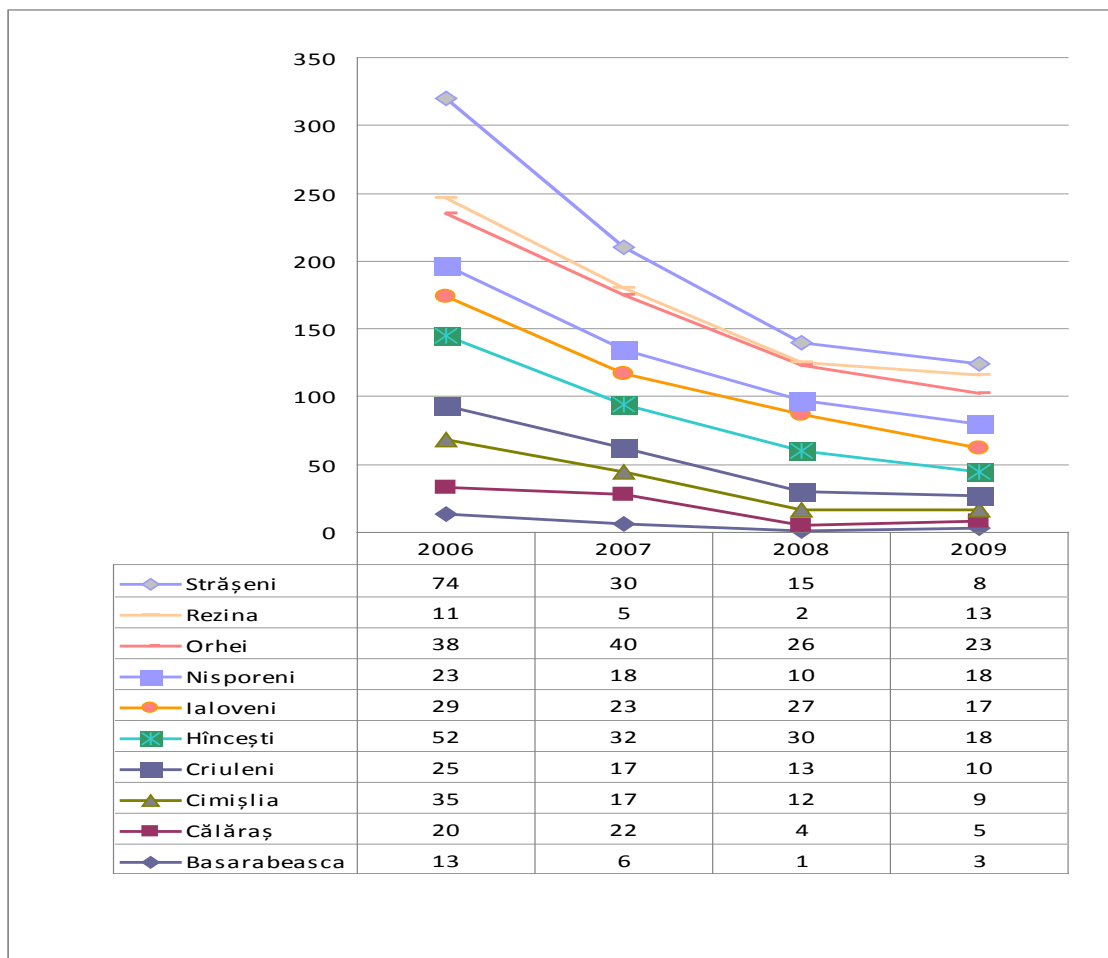


Table 4. Number of criminal cases against children examined by the district courts (first instance) linked to the Appeal Court Chisinau (2006-2009)



b) The situation on the examination of criminal cases against children in the north region of Moldova. The district court Balti examined 82 cases in 2006 which is 6, 32% out of all cases examined in the country; in 2007-89 cases, or 7.96% out of 1117 cases examined in the country, in 2008 - 100 cases or 8.24 % out of 824 cases examined in the country, in 2009 there is an increase in the number of cases of such children in year 80 cases were considered, which is -13.2% of 605 cases examined by country (Table 5, 6).

Table 5. Number of criminal cases against children, examined in the district court from Balti city, 2006-2009

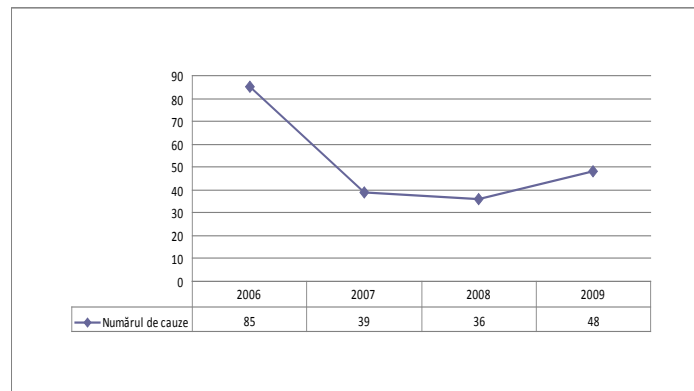
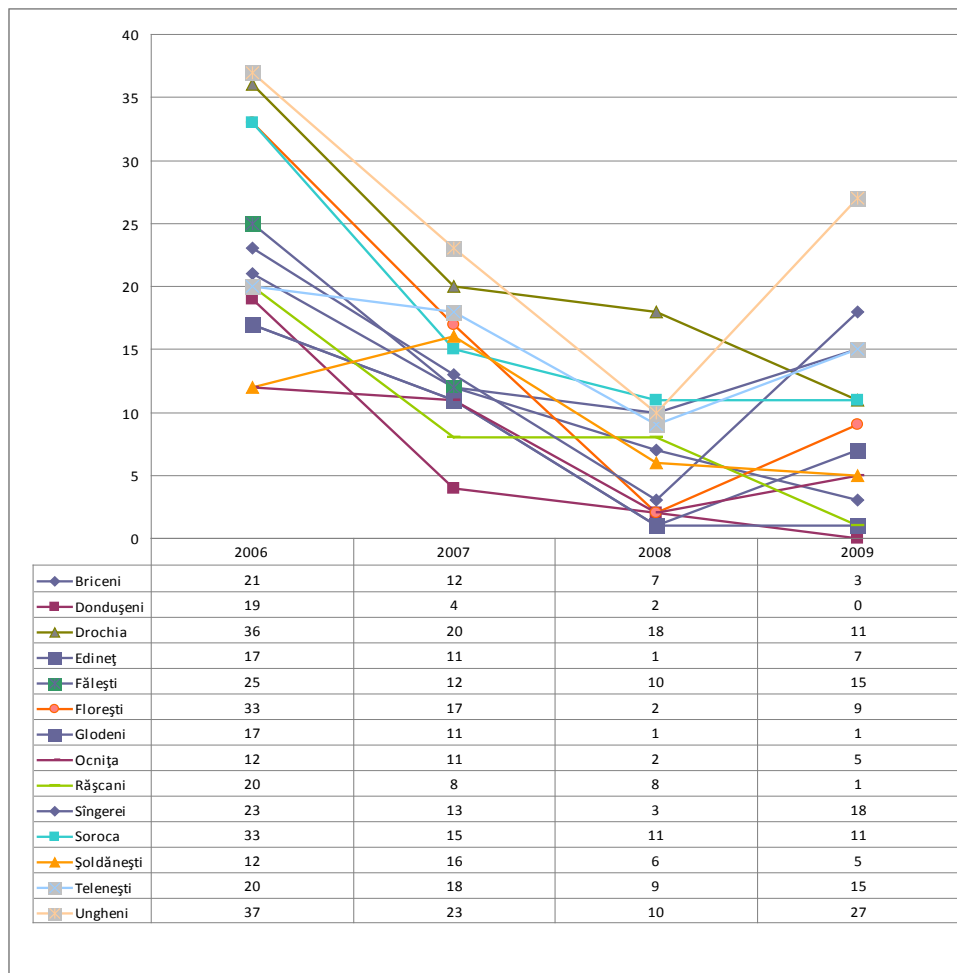


Table 6. Number of criminal cases against children, examined in the district courts linked to the Balti Appeal Court, 2006-2009



c) The situation on the examination of criminal cases against children in the south region of Moldova. According to data provided in the study it was found that in the Court of Cahul municipality recorded a decrease in the number of cases examined against juveniles in 2009 compared to the number of similar cases examined in 2008. At the same time, the share of criminal cases examined in 2006 and 2009 shows a decrease of 1% of them in 2009.

An analysis of criminal cases in the courts of the country's children compared to full volume by country of criminal cases against children, is found the following picture in 2006 to 49 cases representing 3.7% of all cases examined the country, year 2007-45 causes is 3.8% of all cases examined the country in 2008 to 57 cases representing 6.9% of all cases examined the country in 2009 to 29 cases representing 4.7% of all country cases examined (Table 7/8).

Table 7. Number of criminal cases against juveniles examined in the district court of Cahul city (2006-2009)

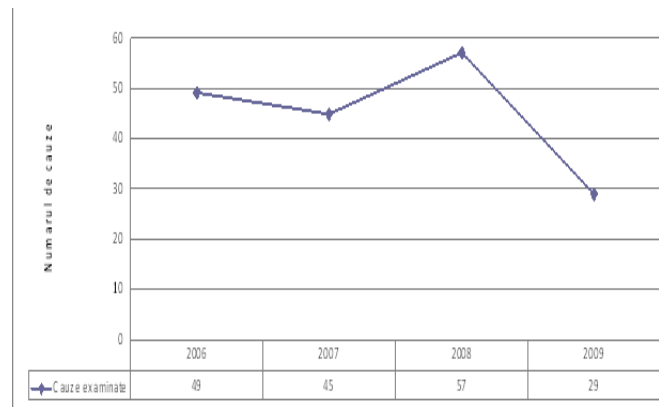
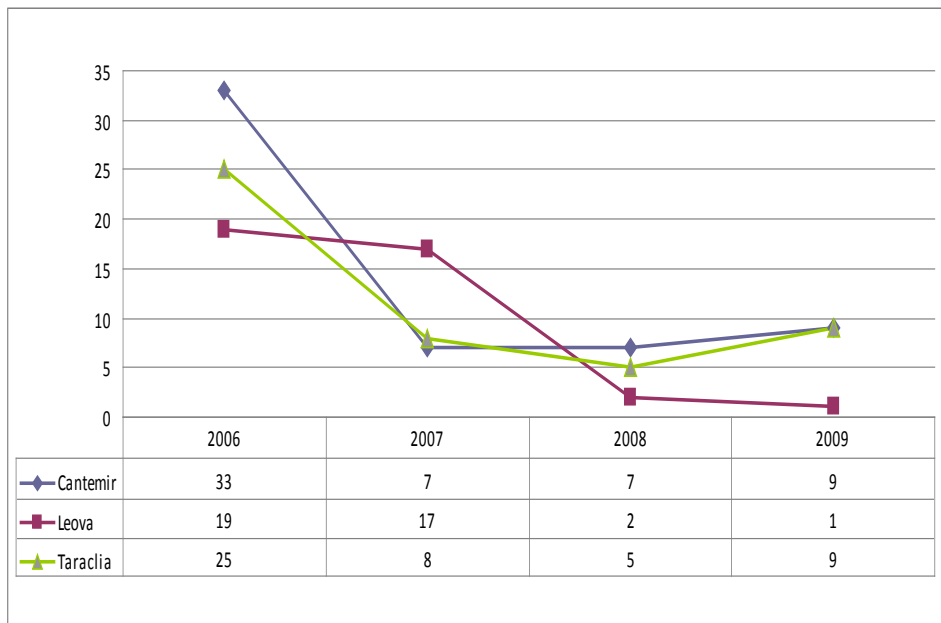
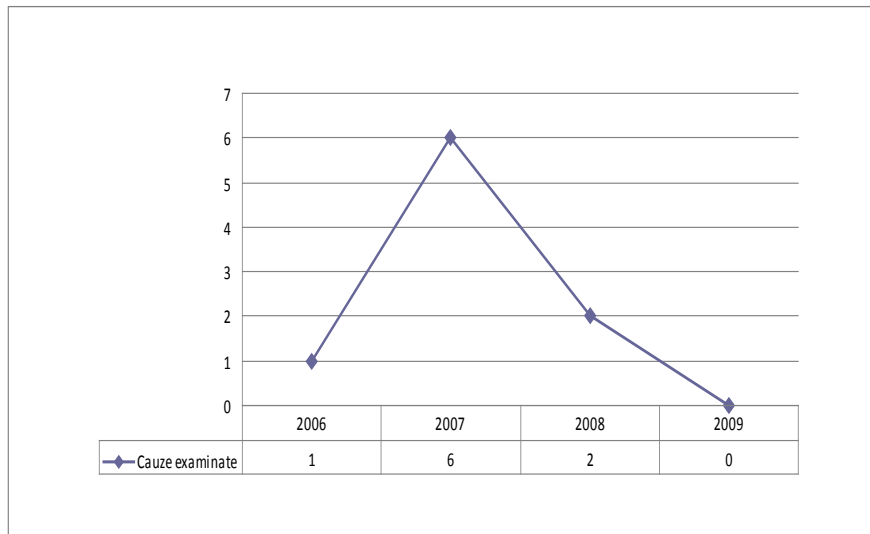


Table 8. Number of criminal cases against children, examined in the district courts linked to the Cahul Appeal Court, 2006-2009

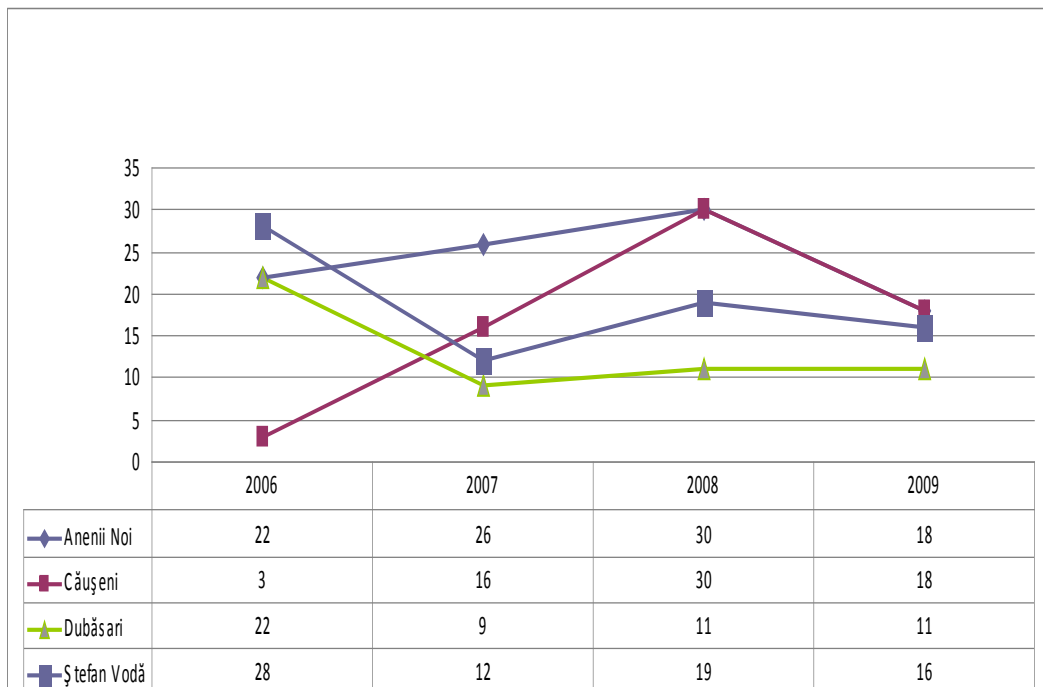


d) The situation on the examination of criminal cases against children in the Transnistrian region.

Tabel 9. Number of criminal cases against children, examined in the district court of Bender city, 2006-2009



Tabel 10. Number of criminal cases against children, examined in the district courts linked to the Bender Appeal Court, 2006-2009



e) The situation on the examination of criminal cases against children in the Autonomous Territorial Region Gagauzia:

Table 11. Number of criminal cases against children, examined in the district court of Comrat city, 2006-2009

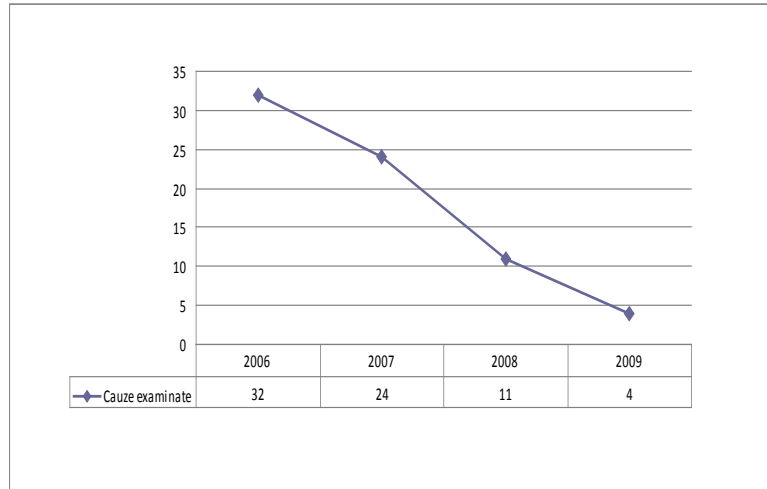
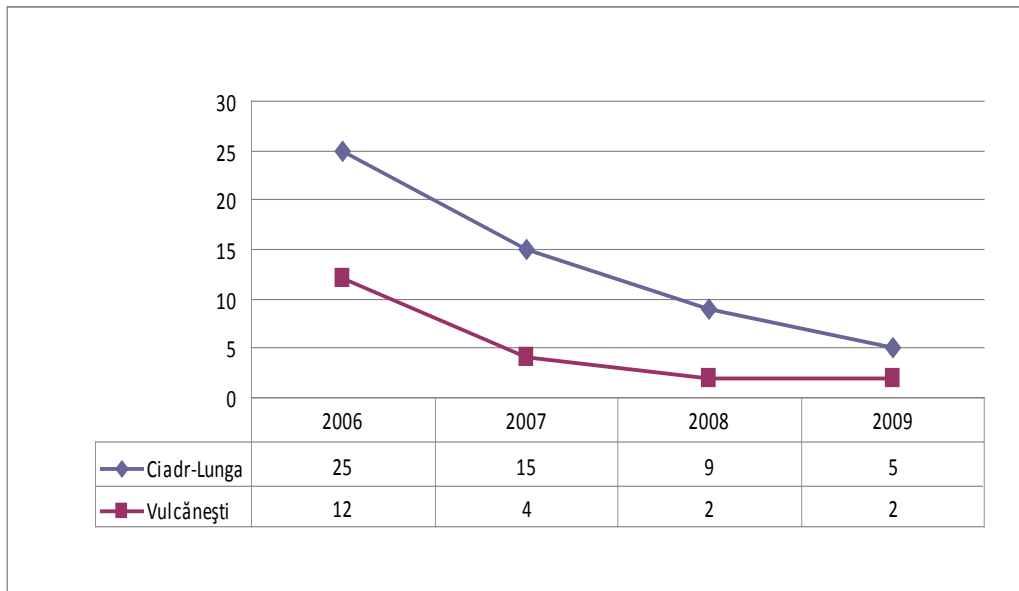


Table 12. Number of criminal cases against children, examined in the district courts linked to the Cahul Appeal Court, 2006-2009



Referring to the number of children criminally sentenced, the situation is the following:

Table 13. Number of criminal cases involving children examined by the district courts (first instance courts) of Chisinau city

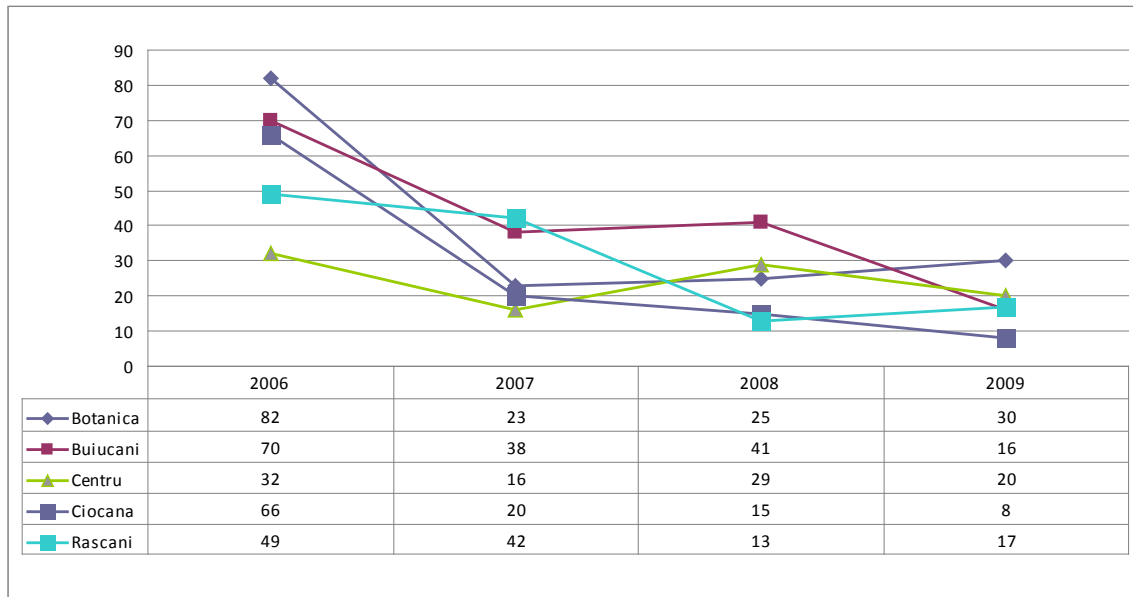


Table 14. . Number of criminal cases involving children examined by the district courts from the central region of the Republic of Moldova

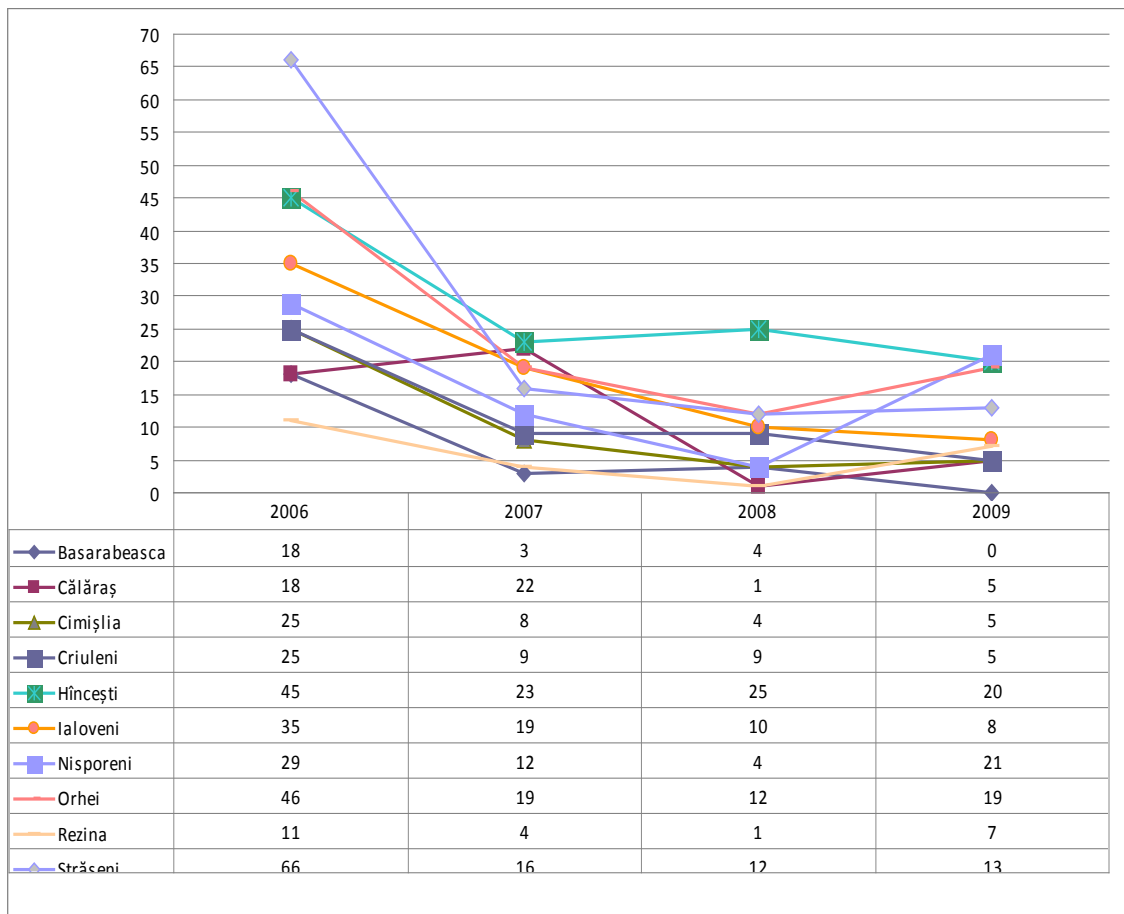


Table 15. Number of criminal cases involving children examined by the district courts (first instance courts) of Balti city

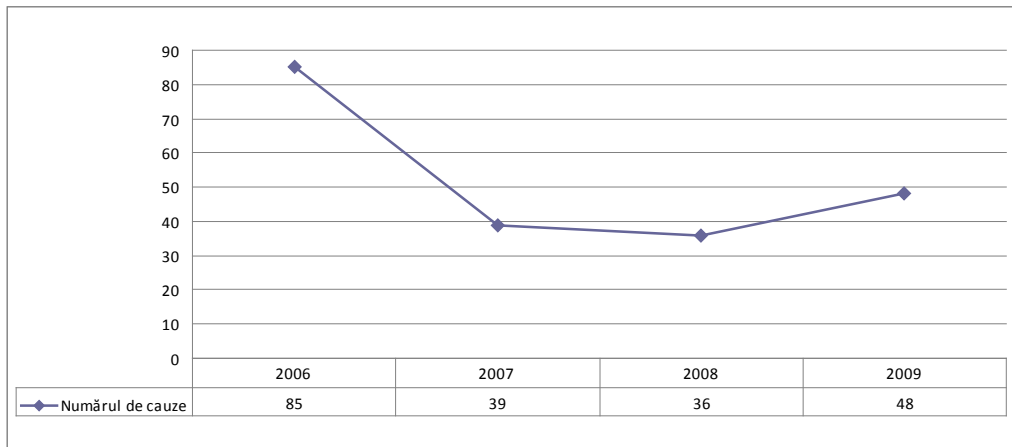


Table 16. Number of criminal cases involving children examined by the district courts from the northern region of the Republic of Moldova

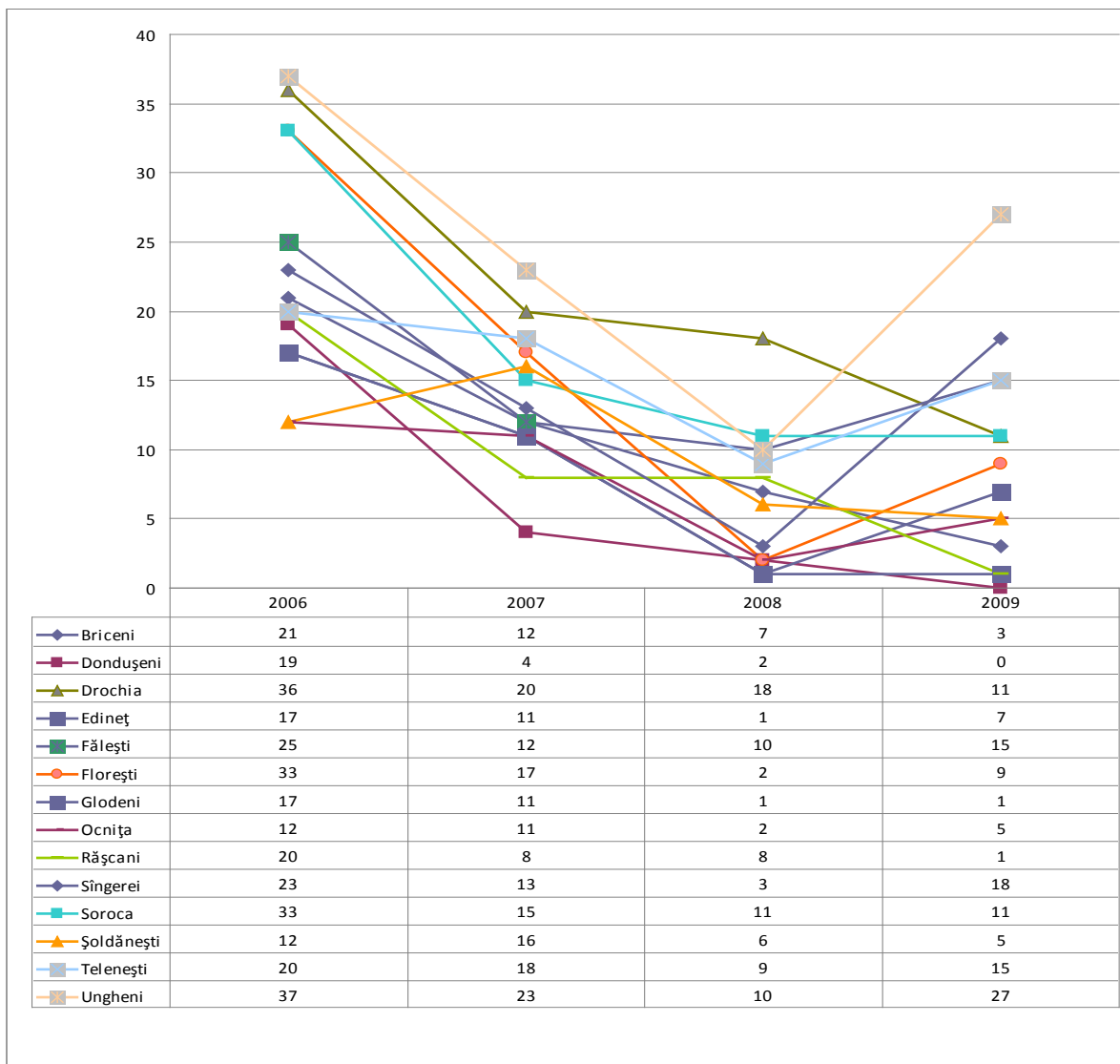


Table 17. Number of criminal cases involving children examined by the district courts (first instance courts) of Comrat city

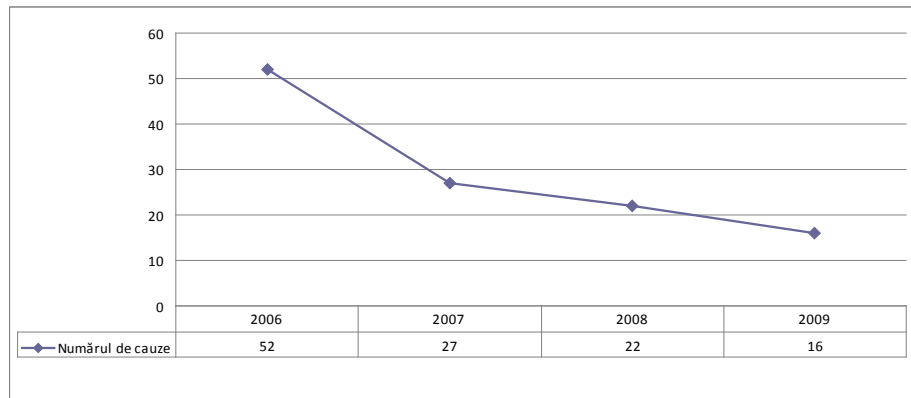


Table 18. Number of criminal cases involving children examined by the district courts from the southern region of the Republic of Moldova

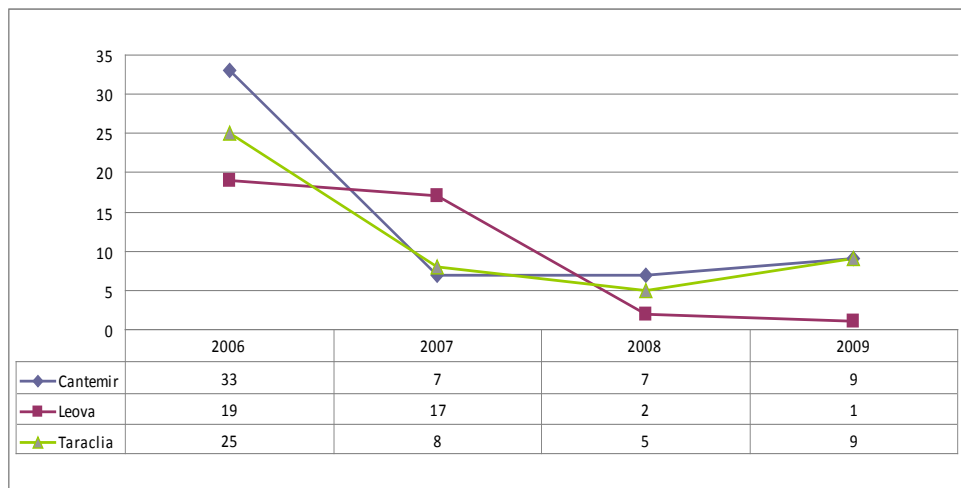


Table 19. Number of criminal cases involving children examined by the district courts (first instance courts) of Bender city

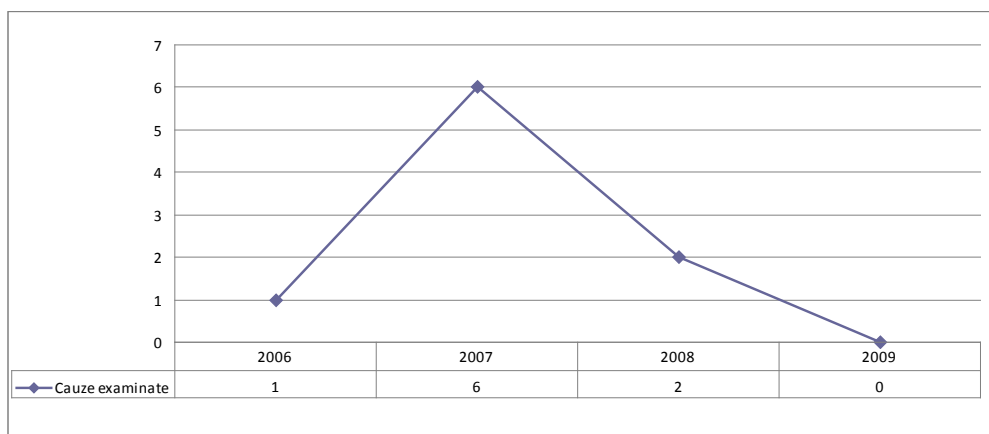


Table 20. Number of criminal cases involving children examined by the district courts from the eastern region of the Republic of Moldova

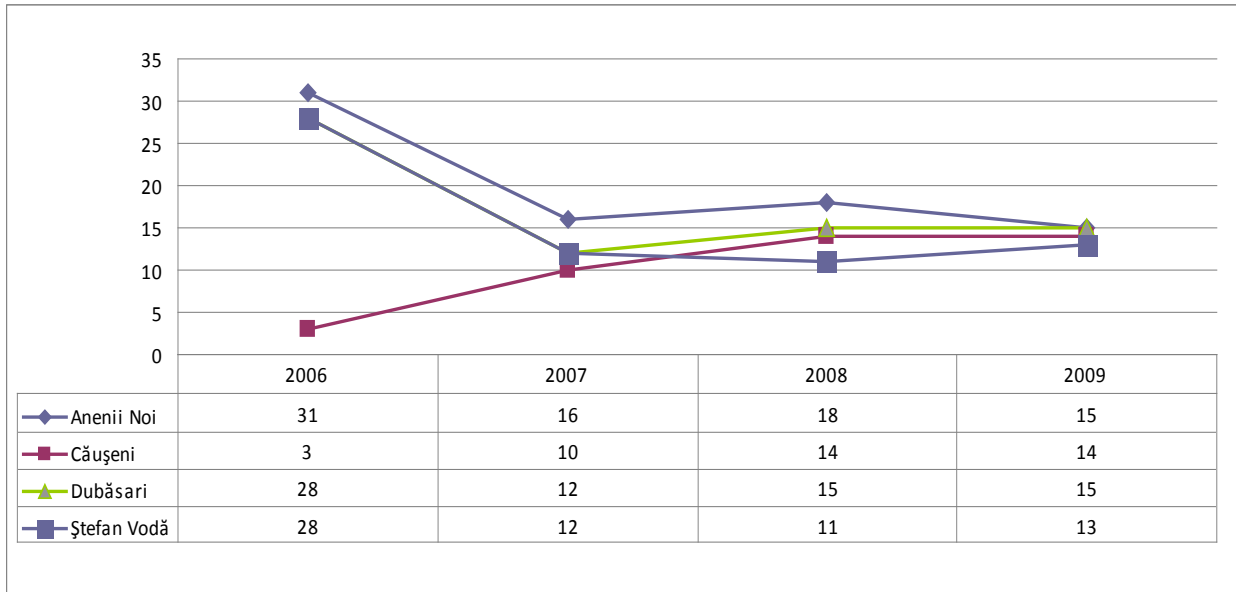


Table 21. Number of criminal cases involving children examined by the district courts (first instance courts) of Comrat city

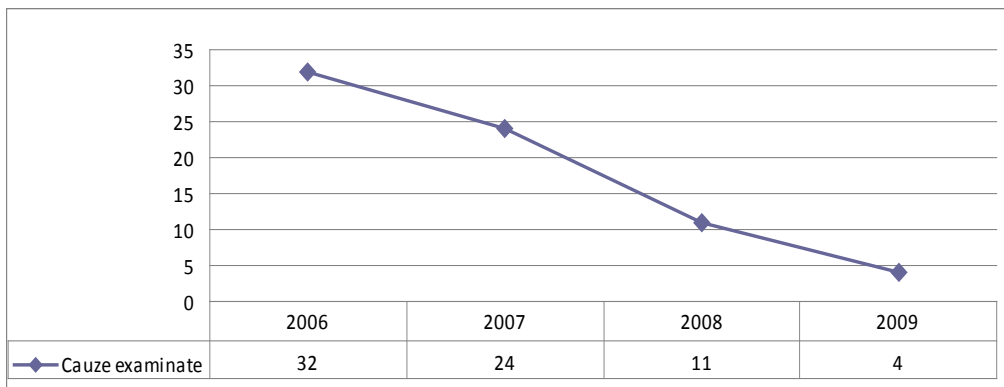
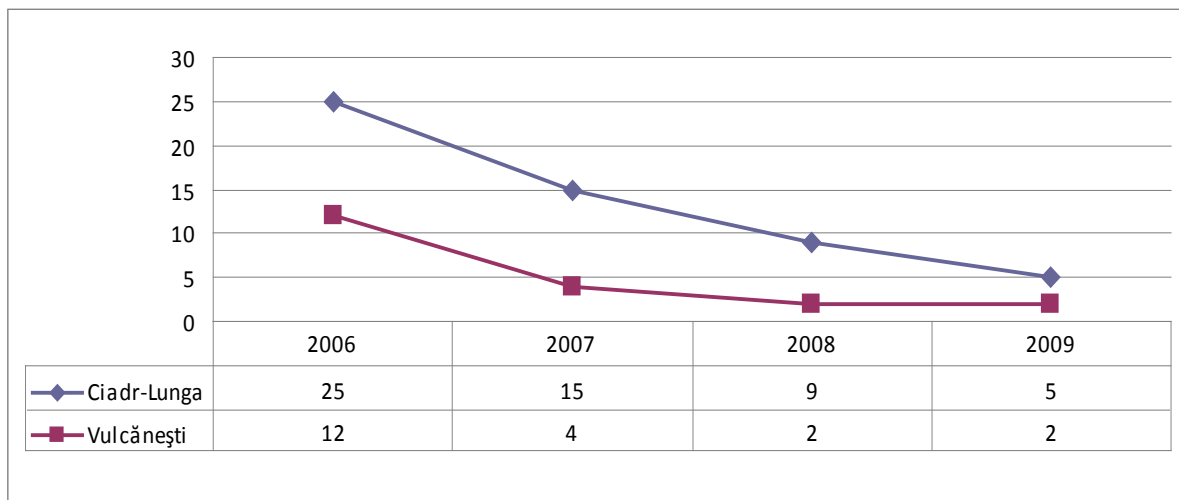


Table 22. Number of criminal cases involving children examined by the district courts from the western region of the Republic of Moldova



In general lines, when it comes to the number of convicted persons, the situation is similar with the numbers of examined criminal cases. Thus, according to the statistical data included in the Chart 14, one can see an increase on the number of convicted persons in 2009 compared with 2008.

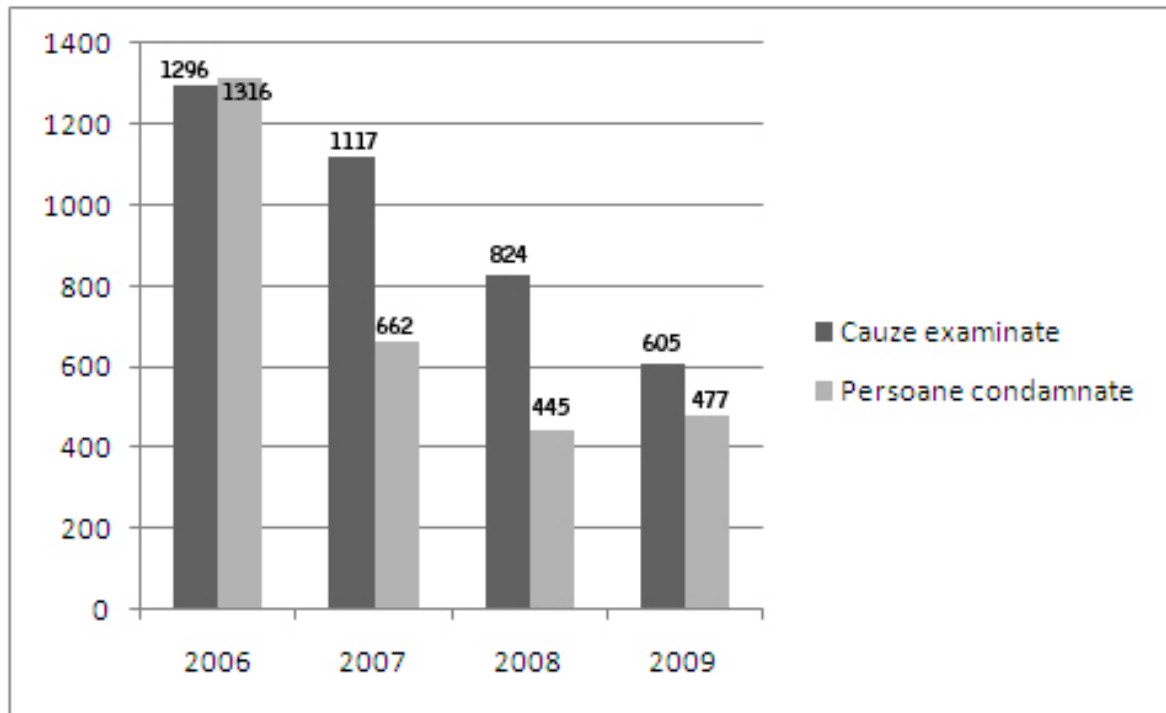


Chart 14. Number of examined cases compared with the number of convicted persons, 2006-2009.

In 2009 the national average of workload per month per judge was 3.8 criminal cases.

Thus, knowing the average number of criminal cases during 2006 - 2009 which is - 4 cases, we can make a recommendation on the number of judges that could be trained and specialized in juvenile justice, taking into account the data for 2009.

129 cases involving children were examined in 2009 in Chisinau, and this equals to a workload of 10,75 cases per judge. In the Balti court 80 cases against children were examined in 2009 - which is 6,66 cases per judge. The workload in the rest of the courts is not higher than a monthly workload.

Hence, in case a decision of specialization will be taken then there will be needed at least 40 judges to examine the criminal cases concerning children in conflict with the law.

(The scheme of distributing cases according to Annex no. 3, 4)

VIII. THE PERSPECTIVE OF HAIVNG SPECIALIZED COURTS IN CASES INVOLVING CHILDREN IN THE REPUBLIC MOLDOVA

Whatever system of judging cases involving children might be promoted, their treatment in the justice system must be guided by the following few fundamental approaches:

1. **Fairness** - all proceedings to be conducted in a fair environment for children in conflict with law, witnesses, victims and the community as a whole;
2. **Recognition of the differentiated approach in cases involving adults and those involving children** - since adults and juveniles are different in their physical and mental development, this difference should be considered when in elaborating and developing treatment techniques for delinquency;
3. **Individualized approach** - there are no two similar cases, just as no two identical offenders by their degree of development. In this respect, individualized approach would mean development of individualized intervention programs to respond to the particular needs of each child involved in the justice system;
4. **Recognition of the pro-social potential** - even the most hardened offender has pro-social values. This has to be identified and developed by professionals;
5. **Social and public security** - whatever the reaction of the justice system to the delinquency, this must provide a sense of security and safety for the community;
6. **Offender's accountability** - whatever the approach or intervention techniques, these must lead to acknowledgement and accountability for the acts committed by the offender;
7. **Empowerment of the community** - every offence is the result of a particular social and community context. Thus, some responsibility must be taken by the community for the eventual failures in the harmonious development of the young people;
8. **Responsibility of the justice system as a whole** - children, like adults, need deliberate reactions to delinquency. Because, any reaction will not produce the desired effect if it gives the impression formality or indifference.

UN Committee on the Rights of the Child, in the General Observations no. 10 (2007) on children's rights in the context of justice administration towards children⁷⁸ mentions among core principles for the states consideration: non-discrimination, ensuring the best interests of the child, guaranteeing the right to life, survival and development; providing the freedom of opinion and respect for the human dignity.

The proposed scheme of treatment of the children in conflict with the law can be found in Appendix 2.

⁷⁸ Para.5, General Observations no 10 (2007) on children's rights in the context of administration of justice towards children, CRC/C/GC/10, 25th of April 2007

| Strengths | Weaknesses |
|---|---|
| <ul style="list-style-type: none"> - There is a certain experience of cooperation between state and non-state actors in promoting new concepts in criminal justice ; - There are certain programs and approaches dedicated to justice for children (for example Continuous trainings in justice for children field at NIJ, trainer manual in the juvenile justice field); - A certain number of employees from the justice system positively oriented towards promoting the concept of justice for children; - It's focused on the process and not just on the result, because in cases involving adults most consideration is given to the deed, than to the psycho-social characteristics of the offender and the circumstances of the crime; | <ul style="list-style-type: none"> - Can affect the principle of random distribution of cases; - There is no clear understanding still of the need for a separate justice system for children, which is confused with the concept of specialized court; - Discontinuous communication between state institutions regarding priorities, including those in the justice for children field; - Limited motivation, which is based on departmental interest of cooperation between institutions and agencies that have responsibilities in the area of justice for children; - Superficiality of the juvenile delinquency prevention programs; - Public institutions in the community are affected by multiple other functional problems, which does not allow to have high expectations on immediate effectiveness of treatment programs and community restorative juvenile delinquency, which may endanger the very concept; - Discontinuity of different interventions of community services (eg schools, police, local government, parents associations, etc.); - Limited availability of breakdown data on children in the justice system and their needs; |
| Opportunities | Risks |
| <ul style="list-style-type: none"> - There in Moldova certain categories of services for children in conflict with the law; - In the legal community the concept of justice for children is being discussed ; | <ul style="list-style-type: none"> - Limited opportunities to engage qualified specialists with advanced qualification among people working in the community; - Inadequate understanding of the concept of child friendly treatment by the communities, as a result of punitive attitudes and high rates of victimization. The approach according to which diversion to community services means exemption from punishment and accountability; |

Judges responded:

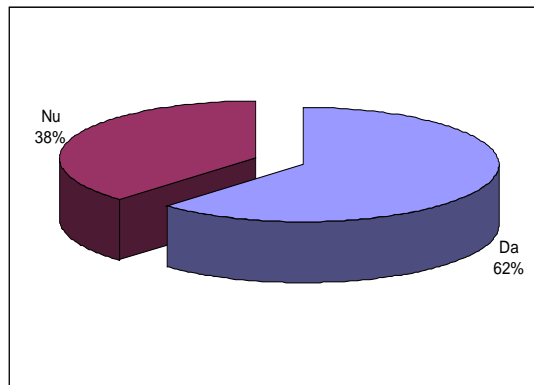


Chart 15 Do you think specialized courts for juveniles are necessary?

Specialized courts according to one of the options could examine both cases in which juveniles are involved as perpetrators, as well as cases in which juveniles appear as victims.

The following categories of cases could be in the competence of the Courts specialized in cases involving children:

1. criminal cases regarding children in conflict with the law;
2. criminal cases in which the children are victims of the crimes;
3. contravention cases against children;
4. civil cases regarding the following issues: deprivation of the parent's rights; restoring the parent's rights; establishing the child's residence; establishing the modality of interacting with the child; contesting the adoption; establishing and contesting the paternity; litigations regarding the domicile right where children are involved; repairing the damages caused to the child's health; cases regarding the protection of the child's right to property;
5. other categories of cases: acknowledging the disappearance of the child's parent; establishing certain facts that have legal value and consequences for the child; protection of the child as consumer; contesting the illegal acts of the public authorities by which the rights of the child were violated.

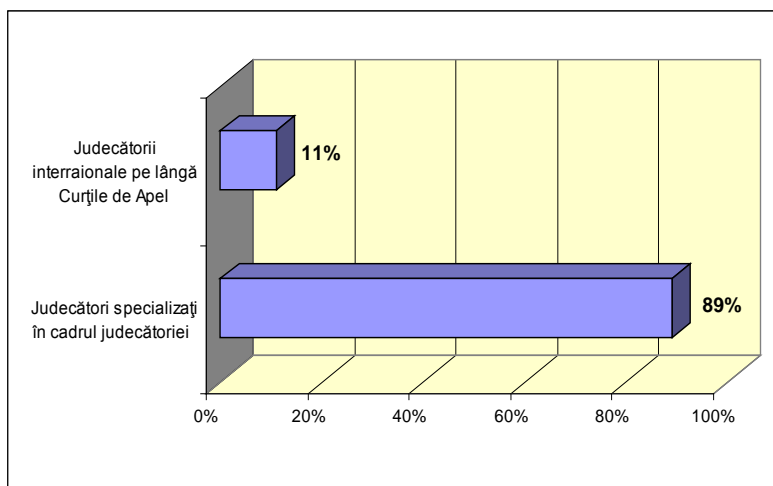


Chart 16. How do you think is the best way to ensure the functioning of specialized courts for examining cases regarding children?

IX. ADDITIONAL SERVICES NECESSARY FOR THE FUNCTIONING OF A SPECIALISED JUSTICE SYSTEM FOR CHILDREN

"Justice for Children" is a concept covering all existing procedural safeguards to protect and meet the needs of children in conflict with the law, child victim or witness of crime. Thus, the need for a legal framework that would specifically regulate the procedures, methods and techniques used in the conduct of the criminal proceedings when children are involved, and also it requires competent specialists in the work with children.

The Criminal Procedure Code of 2003 reserves a separate chapter for certain elements of the justice for children, placing it in the section or special procedures. At the same time, as usual, the procedural law contains gaps that might create some obstacles in achieving the specialized concept of justice. The implementation of these provisions requires the existence of additional services that would allow implementation of child friendly procedures.

IX. 1. Protection of the child involved in the criminal justice system (child in conflict with the law, child-victim, child-witness)

The Criminal Procedure Code contains general provisions on witness examination with special applications (Art.110 of the Criminal Procedure Code). The Law on the protection of witnesses and other participants in criminal proceedings does not contain separate rules for juvenile witnesses.

At this point, we consider as necessary amending art.481 para (1) Criminal Procedure Code by introducing the possibility of interviewing the child witness according to the special provision in art 110 of the Criminal Procedure Code. Likewise, it is found need to amend the law on witness protection, Art 13 para (1) by investing the prosecutor with competence of applying protection measures. Child protection can be achieved in an efficient manner only if there are mechanisms for the protection of family members as well. Therefore, it is required to have separate provisions in the Law on witness protection, regarding the witness' family members and legal representatives.

Besides protection measures in the aforementioned law it's necessary to provide for assistance measures, with separate references regarding special assistance measures applicable to the child-witness or child-victim, which should ensure for an environment favourable for child's development. It should be noted that in September 2010, the Criminal Procedure Code was amended by inserting certain rules concerning the protection and assistance of the victims of domestic violence.

IX. 2. Detention of children in conflict with the law

Although in 2006 the Criminal Procedure Code was amended, there remains a gap in our opinion, about the time of holding a juvenile person in custody. According to the Criminal Procedure Code art 186 *the term of holding a juvenile person in custody in the criminal investigation phase may not exceed four months* (art 186 para (4) Criminal Procedure Code). According to art 186 para (9) Criminal Procedure Code, *after expiry of the deadlines set out in para (5) and (8) the trial period with keeping the defendant in custody may not be extended, unless **exceptional** cases, upon the prosecutor*

request, by a reasoned decision of the court, every time by 3 months until the delivery of the sentence. The law does not specify which cases are **exceptional**.

Art. 186 para (9) of the Criminal Procedure Code does not specify for which categories of defendants the custody period may be extended, and theoretically in this category may be included also juveniles. This leads to long-term detention/remand of children. Therefore, art 186 para (9) needs to be completed with the phrase "*except juvenile defendants*". It is worth mentioning that in Moldova there is no explicit provision that would allow the placement of juveniles in public custody/detention. Thus, Article 23 of the Law no. 338-XIII as of 15.12.1994 on the Rights of the Child should be supplemented with a new paragraph (3) as follows: (1) *The institutionalization of children in specialized institutions for children with delinquent behaviour, is allowed by court decision court only, after the perpetration of acts containing the signs of a crime.*

Also, the Enforcement Code art 265 para (1) letter c) provides that the convicted juvenile can be solitary confined/isolated for up to 7 days. This provision is in conflict with the international standards (Articles 66-71 of the United Nations Rules for the Protection of Juveniles Deprived of Freedom, Resolution 45/113/4 of December 1990). Hence, the Enforcement Code No. 443-XV dated 24.12.2004, Official Gazette nr.34-35/112 as of 03.03.2005, should be amended in Article 265 as follows: in paragraph (1) letter c) the words "*or the convicted juvenile.*"

IX. 3. Psychologists and teachers

Art. 479 para (2) of the Criminal Procedure Code establishes that *during the hearing of the juvenile suspect, defendant, the participation of the teacher or psychologist is mandatory.*

3) The teacher or the psychologist shall be entitled, with the consent of the criminal investigative body, to address questions to the juvenile and upon the completion of the hearing to review the transcript or, as the case may be, the written statements of the juvenile and to make written remarks on their completeness and correctness. These rights shall be explained to the teacher or the psychologist prior to the beginning of the hearing for a juvenile and a relevant entry to that effect shall be made in the respective transcript.

Hearing of the juvenile witness (art.481 the Criminal Procedure Code.) shall be carried out under the conditions of art.478-480 of the Criminal Procedure Code.

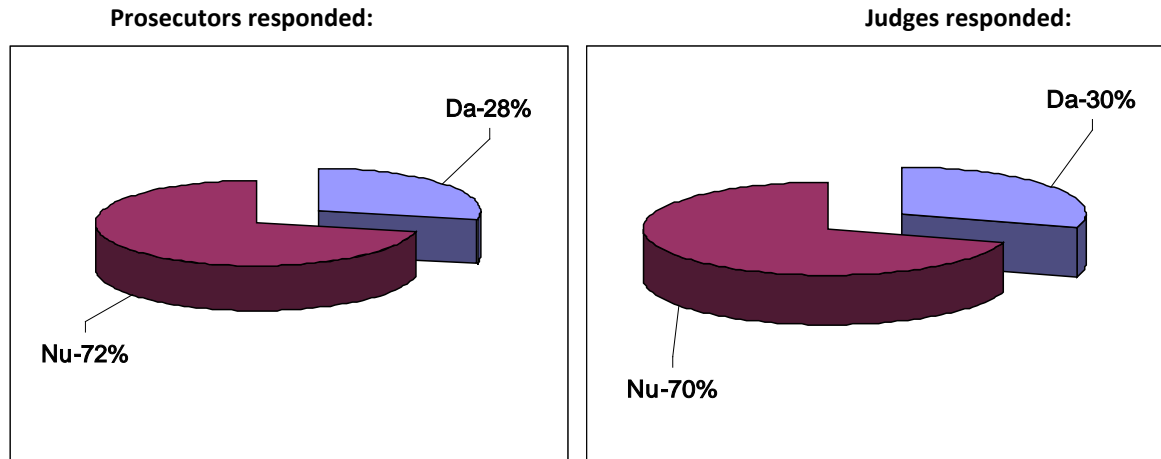


Chart 17/Chart 18. Are there legal problems regarding the statute of the psychologist/teacher in the criminal investigation phase?

The Criminal Procedure Code does not contain rules that would regulate the status of the teacher and psychologist in the criminal proceedings. This creates serious difficulties in assisting the children and in providing a beneficial environment for them during their participation in the actions taken by prosecutors or the court.

Courts and prosecutors face difficulties in identifying teacher or psychologist who would be competent in assisting the children. The problem is caused both by the lack of legal provisions regarding teacher or psychologist institute and the lack of policies on the identification, training, remuneration etc. Thus, 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.

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

In Moldova there are several higher education institutions which educate teachers and psychologists. Currently there are 6 universities that train specialists in the psychology of age and education sciences: State University of Moldova, Pedagogical University "Ion Creanga", Free International University of Moldova, State University "Aleco Russo" from Balti, Tiraspol State University.

In each of these Universities there are specialized faculties in psychology and pedagogy, eg: State University of Moldova, prepares specialists in the field of psychology of youngsters and children, at the Faculty of Psychology and Education, this includes three specialties: civic education, psychology, psycho-pedagogy.

In their study curriculum there are integrated courses such as: child psychology, juvenile delinquency, educational psychology, psycho-pedagogy of the deviant behaviour, psycho-pedagogical counselling. In most of these universities master courses are included as well, eg Moldova State University and International University of Moldova.

Thus, the students can continue their education by applying to a master, so that they continue working as psychologists and educators. However, the representatives of the criminal justice system found deficiencies in identifying qualified educators and psychologists to participate in cases involving children.

Chart 19. How do you identify the psychologist/teacher?

(Translator's Note: These charts are missing in the word file)

Prosecutors responded:

5% - We don't have the possibility of involving a teacher or psychologist every time; therefore we perform procedural measures without involving such specialists;

25% - oftentimes, we cannot involve highly-qualified specialists, in this position, show-up persons who don't have the necessary qualification;

51% - usually, we involve a specialist from the community;

19% - usually, we involve an employee from prosecution.

Chart 20. How do you identify the psychologist/teacher?

Judges responded:

5% - We don't have the possibility of involving a teacher or psychologist every time; therefore we perform procedural measures without involving such specialists;

17% - oftentimes, we cannot involve highly-qualified specialists, in this position, show-up persons who don't have the necessary qualification;

36% - usually, we involve a specialist from the community;

42% - usually, we involve an employee from prosecution.

Moreover, not all prosecutors and judges are aware of the importance of attracting these individuals in cases involving children. Some prosecutors and judges participating in the interviews explained that it is difficult to attract because such persons are not remunerated, even suggesting that such a specialist must be employed by the institution.

IX. 4. Legal Representatives

Criminal Procedure Code provides that legal representatives are parents, adoptive parents, guardians and representatives of institutions under whose supervision the child. In practice there are cases when the child remains found in overseeing grandparents or other relatives.

At this point it is reasonable to accept the process and other relatives than those included in the concept of legal representatives. With this rationality is recommended to modify Article 77, paragraph 2, Criminal Procedure Code, after the words "*as the legal representative*" to introduce the term '*Relatives to the third degree and in their absence*'. Particularly relevant to take into account is the role of these people in a situation where children often do not understand the significance of procedural actions.

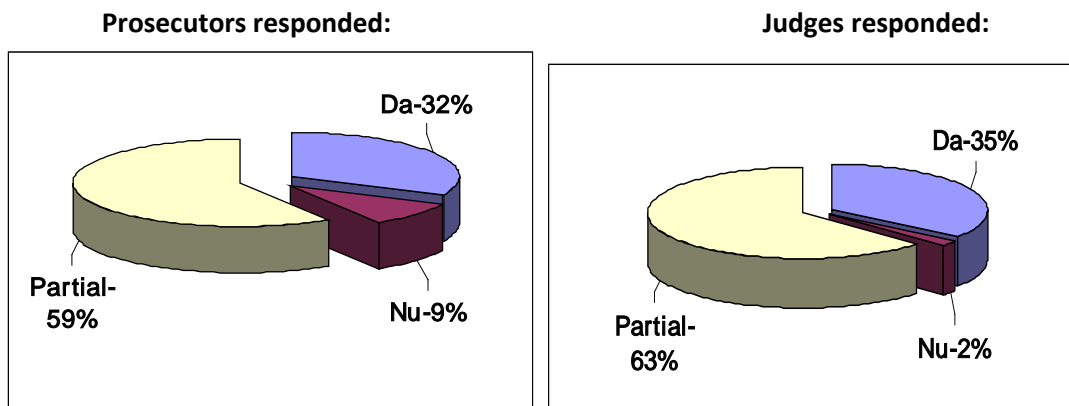


Chart 21. Do you think the juvenile understands and performs his/her rights during the criminal investigation?

Chart 22. In general, do you think the juvenile understands and performs his/her right during the proceeding?

Usually, legal representatives know about that child involvement in the criminal justice system. At the same time shortcomings in ensuring the participation of legal representatives, from various reasons, including lack of funds and money transmission, sometimes parents refuse to appear, sometimes parents are not on the territory of Moldova or sometimes the parents are not responsible and are indifferent the fate of the child, sometimes the summoning are not handed.

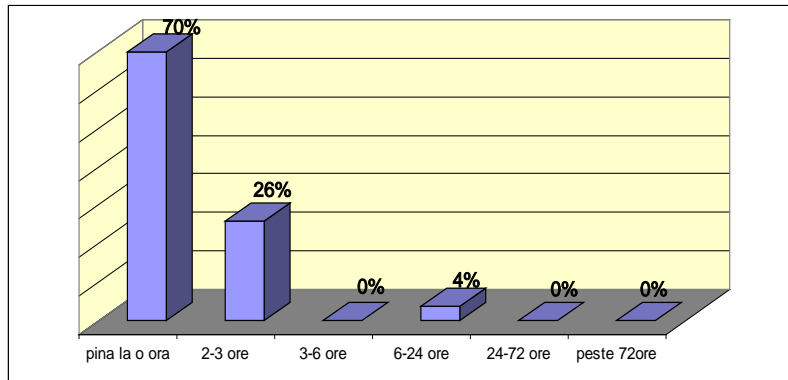


Chart 23. In case of a apprehended juvenile, within what period of time would the legal representative be informed about the place and the reason for detention?

Prosecutors responded:

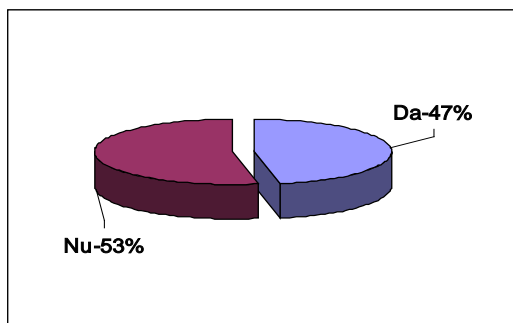


Chart 23. Are there obstacles in summoning parties and other participants in the proceeding in cases involving children in conflict with the law?

Judges responded:

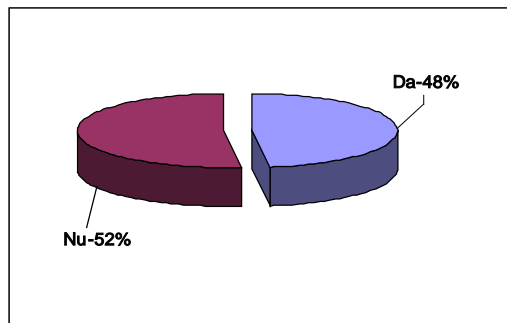


Chart 24. Are there obstacles in summoning parties and other participants in the proceeding in cases involving children in conflict with the law?

IX. 5. Probation Service

According to Article 9 of the Law on Probation (Official Gazette 103-105/389 of 13.06.2008), *the pre-sentence report for psychosocial assessment of the personality is a written document, with a consultative and orienting character, meant to provide the criminal investigation body, prosecutor and court with information about the suspect, accused or defendant, about his education, his behaviour, family situation, friends network, factors which influence or can influence on the general behaviour, the perspectives of social re-integration, as well as other express information specified in the petition by the applicant.*

When drawing up the pre-sentence report for psychosocial assessment of the personality, family members, friends, colleagues, other sources of information, such as psychologists, teachers, social workers, physicians, other professionals, and people who can really help to reflect psychosocial picture of personality of the suspect, the accused or defendant are being contacted

In the Criminal Procedure Code it is not established how to use the pre-sentence report in the criminal proceeding, which leads to the fact that in many cases the courts do not use that report. In this regard, it is recommended to insert a new Article - 485¹ in the Criminal Procedure Code:

Art.485¹ Pre-sentence report for psycho-social assessment of the juvenile's personality

(1) In cases of suspected, accused, defendants, juvenile prosecutor or court appropriate calls psycho-social assessment report by the probation service in the area where the child was in the period up to the crime.

(2) Essay sentence psychosocial assessment of personality is to provide data for the criminal juveniles psycho-behavioral perspective.

(3) Essay sentence structure and content of psycho-social personality assessment is provided in normative acts that regulate the activity of probation.

(4) Sentence in the report psychosocial assessment of personality can be submitted recommendations on measures to be taken for the juvenile including any penalty.

Most judges and prosecutors consider probation reports as useful.

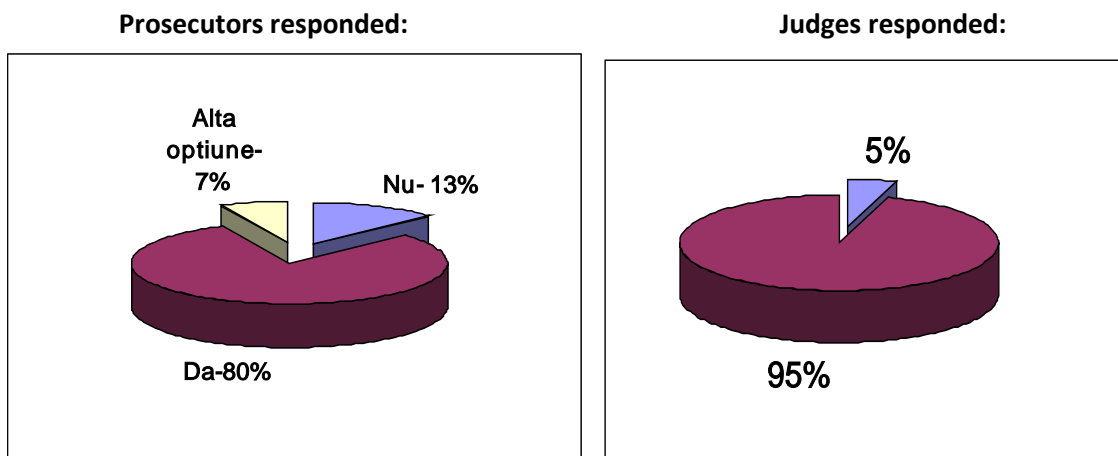
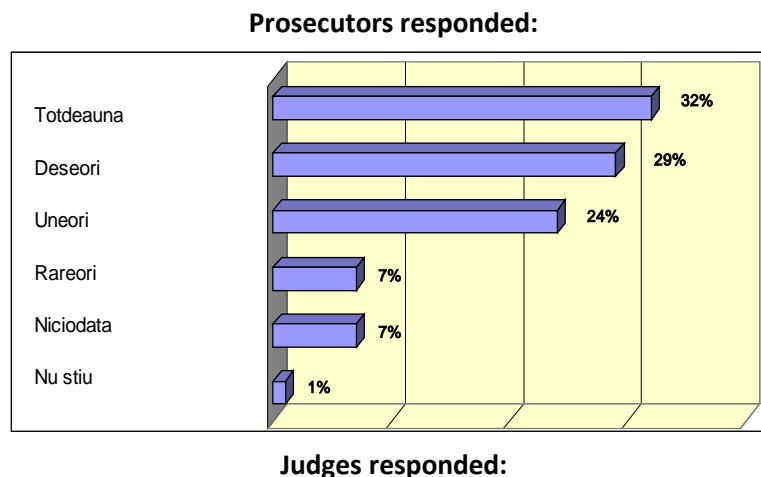


Chart 26/27. The usefulness of the report for psychosocial assessment of the accused juvenile

32% of prosecutors and 52% of judges believe that pre-sentence probation report should be drawn-up in all cases juveniles.



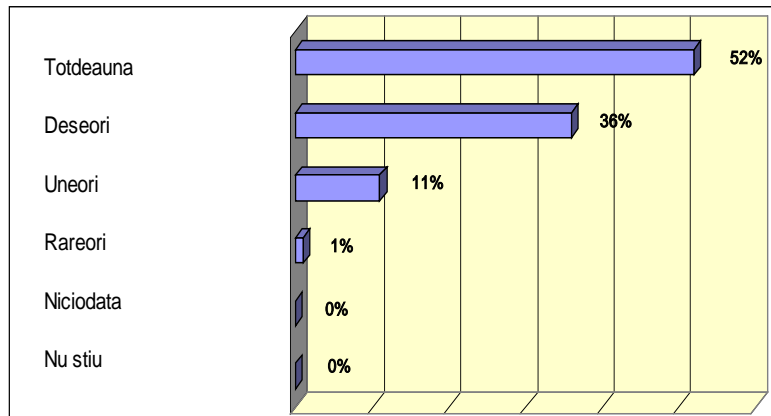
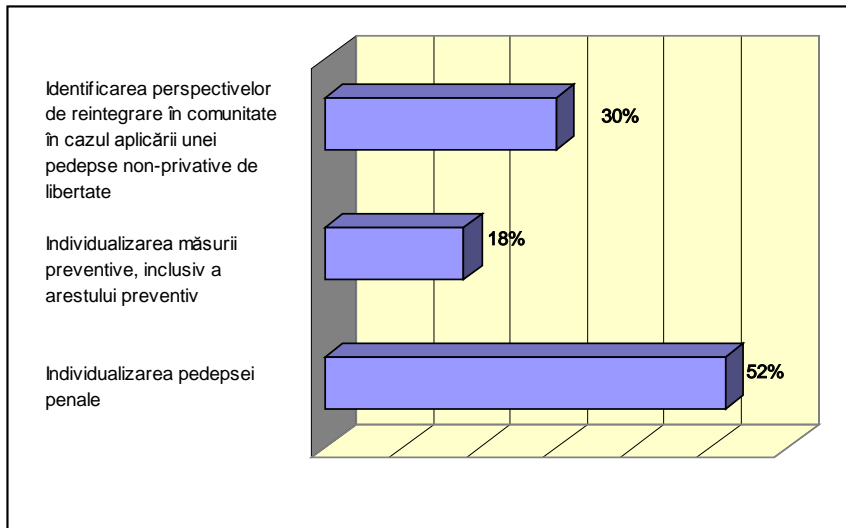


Chart 28/Chart 29. What do you think, is it necessary to request/write pre-sentence report in cases with juveniles involved?

Prosecutors responded:



Judges responded:

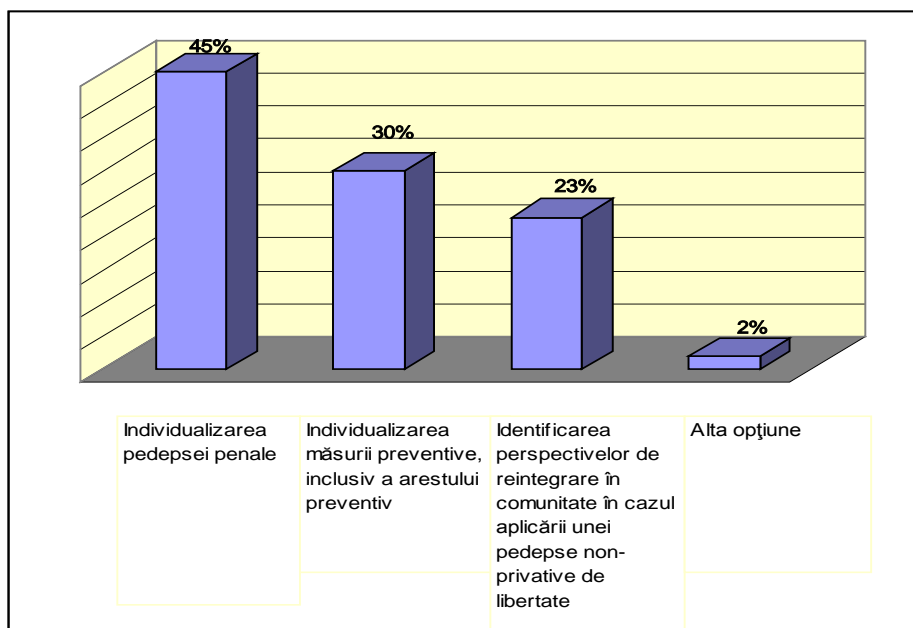
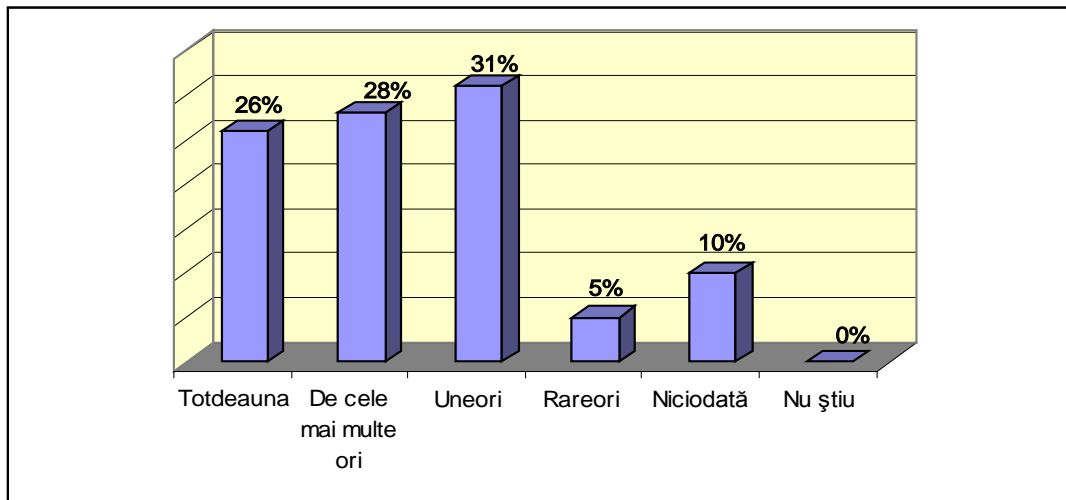


Chart 30/Chart 31. In your opinion, what can the pre-sentence report contribute to?

Most prosecutors (52%) and judges (45%) considered the pre-sentence report useful for the individualization of the punishment. In this context, the report is relevant to the decision whether to apply a sanction in the community (30% and 23% judges, prosecutors). 18% of prosecutors and 30% of judges considered the report relevant to individualizing the preventive measure.

Prosecutors responded:



Judges responded:

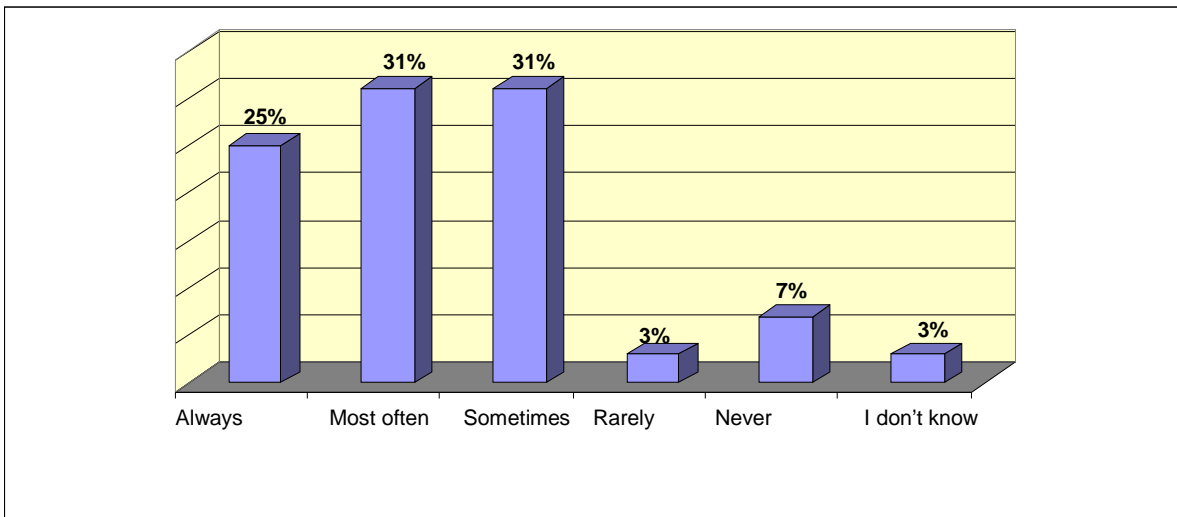


Chart 32./Chart 33. Should probation counselors provide primary psycho-social assistance (before delivering the sentence) to the perpetrator?

Judges responded:

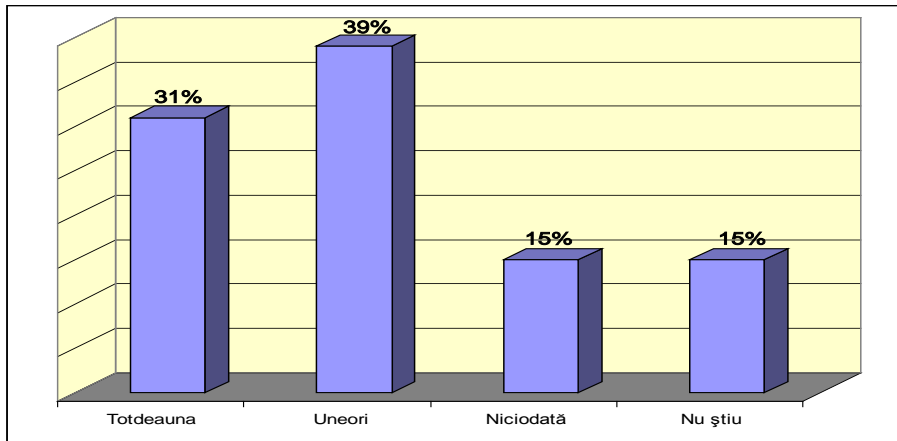


Chart 34. Should probation counselors participate in the court hearing for explaining the social needs of the defendant and the potential solutions for him/her?

Thus justice actors see a more advanced role of the probation counsellors than the current one. In general, the number of juveniles under probation service's supervision is not extremely high; this would allow the proper performance of their respective duties

Tabel 23. Type of alternatives to detention, 2008-2010

| | lanuarie 2008 | lanuarie 2009 | lanuarie 2010 |
|--|------------------|------------------|------------------|
| Unpaid work for the benefit of the community art. 67 CC. | 84 | 33 | 25 |
| Suspension of the punishment enforcement art.90 CC. | 446 | 87 | 178 |
| Pre-term conditional release art.91 CC. | 11 | 1 | - |
| Release of juveniles art.93 CC. | - | 10 | 9 |
| Postponement of the punishment enforcement art.96 CC | 1 | 5 | - |

At the same time, many of the interviewed judges and prosecutors mentioned the inappropriate quality of the probation services, fact which makes them avoid the active involvement of these specialists.

Prosecutors responded:

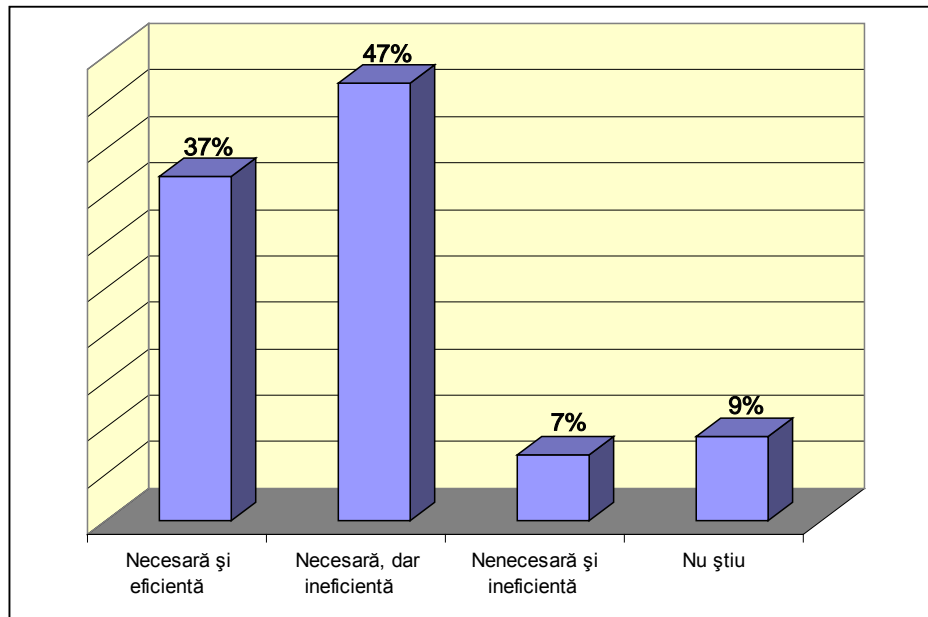


Chart 35. How do you think is the activity of the probation counselors regarding the social reintegration of the persons sentenced to non-imprisonment punishments?

Judges responded:

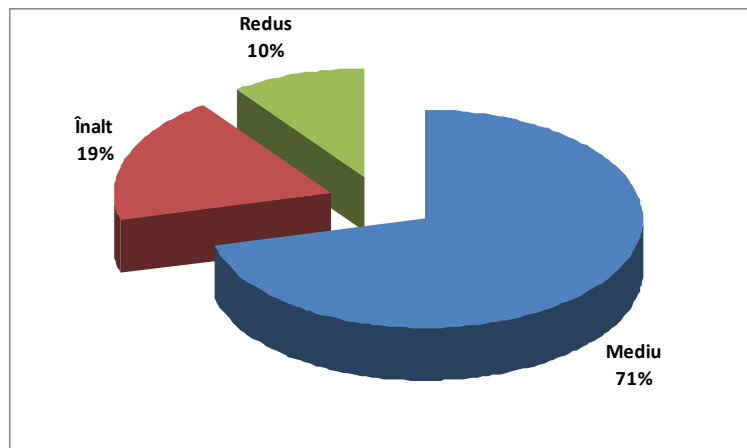


Chart 36. How do you appreciate the quality of the information included in the pre-sentence report?

IX.6. Mediation service

The first practical work in mediation in criminal cases was initiated in February 2005 with the creation of the Center for Mediation in the Institute for Penal Reform. Eight mediators who attended the training program on restorative justice perform mediation activities in Chisinau municipality:

- developing practical activities for informing the prosecuting authorities and courts on mediation;
- taking cases subject to mediation in the prosecution or courts;
- organization of mediation;
- transmission reconciliation agreement and the results of the mediation process mediation service requestor;

- monitoring and evaluation activities of the activities;
- conduct public awareness activities on mediation.

The experience gained as a result of their activities piloting of mediation in criminal cases, as well as the prosecution of interest Ungheni Cahul, Falesti municipality Telenesti the application pools and mediation favored the expansion of the pilot mediation in areas above - listed. Extension activities piloting mediation in criminal cases Ungheni Cahul, Falesti, Balti and Telenesti were initiated since November 2006. In each sector the pilot mediation activities were preceded by conducting workshops with the participation of law enforcement officers aimed their information on mediation in criminal justice, mediation and implementation results intention of extending the implementation of this institution. In 2005-2008 by piloting sectors mediation service were referred 254 criminal cases, of which 232 cases were taken in 224 cases mediation sessions were held.

Trainers in mediation:

I Training of mediators: 2009

Roman Koval-or Ukrainian Centre for Common Ground. Kiev, Ukraine.

Vasile Rotaru, lawyer, PhD in law,

Diana Bocăneala-mediator IRP,

Viorica Magariu-mediator IRP

Diana Postu - mediator IRP

Alexander Cocirță-lawyer

Maria Crăciun-psychologist

II. Training of mediators: 2009

Marcel Burlacu Mediation as council president, lawyer

Inga Obada - Member of the Board of Mediation, mediator IRP

Maria Lungu - IRP mediator, psychologist

Cristina Beldiga - Member of the Board of Mediation, mediator IRP

Vasile Rotaru - PhD in Law, State University of Moldova.

Claudia Crăciun - PhD, professor

Initial training curriculum mediators (Annex 3)

Mediation Council took mediators training curriculum developed by the IRP in 2004 .With some changes in the curriculum are made based initial training of mediators.

Persons trained:

In 2008, 60 persons participated in the initial training of mediators

In 2009, 30 persons participated in the initial training of mediators

In 2010, 20 persons participated in the initial training of mediators

In 2011, 20 persons participated in the initial training of mediators.

In total 130 persons participated in trainings, of which 124 persons or presented them for the qualification examination. 124 persons obtained the certificates.

Table 24. Territorial distribution of certified mediators

| Territorial distribution of certified mediators | | |
|--|-----------|-------------------------------|
| 1. | Chişinău | 62 |
| 2. | Balti | 2 |
| 3. | Cahul | 1 |
| 4. | Ungheni | 4 |
| 5. | Teleneşti | 2 |
| 6. | Orhei | 1 |
| 7. | Drochia | 2 |
| 8. | Straseni | 2 |
| 9. | Hincesti | 2 |
| 10. | Edinet | 1 |
| 11. | Causeni | 1 |
| 12. | Ialoveni | 2 |
| Total | | 82 certified mediators |

List of persons certified is attached (Annex 6, 7)

Registered Mediation Bureaus

On September 15, 2010 the MoJ registered 11 individual mediation bureaus in the Chisinau city, in the districts Edinet, Orhei, Ungheni, the papers are filled for registering an individual office in Chisinau and an associated office of mediators in the Balti city.

In 2009 and the first 8 months of 2010 no mediation activities performed were reported to the Board of Mediation.

The draft law for amending the Criminal Procedure Code – Activity of the working group for developing a mechanism for the mediation process in criminal cases. In January 2008, the Institute for Penal Reform has created a working group with the aim to create a mechanism to conduct the mediation process in criminal cases. The working group was composed of two prosecutors from the Prosecutor General and 2 mediators of the Institute for Penal Reform. The results of the working group are:

Draft law on introducing amendments to the Criminal Procedure Code on mediation in criminal cases, developed, is attached (Annex 10). Instruments listed in article format. 37 of the Law on mediation formalization developed are presented below (Annex 11). It is also important that mediation programs are accompanied by restorative justice practices.

IX. 7. State guaranteed legal aid

Often, children who are involved in the justice system come from socially vulnerable families with a low monthly income. From these considerations, a state legal aid system is decisive for the exercise of justice in such cases.

State guaranteed legal aid includes lawyers' services in criminal proceedings (in some contravention and civil case) offered to people who do not have sufficient financial means to pay a lawyer, meaning

that they have a lower income level than that required by law (the minimum living conditions calculated by the National Bureau of Statistics) or entitled to such assistance under the law.

State guaranteed legal aid consists of consultancy services provided by lawyers who are contracted and paid by the state. The Criminal Procedure Code provides that the interests of juveniles in a criminal case must be represented by a lawyer and the Law on State Guaranteed Legal Aid of 26 July 2007, no.198-XVI establishes the mechanism and rules for appointing lawyers providing state guaranteed legal aid. This aid is granted regardless of income level of the beneficiary in the following cases:

- when the person needs immediate legal aid in case of being held in custody in a criminal proceeding or a contravention;
- in case of mandatory participation of the lawyer in the criminal proceedings under art. 69 par. (1) p. 2) -12) of the Criminal Procedure Code of the Republic of Moldova;
- in case of mandatory participation of a lawyer in civil proceedings under art. 304 and 316 of the Civil Procedure Code of the Republic of Moldova.

However, the legislation provides that qualified legal aid is given depending on the income level of the person, namely:

- when the person needs legal assistance in criminal cases and the interests of justice require so, but he/she has no sufficient means to pay for this service;
- the person needs legal assistance in procedurally complex cases of contravention, civil and administrative and the person does not have sufficient means to pay for these services.

As to offering qualified legal aid to children in conflict with the law in criminal proceedings under the provisions of p. (4) par. (1) of Art. 69 of the Criminal Procedure Code of the Republic of Moldova, child participation as a suspect, accused or defendant represents a case of mandatory participation of the defence lawyer in criminal proceedings and according to let. (c) par. (1) of art. 19 and art. 20 of the Law on State Guaranteed Legal Aid such assistance is granted regardless of income level of the juvenile in conflict with law or his/her legal representatives. Thus, in case of juveniles involved in criminal proceedings as suspects, accused, defendants or injured persons, the right to state guaranteed legal aid is not conditioned by the income level of the parents or the juvenile. Moreover, the presence of a lawyer in such processes is a prerequisite for the process to be legal. The most requested type of state guaranteed legal aid for juveniles in conflict with law is qualified legal aid that is given by:

- defense and representation of the interests of the juvenile in custody within a criminal proceeding or a contravention;
- defense and representation of the interests of the juvenile - suspect, accused, defendant, injured party in a trial;
- defence and representation of the interests of a convicted juvenile.

The law also provides for the protection and representation of the interests of a juvenile in contraventions, as well as in civil proceedings and defence and representation of the interests of a

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/asistenta-juridica-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.

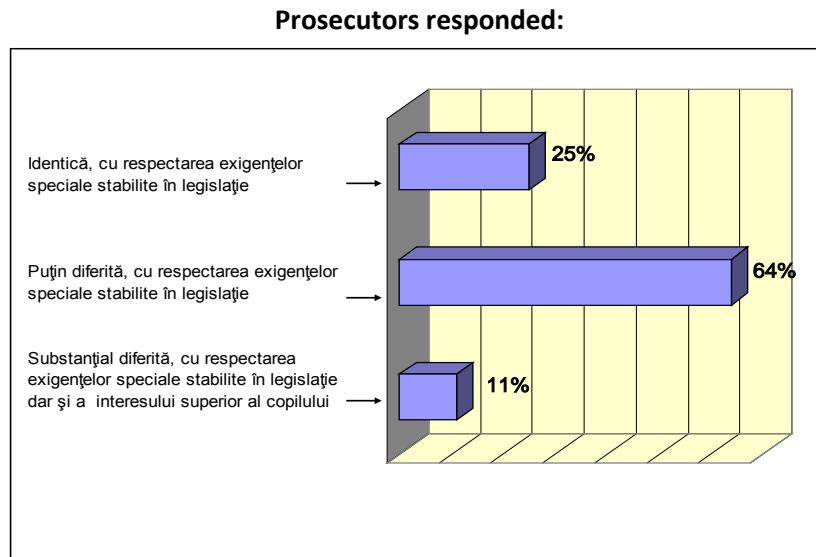


Chart 37. Do you think your approach as a prosecutor is different in the cases with juveniles or is it similar with the cases involving adults?

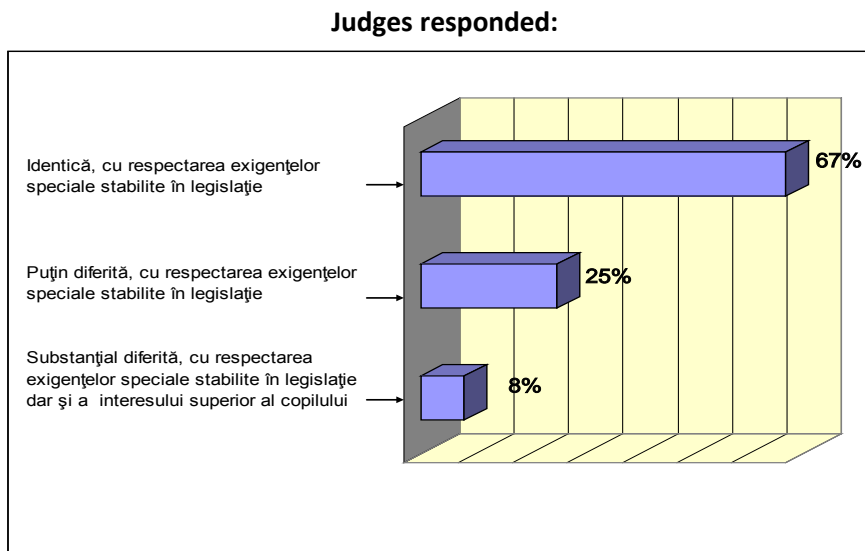


Chart 38. Do you think your approach as a prosecutor is different in the cases with juveniles or is it similar with the cases involving adults?

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:

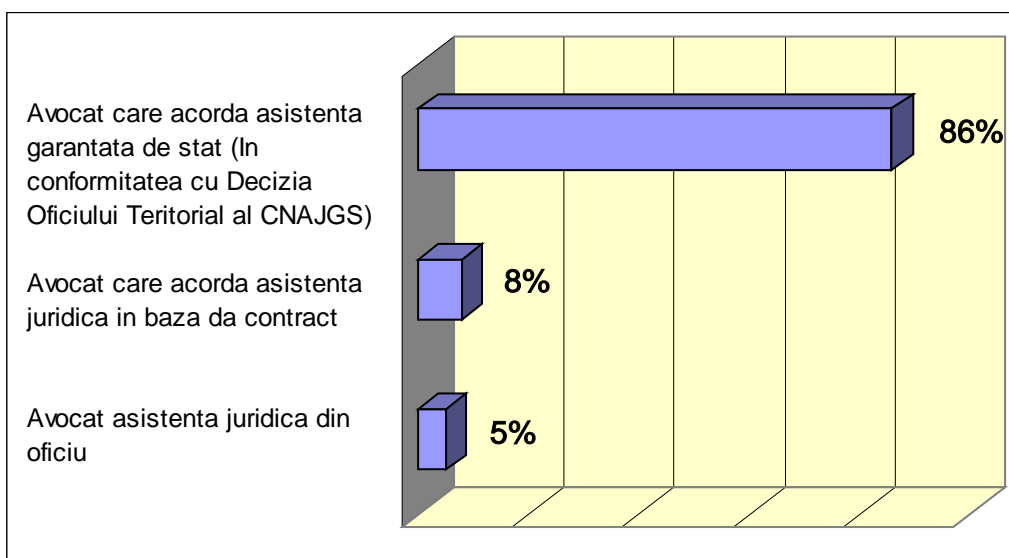
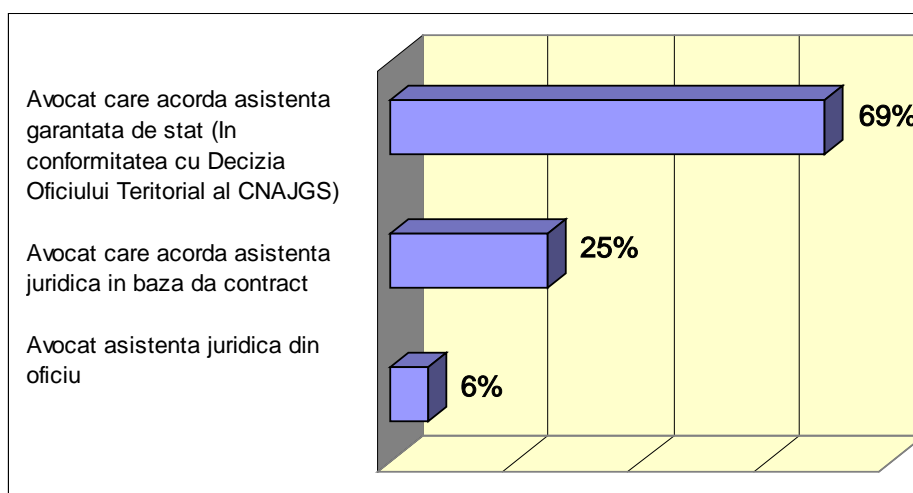


Chart 39. The defendant offering legal assistance to the child at the criminal investigation phase is employed?

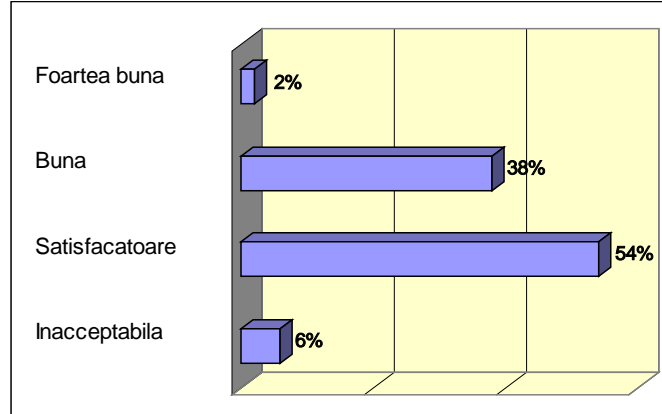
Judges responded:



⁷⁹ In the first 9 months of 2012, 1095 children have been assisted by the state guaranteed legal aid, see http://www.cnaigs.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:

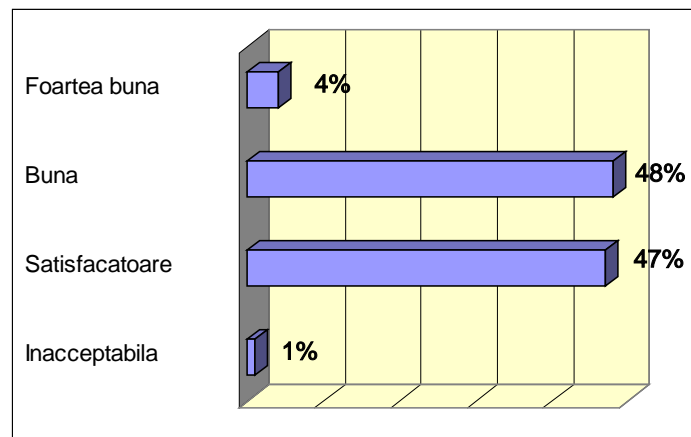


Chart 41/42. How do you appreciate the quality of the defender providing state guaranteed legal aid?

Prosecutors responded:

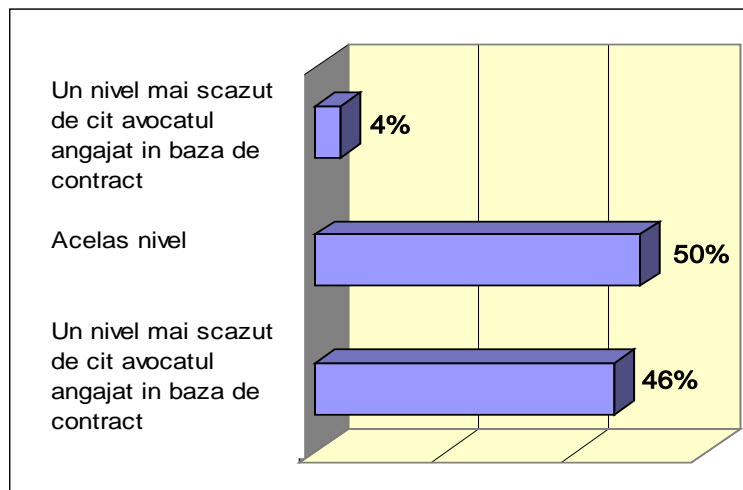


Chart 43. How do you appreciate the performance of the defender providing state guaranteed legal aid compared with the defender employed by contract?

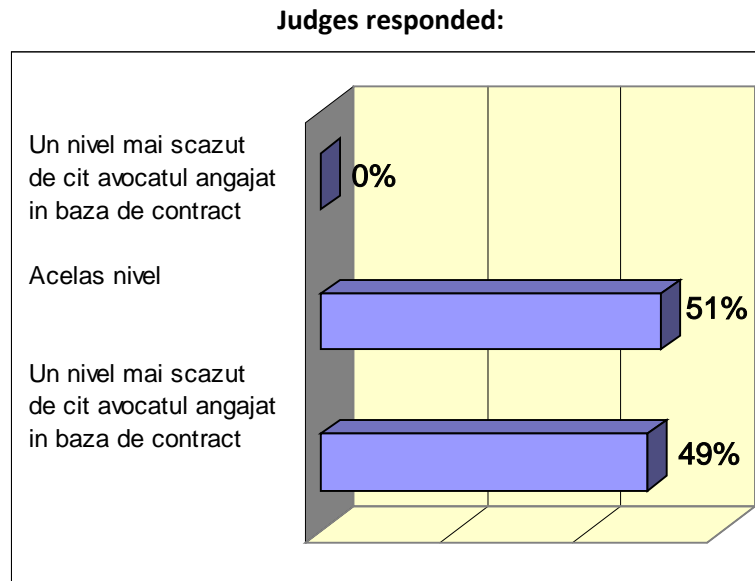


Chart 44. How do you appreciate the performance of the defender providing state guaranteed legal aid compared with the defender employed by contract?

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

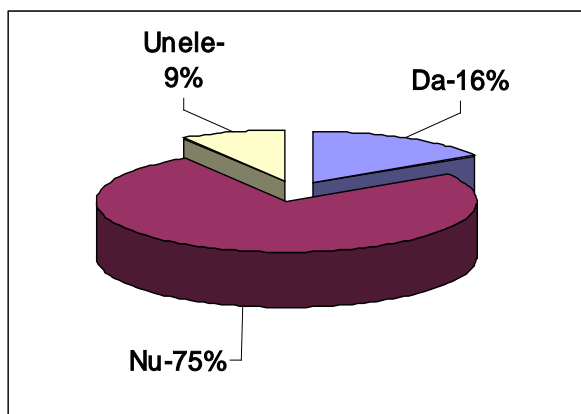
Such programs should be based on individual special needs of each child in conflict with the law. The following principles of community intervention services (including probation service) can be deducted from the normative-legal regulations and the good practices:

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

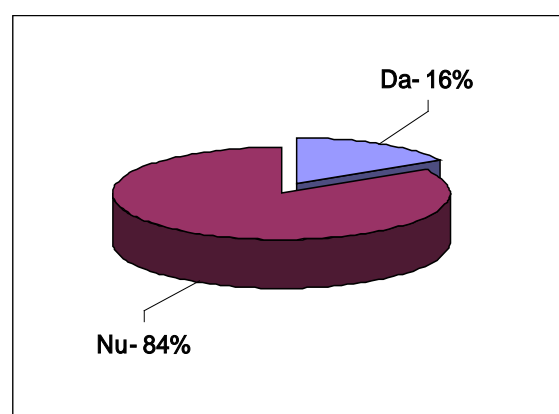


Chart 45/Chart 46. Is there in the community you are working, the possibility of sending the juvenile to community services and other competent services?

Prosecutors responded:

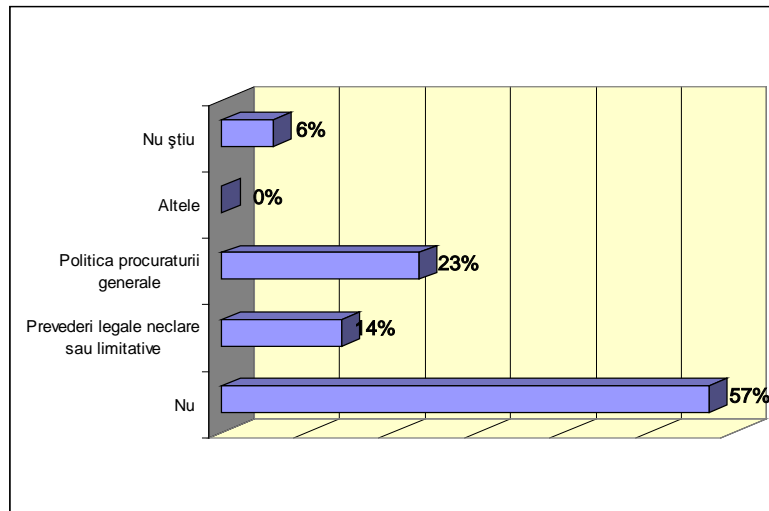


Chart 47. Are there limitations in the discretionary right/power of the prosecutor?

Judges responded:

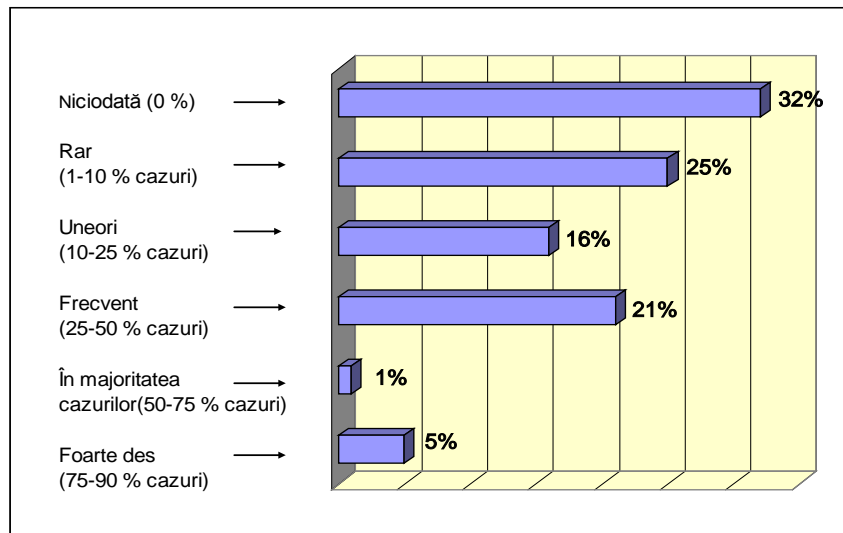


Chart 48. From your practice, how do you estimate the frequency of cases when the criminal investigation against children was ceased by waiver from prosecution and using coercive measures of educative nature?

Judges responded:

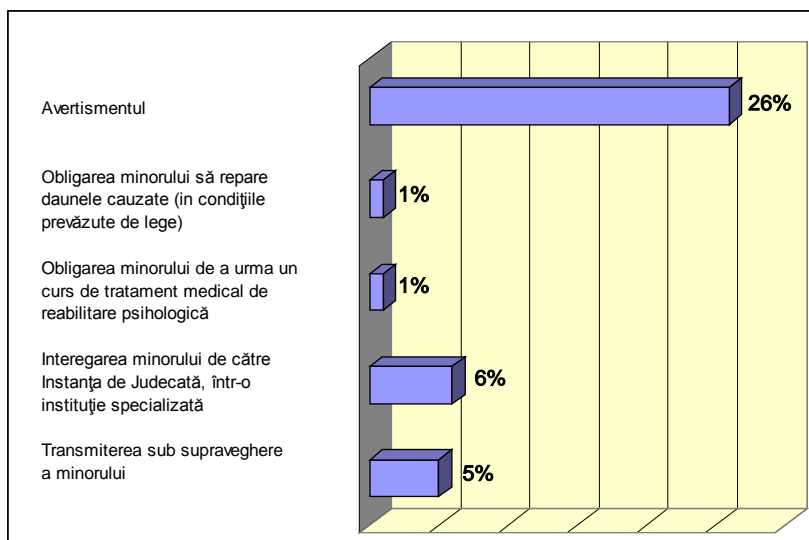


Chart 49. The percentage of coercive measures of educative nature applied?

Prosecutors responded:

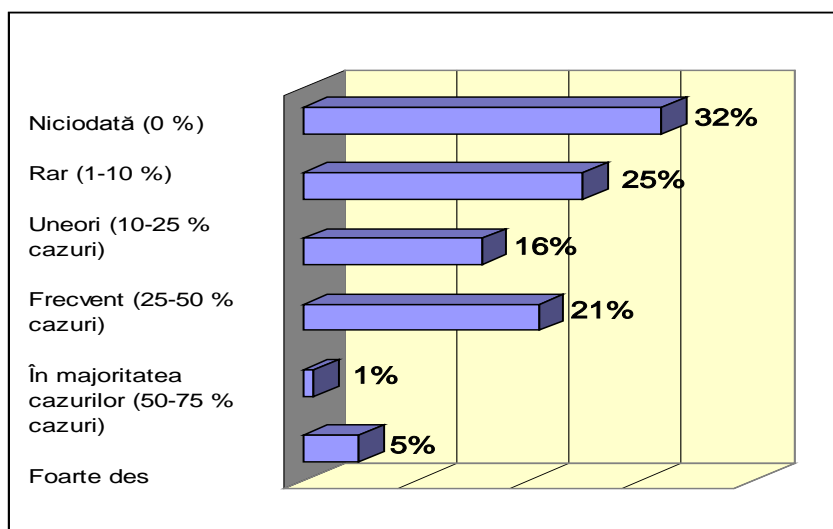


Chart 51. From your practice, how do you estimate the frequency of cases when the criminal investigation against children was ceased by waiver from prosecution and using coercive measures of educative nature?

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.

IX.10. Inter-agency cooperation in the treatment of juvenile delinquency

Cooperation between different institutions is crucial, so that each of these institutions, whether public or private, central or local would contribute to the reaction to juvenile delinquency by providing services that are in their respective competences. However, each of these institutions and organizations should provide such services in an organized and coherent manner that would ensure continuity of treatment.

The successful prevention of juvenile delinquency requires efforts from the entire society to ensure the harmonious development of adolescents, with respect for their personality from early childhood. These efforts should relate to: providing opportunities, especially when it comes to education; meeting the varying needs of young persons and serving as an essential support for safeguarding the personal development of young people, especially those who are dangerous or represent a social risk and are in need of special care and protection; thinking patterns and approaches towards prevention of juvenile delinquency are based on laws, processes, institutions, facilities and services to achieve the goals by reducing motivation, needs and opportunities or conditions for committing crimes;

Official intervention should primarily influence all young people in the context of their rights and interests and be fair and equitable; ensuring the well-being and development of the rights and interests of all people; variations of the behavior of young people or their attitude inconsistent with social norms and values are a part of the process of maturing and growth and tend to disappear, in most cases, upon achieving maturity by the young person; precaution not to name a person “deviant”, “delinquent” or “recidivist”, because by this we can often contribute to the development of an undesirable behavior of young people, according to the majority of experts. Community services and programs should carry out prevention of juvenile delinquency acting as an active factor. Legal or control institutions shall be used only as a measure of last resort⁸⁰.

Recommendation Rec (2003) 21 concerning partnership in crime prevention⁸¹ recognizes that the exclusive use of traditional criminal justice and law enforcement measures proved not to be sufficiently effective in reducing the number and impact of contemporary crime problems. Criminal situation and the growing concern for crime problems contribute to the feeling of insecurity for many people in Europe, which, in extreme cases, may be associated with loss of confidence in political authorities, law and institutions responsible for its enforcement, and which subsequently may raise intolerance, exclusion and xenophobia. Research has shown that within traditional approaches the development and implementation of crime prevention strategies involving society and local authorities are potentially effective and valuable. An effective prevention approach aiming to reduce crime and associated damage must involve establishing of partnerships between the respective key actors on all levels - national, regional and local – in order to address short, medium and long term causes and possibilities for crime, reduce risks for potential victims and therefore contribute to the quality of life by improving safety in society. According to the Recommendation concerning partnership in crime prevention, partnership represents a method to increase the performance in achieving a common goal through common ownership and sharing of resources between different public or private agents, whether collective or individual. Partners will work together without losing their respective professional identity and without unacceptable or illegal undermining of their respective powers and interests, and without loss of accountability.

⁸⁰ United Nations Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), Resolution 45/112 December 14, 1998, (the 68th Plenary Session).

⁸¹ Adopted by the Committee of Ministers of the Council of Europe on 24 September 2003 at the 853 meeting of prime ministers

X. EVENTUAL COSTS FOR PARTICIPANTS IN PROCESS IN CASE OF ESTABLISHMENT OF SPECIALIZED DISTRICT COURTS IN IN CRIMINAL CASES

During the interviews conducted, a proposal was launched to establish specialized courts at the level of Courts of Appeal, in three regions of the country that would eventually be competent to examine criminal cases concerning children in conflict with the law. When considering this option, it is necessary to take into account distances between localities, eventual travel expenses for parties and eventual duration of judicial proceedings, thus creating an overview of the efficiency of such courts.

Table 25, Calculation of distances between mun. Balti and localities in the district, as well as travel expenses

| | Court/locality | Court of Appeal | Distance between localities | Ticket price MDL |
|----|----------------|-----------------|-----------------------------|------------------|
| 1 | Briceni | Balti | 104 km | 39.5 |
| 2 | Donduseni | Balti | 88 km | 33.4 |
| 3 | Drochia | Balti | 49 km | 18.6 |
| 4 | Edinet | Balti | 70 km | 26.6 |
| 5 | Boast | Balti | 37 km | 14.1 |
| 6 | Florești | Balti | 37 km | 14.1 |
| 7 | Glodeni | Balti | 39 km | 14.8 |
| 8 | Ocnita | Balti | 107 km | 40.7 |
| 9 | Riscani | Balti | 42 km | 16.0 |
| 10 | Singerei | Balti | 28 km | 10.6 |
| 11 | Soroca | Balti | 75 km | 28.5 |
| 12 | Soldanesti | Balti | 85 km | 32.3 |
| 13 | Telenești | Balti | 53 km | 20.1 |
| 14 | Ungheni | Balti | 93 km | 35.3 |

Source: State Enterprise "Auto stations", for more information visit- www.autogara.md

Table 26, Calculation of distances between mun. Chisinau and localities in the district, as well as travel expenses

| | Court/locality | Court of Appeal | Distance between localities | Ticket price MDL |
|---|----------------|-----------------|-----------------------------|------------------|
| 1 | Basarabeasca | Chișinău | 92 km | 34.96 |
| 2 | Calarasi | Chișinău | 49 km | 18.62 |
| 3 | Cîmislia | Chișinău | 64 km | 24.32 |
| 4 | Criuleni | Chișinău | 44 km | 16.72 |
| 5 | Hincesti | Chișinău | 26 km | 9.88 |
| 6 | Ialoveni | Chișinău | 11 km | 4 18 |
| 7 | Nisporeni | Chișinău | 72 km | 27.36 |

| | | | | |
|-----------|----------|----------|--------|-------|
| 8 | Orhei | Chişinău | 48 km | 18.24 |
| 9 | Rezina | Chişinău | 101 km | 38.38 |
| 10 | Straseni | Chişinău | 24 km | 9.12 |

Source: State Enterprise "Auto stations" for more information visit- www.autogara.md

Table 27, Calculation of distances between mun. Cahul and localities in the district, as well as travel expenses

| | Court/locality | Court of Appeal | Distance between localities | Ticket price MDL |
|-----------|-----------------------|------------------------|------------------------------------|-------------------------|
| 1. | Cantemir | Cahul | 47 km | 17.9 |
| 2. | Leova | Cahul | 72 km | 27.4 |
| 3. | Taraclia | Cahul | 60 km | 22.8 |

Source: State Enterprise "Auto stations" for more information visit- www.autogara.md

Table 28, Calculation of distances and travel expenses within ATU Gagauzia

| No. | Court/locality | Court of Appeal | Distance between localities | Ticket price MDL |
|------------|-----------------------|------------------------|------------------------------------|-------------------------|
| 1. | Ciadir-Lunga | Comrat | 36km | 13.7 |
| 2. | Vulcanesti | Comrat | 82 Km | 31.2 |

Source: State Enterprise "Auto stations" for more information visit- www.autogara.md

Table 29, Distances between or. Bender and localities in the district, as well as travel expenses

| | Court/locality | Court of Appeal | Distance between localities | Ticket price MDL |
|----------|-----------------------|------------------------|------------------------------------|-------------------------|
| 1 | Anenii Noi | Bender | 28 km | 10.64 |
| 2 | Causeni | Bender | 24 km | 9.1 |
| 3 | Dubasari | Bender | 73 km | 27.74 |

Source: State Enterprise "Auto stations" for more information visit- www.autogara.md

The cost of one trip shall be doubled due to participation of legal representative in court proceedings. Travel expenses shall be multiplied by the number of court hearings which, in its turn, depends on the complexity of the case and the conduct of the court and the parties.

According to the monitoring of Moldovan courts carried out by the **OSCE** Mission, justified postponement of court hearings have been established⁸². The monitoring was carried out between 2006 and 2009, and no considerable progress has been identified.

Statistics show that over 40% of all postponements are due to the absence of one or more parties to the proceedings. By adding postponements due to the lack of witnesses, one can establish that over a half of the delays are caused by the absence of a key participant to the proceedings. Often,

⁸² There is no official statistical life criminal cases, which would allow to assess the cost of prosecution.

participants failed to meet in court due to justifiable reasons such as death of a close relative, serious illness or absence from the country. However, there were many postponements without serious reason, such as unannounced vacations or attending a football match together with colleagues. In addition, prosecutors and defense attorneys often failed to explain or to notify others about their absences.

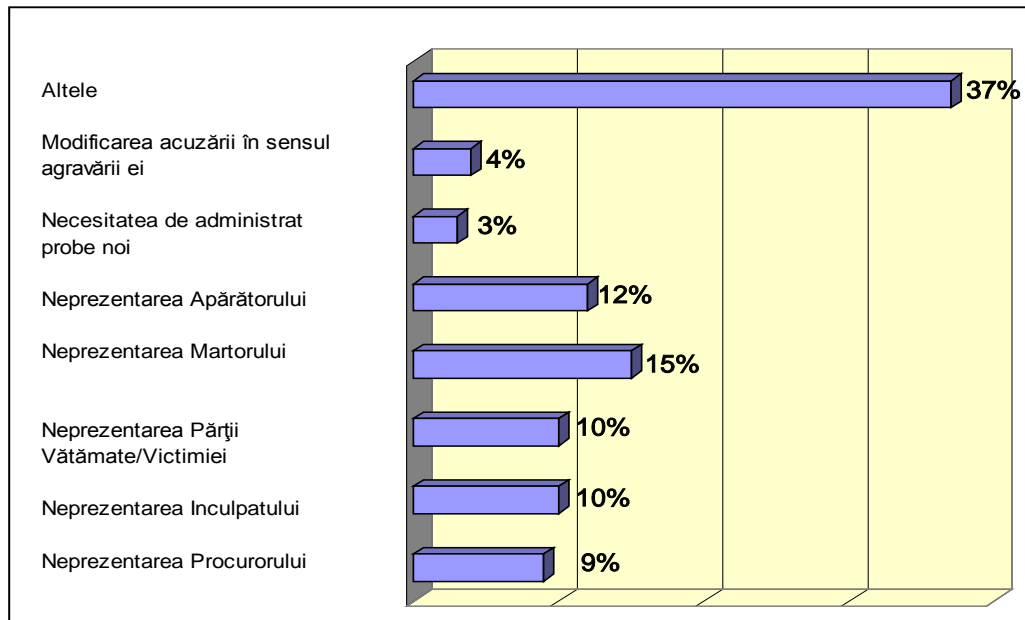


Chart 52. Reasons for postponements of hearings in the first instance courts

In this chart, 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.

The postponements of hearings are more and more worrisome and problematic. All categories of participants in the trial complained to the monitors about the frequent postponements of hearings. Data collected in Chisinau court during the monitoring period shows that 61% of hearings were postponed: 56% during the first monitoring period and 63% during the second. In the south-east, 85% of scheduled hearings were postponed. These figures call for an immediate examination of the causes of postponements and measures are needed to significantly reducing their occurrence.

Table 30. Reasons of postponements of hearings:

| Reasons of postponement | Chișinău | | | South-east region |
|-------------------------------|--|---|--|--|
| | First monitoring period April 2006- May 2007 | Second monitoring period June 2007- november 2008 | Full monitoring period April 2006- November 2008 | Full monitoring period September 2007- November 2008 |
| Absence of the victim/injured | 8% | 8% | 8% | 8% |

| 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.

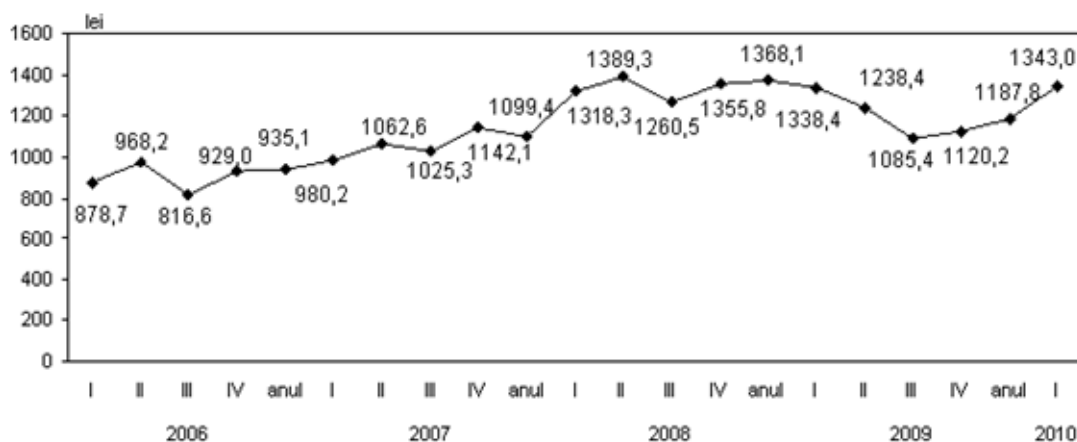


Chart 54. Quarterly development of the minimum subsistence for 2006-2010

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

