



ALTERNATIVES TO CUSTODY FOR YOUNG OFFENDERS

NATIONAL REPORT ON JUVENILE JUSTICE TRENDS

Croatia



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A. Juvenile Justice

A.1. Please describe the legal framework and the main characteristics of the juvenile justice system of your country.

A.1.1. Is there a special law or code regarding juvenile justice?

Although Croatia has a special statute that regulates juvenile justice matters – known as the Juvenile Courts Act² – it is not a complete codification, which means that a legal practitioner dealing with juveniles also needs to be familiar with provisions coming from different legal sources. Croatian legal framework in the area of juvenile justice consists primarily of three main sources: I. constitutional principles, II. international treaties and III. statutory provisions. Each of them shall be elaborated in the forthcoming paragraphs.

I. *The Constitutional protection of children*³ is regulated in Part II, Chapter 3 of the Croatian Constitution⁴ entitled “Protection of Human Rights and Fundamental Freedoms: Economic, Social and Cultural Rights”. These provisions include the following principles governing the protection of children: (1) principle of legality, (2) principle of protection of children, (3) principle of special protection of vulnerable categories of children. *Principle of legality* is articulated in Art. 56(2) of the Constitution: “Rights related to child-birth, maternity and child care shall be regulated by statute.” This

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² Juvenile Courts Act (*Zakon o sudovima za mladež*), “Narodne novine” (*Official Gazette*) No. 84/11, 143/12, 148/13.

³ For a more detailed overview of the Constitutional provisions regarding the protection of children see Marsavelski A., Children as Perpetrators of Criminal Offences in Croatia, in Adem Sözüer (ed.), Uluslararası Suç ve Ceza Film Festivali: Çocuk (ça) Adalet? - Tebliğler // 3rd International Crime and Punishment Film Festival: Juvenile Justice - Academic Papers, Istanbul, 2013, pp. 384-385.

⁴ Constitution of Republic of Croatia (Ustav Republike Hrvatske), “Narodne novine” (*Official Gazette*) No. 56/90, 135/97, 8/98, 113/00, 124/00, 28/01, 41/01, 55/01, 76/10, 85/10 [hereinafter: Constitution].

principle is rooted in the constitutional separation of powers, meaning that such rights cannot be regulated by judicial practice, customary law or administrative regulations, but the exclusive competence to regulate these issues is given to the legislator (i.e. the Croatian Parliament). The Constitutional *principle of protection of children* recognizes three levels depending on who is obliged to provide such protection: (a) community,⁵ (b) state,⁶ and (c) parents.⁷ Finally, the Constitution emphasizes the *principle of special protection of certain vulnerable categories of children*,⁸ which are entitled to special care from the state (Art. 57(3) & 62 of the Constitution).

II. Croatia has ratified a number of *international treaties setting out child-specific needs and rights*.⁹ These documents contain universal standards in the area of protection of children's rights and during the past 20 years Croatia has introduced various legislative amendments in order to implement their provisions. The most important among them is the *UN Convention on the Rights of the Child* [hereinafter: CRC]. The former Yugoslavia signed and ratified the CRC on 26 January 1990 and 3 January 1991, respectively, with one reservation, which was later withdrawn by Croatia¹⁰. Based on the notification of succession of the former state, Croatia became a State Party to the CRC on 8 October 1991. The CRC requires States Parties to "undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present CRC. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources." (Art. 4 of the CRC). While analysing the provisions of the Croatian juvenile justice system, in the forthcoming chapters this report will also observe the implementation of certain provisions of the CRC and its protocols.¹¹ Among other relevant international treaties which have been ratified

5 „Everyone shall have the duty to protect children” (Art. 64(1) of the Constitution).

6 The Constitution guarantees state protection of children, especially by enabling “social, cultural, educational, material and other conditions promoting the achievement of the right to a suitable life” (Art. 62 of the Constitution).

7 The Constitution emphasizes that parents are responsible “for the upbringing, welfare and education of their children”, as well as “for ensuring the right of their children to the full and harmonious development of their personalities” (Art. 64 of the Constitution).

8 According to Art. 57(3) and 62 of the Constitution, these categories include: children of fallen Croatian war veterans, children with disabilities, orphans and neglected children (Art. 57(3) & 62 of the Constitution)

9 For a more detailed overview of the international agreements related to children's issues ratified by Croatia *see* Marsavelski, pp. 383-384.

10 “The competent authorities (ward authorities) of the Socialist Federal Republic of Yugoslavia may, under article 9, paragraph 1 of the Convention, make decisions to deprive parents of their right to raise their children and give them an upbringing without prior judicial determination in accordance with the internal legislation of the SFR of Yugoslavia.” Multilateral Treaties Deposited with the Secretary General, Vol. I, Chap. IV (Human Rights), 11. Convention on the Rights of the Child, 2001, p. 309., n. 3., available at <https://treaties.un.org/doc/source/publications/MTDSDG/english-I-2001.pdf>. Croatia made a similar reservation upon succession in respect to article 9, paragraph 1 of the Convention, which read as follows: “The Republic of Croatia reserves the right not to apply paragraph 1 of article 9 of the Convention since the internal legislation of the Republic of Croatia provides for the right of competent authorities (Centres for Social Work) to determine on separation of a child from his/her parents without a previous judicial review”. *Id.*, at p. 297. However, on 26 May 1998, the Government of Croatia informed the Secretary-General that it had decided to withdraw its reservation. *Ibid.*, p. 312, n. 18.

11 In 2002, Croatia has signed and ratified two optional protocols to the CRC: (1) *Optional Protocol on the Involvement of Children in Armed Conflict* (ratified on 1 November 2002), and (2) *Optional Protocol on the*

by Croatia, it is important to mention the following: *Convention on the Civil Aspects of International Child Abduction* (Hague Conference on Private International Law)¹², *Convention on the minimum age for admission to employment and work* (International Labour Organization)¹³, and *Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour* (International Labour Organization)¹⁴.

General statutory provisions, applicable to all offenders (not just juveniles) can be found in the Criminal Code¹⁵ and the Criminal Procedure Act,¹⁶ but there is also a special law regulating juvenile justice: the Juvenile Courts Act¹⁷ [hereinafter: JCA]. The JCA contains specific statutory provisions of substantive criminal law regarding juveniles, rules on juvenile courts and juvenile criminal procedure, provisions on enforcement of sanctions applicable to young perpetrators of criminal offences, as well as rules on criminal law protection of children and minors. The relevant provisions of the JCA shall be elaborated in the forthcoming paragraphs.

A.1.2. Which courts and other special authorities are responsible for the reactions of juvenile offending (criminal courts, specialised juvenile criminal courts, family courts, special prosecutors, police etc.)?

Croatia has specialised professionals involved in criminal proceedings against minors: police, investigators public prosecutors, judges and defence counsels. According to Art. 69(1) of the JCA, investigative actions in procedures against minors shall be dealt with by officers of police authorities specialised in juvenile delinquency. Such police officials have undergone special training to deal with juvenile offenders. In proceedings against minors there are also specialised public prosecutors and investigators for juveniles.¹⁸ According to Art. 35 of the JCA, criminal cases involving juveniles are under the jurisdiction of the

Sale of Children, Child Prostitution and Child Pornography (ratified on 13 May 2002). Croatia has not yet ratified the third Optional Protocol to the CRC on a Communications Procedure, which enters into force on 14 April 2014.

¹² Croatia was one of the successor States to the former Socialist Federal Republic of Yugoslavia which became a Party to the Convention on 1 December 1991. Since Croatia already declared its independence on 8 October 1991, Croatia declared itself to be bound by the Convention on 5 April 1993.

¹³ Croatia ratified this Convention on 8 October 1991.

¹⁴ Croatia ratified this Convention on 17 July 2001.

¹⁵ Criminal Code (*Kazneni zakon*), "Narodne novine" (*Official Gazette*) No. 125/11, 144/12.

¹⁶ Criminal Procedure Act (*Zakon o kaznenom postupku*), "Narodne novine" (*Official Gazette*) No. 152/08, 76/09, 80/11, 121/11, 91/12, 143/12, 56/13, 145/13.

¹⁷ Juvenile Courts Act (*Zakon o sudovima za mladež*), "Narodne novine" (*Official Gazette*) No. 84/11, 143/12, 148/13. The name of the Act is a translation of *Jugendgerichtsgesetz* – the name of equivalent acts in Germany and Austria, which have been initially used as legislative models for drafting the first Croatian Juvenile Courts Act in 1997.

¹⁸ Exceptionally, if a juvenile prosecutor or a juvenile investigator is unable to take over the case, certain procedural action may be carried out by another prosecutor or investigator,. See Art. 74 JCA.

so-called juvenile courts. However, these courts are not founded in separate “buildings” in Croatia, but they exist as juvenile divisions in certain major courts of general jurisdiction: (1) in all municipal courts located in cities where county courts have their seats, (2) in county courts themselves, and (3) in certain larger municipal courts (Art. 37(1-2) of the JCA). These divisions are composed of juvenile chambers and juvenile judges. In addition to this, at the Croatian Supreme Court there are also special juvenile chambers (Art. 37(3) of the JCA). Judges for juveniles and public prosecutors appearing before these courts (public prosecutors for juveniles) are required to have strong inclinations towards upbringing, needs and benefits of the youth, and shall have basic knowledge of criminology, social pedagogy and social welfare for young persons (Art. 38 of the JCA). Finally, when a minor is obliged to have a defence counsel, but he/she or their representative omit to hire one, the judge shall *ex officio* appoint a defence counsel who “has strong inclinations towards, and basic knowledge about the upbringing and welfare of young persons, from the Croatian Bar Association’s list of juvenile attorneys” (Art. 54 of the JCA).

A.1.3. What is the scope (only criminal or also antisocial behaviour) of juvenile justice? How is the age of criminal responsibility regulated (please refer to the different age groups and include the legal definitions on “child”, “youth” and “young person”)?

The JCA applies only to two categories of criminal cases: (1) when a juvenile is a perpetrator of a crime, and (2) when a child is a victim of a serious crime;¹⁹ but it does not apply to other forms of antisocial behaviour. When juvenile antisocial behaviour amounts to a misdemeanour,²⁰ such a case is administered by a competent misdemeanour court in accordance with the provisions of the Misdemeanour Act.²¹ Besides that, all other forms of anti-social behaviour can only be administered by social workers in social care centres pursuant to the provisions of Family Act²² and Social Care Act.²³

As noted before, Croatia has ratified the CRC and the definition of a child as a “human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier” (Art. 1 of the CRC) is a part of the Croatian legal system. This

19 The catalogue of crimes against children that fall under the jurisdiction of Juvenile Courts are listed in Art. 113(3) JCA.

20 Misdemeanors in Croatian law, as compared to criminal offences, are considered to be less severe in nature which is reflected in prescribed punishments (mainly fines, exceptionally imprisonment up to three months), in summary proceedings before special misdemeanour courts or administrative organs and the fact that misdemeanour law forms part of administrative law. However, misdemeanour law is also considered to be a branch of criminal law in the broader sense, as misdemeanors and crimes often attack the same social values and the defendants in misdemeanour proceedings have rights that are generally considered to be criminal procedural rights (e.g. right to be heard by an independent and impartial court, right to *ne bis in idem*) when imprisonment can be imposed. Misdemeanours correspond to what is in German called *Ordnungswidrigkeit*.

21 Misdemeanour Act (*Prekršajni zakon*), “Narodne novine” (*Official Gazette*) No. 107/07, 39/13, 157/13. Special provisions on juvenile misdemeanour law can be found in Art. 63–78 of the Misdemeanour Act.

22 Family Act (*Obiteljski zakon*), “Narodne novine” (*Official Gazette*) No. 116/03, 17/04, 136/04, 107/07, 57/11, 61/11.

23 Social Care Act (*Zakon o socijalnoj skrbi*), “Narodne novine” (*Official Gazette*) No. 157/13.

definition is implemented in the relevant legislation²⁴ and the age of majority is set to 18 years.²⁵

Since children can be held criminally liable only if they are older than 14 years of age (Art. 7(1) of the Criminal Code), the juvenile justice system does not apply to offenders aged less than 14 years. Only their parents and persons to whom they are entrusted (e.g. social care services) can apply informal sanctions to bring their behaviour in order (e.g. verbal warnings, reduction or seizure of pocket money etc.).²⁶ Furthermore, this does not prevent criminal proceedings against a child's parents or other persons who are responsible for the child if they had the required mental state (intent or negligence) regarding the child's unlawful conduct.

Thus, the term "juveniles" encompasses children who are at least 14 years of age and extends its scope to individuals who have attained the age of majority, but are less than 21 years old. Subsequently, pursuant to Art. 2 of the JCA, there are two categories of juveniles: (1) "minors" (age: 14 - 18), and (2) "young adults" (age: 18 - 21). This distinction is of practical importance because young adults can be subject to more severe sanctions than minors (see *infra* Part A.2.).

A.1.4. Are there specific procedural rules for young persons and how do they differ from those for adults? Are due process guarantees respected?

The purpose of procedure against juveniles is somewhat different from an ordinary criminal procedure. It is closely linked to the purpose of sanctions for minors: rehabilitation and resocialization through education and protection from reoffending.²⁷ This means that certain pedagogic measures ought to be applied even before implementation of criminal sanctions i.e. during the criminal procedure and continue after conviction, which establishes an integral approach to treatment of juvenile delinquents.²⁸ This is in line with Art. 5.1. of the *Beijing Rules*: "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 offence."²⁹ Therefore, in order to achieve the important purposes of criminal procedures against juveniles, the criminal procedure for juveniles substantially differs from the ordinary criminal procedure. The major principles of procedure against minors are the following: (1) principle of purposefulness, (2) principle of informality and flexibility, (3) principle of confidentiality, (4) principle of urgency, and (5) prohibition of trials *absentia*.³⁰

24 See Art. 113(2) of the JCA and Art. 87(7) of the Criminal Code (both defining a child as "a person who has not attained the age of eighteen years").

25 See Art. 120(2) of the Family Act.

26 However, these sanctions cannot include corporal punishments. See Marsavelski, p. 390.

27 Marsavelski, p. 388

28 Carić A., *Mlade osobe u kaznenom pravu (počinitelji i žrtve)*, Zagreb, 2002. pp. 99-100.

29 UN General Assembly, Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), A/RES/40/33, 29 Nov. 1985, Art. 5.1.

30 Marsavelski, p. 388-389.

The “principle of purposefulness”, known in common law countries as the principle of prosecutorial discretion,³¹ is one of the most important principles in the criminal procedure against minors in Croatia.³² This principle is adopted in Art. 71³³ as well as in subsequent articles of the JCA, which allows wide discretion to state attorneys in decisions related to dropping the charges against juvenile offenders and diversion programmes. Furthermore, even during the criminal procedure, the public prosecutor can at any time decide to discontinue proceedings against a minor if reasons of “purposefulness” require him/her to do so. The same discretionary power is given to the judges for juveniles as well as to the chambers for juveniles in criminal proceedings against minors. This is in line with the Beijing Rules³⁴ as well as with the “best interest of the child” standard of the CRC.³⁵

The criminal procedure before juvenile courts is informal and flexible. This is explicitly prescribed in Art. 86(1) of the JCA, which allows the judge to digress from the strict rules of the Criminal Procedure Act regulating trial management, if the application of these rules *in concreto* would not be considered as “purposeful”. This is especially relevant for witness interrogation, in which a judge usually takes the initiative to examine the witnesses, although the Criminal Procedure Act prescribes strict rules of cross-examination.³⁶

In order to avoid early stigmatization that often leads to recidivism, the criminal procedure against juveniles is covered by confidentiality (Art. 60 of the JCA), the public is excluded from trials against minors and the judgment is not delivered publicly (Art. 34. of the JCA). The reasoning behind these provisions is that “making information about the criminal proceedings against a minor available to the public would have irreversible consequences on the child’s development and could easily lead to quitting school and

31 Sometimes also referred to as the “principle of opportunity“, which is a literal translation of a German term “*Opportunitätsprinzip*“.

32 Although Croatia has a legal system rooted in civil law tradition that adopts the principle of mandatory prosecutions (known as the “principle of legality”), wide discretion is given to public prosecutors for juveniles in order to avoid trials, convictions and sentencing of minors as much as possible, because they often have negative effects and cause recidivism. *See* Marsavelski, p. 388.

33 “For a criminal offence punishable by a prison sentence of up to five years or by a fine, the public prosecutor may decide not to request that the criminal proceedings be instituted, although there is a reasonable doubt that the minor concerned committed that offence, if he or she considers that it would not be purposeful to conduct the proceedings against the minor, having in mind the nature of the criminal offence and the circumstances in which the offence was committed, as well as earlier life of the minor and his personal characteristics. In order to establish these circumstance, the public prosecutor may request information from the minor’s parents or guardian, other persons and institutions; he or she may also request that these information be collected by an adviser in the public prosecution service; when it is necessary, he or she may invite these persons and the minor to the public prosecutor’s office to give him or her such information directly.” (Art. 71(1) of the JCA).

34 “The competent authority shall have the power to discontinue the proceedings at any time.” (Art. 17.4. of the Beijing Rules)

35 “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.” Art. 3 CRC.

36 Marsavelski, p. 389.

recidivism”.³⁷

Art. 4. of the JCA regulates that the criminal procedure against juveniles is an “urgent” procedure. This provision has the purpose to accelerate the proceedings in order to begin with the pedagogic treatment as soon as possible and avoid stigmatization of the juvenile defendant, which would be a natural consequence of excessively long trials.³⁸

Although the Croatian juvenile criminal procedure is informal, flexible and urgent, the JCA also contains certain norms designed to ensure that the due process rights of minors are respected,³⁹ while juveniles also enjoy general due process protections under the Criminal Procedure Act, which applies as *lex generalis* i.e. in areas left unregulated by the JCA, which is the *lex specialis* in juvenile justice matters (see Art. 3 JCA).

A.2. Please describe the sanctioning system regarding juvenile justice in your country.

A.2.1. Please give an overview on the sanctions/reactions on youth offending at the different levels of criminal proceedings.

A.2.2. Which possibilities exist to divert a juvenile from a trial? (diversion structures/schemes, alternative authorities like special community councils which can impose certain measures)?

A.2.3. What types of interventions can the competent court impose?

A.2.4. Which forms of liberty depriving sanctions are provided? What is the minimum and maximum length for liberty depriving measures?

A.2.5. What types of residential and custodial institutions exist for juvenile criminal offenders?

The purpose of punishing juveniles in Croatia is considered to be their rehabilitation and

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ For example, pursuant to Art. 54 of the JCA, a minor must be represented by a counsel – statements given without the presence of a counsel cannot be used as evidence. Another example is the prohibition of trials against minors *in absentia* (Art. 53(1) JCA), because such trial is in conflict with the specific purposes of criminal proceedings against juveniles – the relevant data about the child’s personality, mental development and capacity, the environment he lives in, which are relevant for the evaluation purposefulness of the criminal procedure and conviction as well as for the selection of appropriate sanction, can only be collected through direct contacts with the child (in forms of interviews, examinations, psychological tests etc.).

resocialization, which differs from the purpose of punishing adult perpetrators.⁴⁰ The emphasis in juvenile adjudication and sentencing is on protecting juveniles, providing care, assistance and supervision, as well as education to influence their growth, the development of their entire personality and strengthening their personal responsibility in order for them to abstain from reoffending and to facilitate their reintroduction into the social community.⁴¹

The sanctions that can be imposed on minors for the offences committed are: (1) correctional measures, (2) juvenile imprisonment, and (3) security measures.

The purpose of *correctional measures* is to provide protection, care, assistance and surveillance, and by providing education to the perpetrator to influence the development of his personality and strengthen his personal responsibility in order to refrain from committing crimes (Art. 6(1) of the JCA). Since the proclaimed purpose of these measures is special prevention, their content is mainly pedagogic in character. The correctional measures include the following: (1) court reprimand, (2) special obligations, (3) intensified care and supervision, (4) intensified care and supervision with daily stay in a correctional institution, (5) referral to a discipline centre, (6) referral to a correctional institution, (7) referral to a reformatory, and (8) referral to a special correctional institution (Art. 7(1) of the JCA).

Juvenile imprisonment is the most severe sanction for minors, which includes a longer deprivation of liberty (max. 10 years of imprisonment) and thus is reserved for severe offences (prescribed punishment of 3 years of imprisonment or more). The purpose of juvenile imprisonment is to implement pedagogic and educational measures upon the perpetrator in order to influence the development of his personality and strengthen his personal responsibility in order to refrain from committing crimes, as well as to influence others not to commit criminal offences (Art. 6(2) JCA). Thus, except for reasons of special prevention, juvenile imprisonment is additionally justified with reasons of general prevention. However, in comparison to general purposes of punishment adopted in Croatian criminal law,⁴² reasons of retribution are clearly excluded. The sentence of juvenile imprisonment is served in a penal institution for minors or in special divisions of penal institutions for adult convicts. Professionals providing treatment services in these special institutions or divisions are required to have knowledge of pedagogy and psychology.

40 Božičević-Grbić M. & Roksandić Vidlička S., *Reforma maloljetničkog prava i sudovanja*, Hrvatski ljetopis za kazneno pravo I praksu [Croatian Annual for Criminal Law and Practice], Vol. 18, No. 2, 2011, p. 715., available at http://hrcak.srce.hr/index.php?show=clanak&id_clanak_jezik=129691.

41 *Ibid.*

42 “The purpose of punishment is to express public condemnation of the crime committed, raise the confidence of citizens in the legal order based on the rule of law, exert an influence on the perpetrator and all others so that they do not commit criminal offences by raising awareness of the perils of committing criminal offences and of the justness of punishment and allow the perpetrator’s readmission into society.” (Art. 41 of the Criminal Code)

The *security measures* are based on the dangerousness of the perpetrator, which means that they have only special preventive purpose. The Criminal code prescribes the following list of security measures: mandatory psychiatric treatment, mandatory addiction treatment, mandatory psychosocial treatment, prohibition from holding an office or engaging in an activity, prohibition from driving a motor vehicle, prohibition from approaching a person, removal from the shared household, prohibition from accessing the Internet, and protective supervision after having served a full prison term.⁴³

As noted in Part A.1.4., the provisions of the JCA provide public prosecutors with a wide discretion on deciding on the dismissal of charges against juvenile offenders and diversion programmes. The provisions of Art. 72 of the JCA particularly enable diversion in criminal proceedings against juveniles by regulating the state attorney's conditional dropping of charges. The charges shall be dropped if the defendant accomplishes the conditions ordered by the state attorney. These conditions are enumerated in Art. 72(1) of the JCA: (a) apology to the victim; (b) compensation of the damage caused by the defendant; (c) participation in extrajudicial mediation; (d) engagement in humanitarian, community or environmental work; (e) addiction treatment; (f) youth psychosocial treatment; (g) driver's education programme; (h) other obligations that are suitable to the type and nature of the offence and in accordance with the juvenile's personal and family settings.

However, in order to understand the functioning of the Croatian juvenile justice system, it is necessary to observe what happens in practice with most juvenile offenders. An analysis of the relevant statistical data shall be given in the forthcoming paragraphs.

The latest available data, reported by the Croatian Bureau of Statistics, refers to the delinquency of minors (age 14-18) for the year 2012.⁴⁴ This report demonstrates that in 2012 the state attorney's office dealt with 3,113 reported criminal offences committed by minors.⁴⁵ In 2,341 cases (75.2%), the state attorney's office decided not to initiate proceedings, out of which 1,871 offenders were discharged for reasons of purposefulness.⁴⁶ In addition to this, after initiation of proceedings, 132 defendants were discharged, of which 85 for reasons of purposefulness.⁴⁷ Therefore, 62.83% defendants avoided trial (although there was a reasonable doubt that they committed a crime) because the state attorney's office decided to drop the charges by relying on principle of purposefulness.⁴⁸

43 Art. 65 of the Criminal Code.

44 Državni zavod za statistiku (Croatian Bureau of Statistics), Priopćenje (First Release), 29 April 2013, available at http://www.dzs.hr/Hrv_Eng/publication/2013/10-01-02_01_2013.htm

45 *Ibid.*

46 *Ibid.*

47 *Ibid.*

48 Although it is unclear why these data are not exactly the same as the statistical data provided by the state attorney's office, the differences are not significant: the state attorney's office reported in 2012 that they decided upon 3,289 reports of crimes committed by minors, out of which the principle of purposefulness was applied in 2,161 cases (65.7%). See Izvješće Državnog odvjetništva Republike Hrvatske za 2012. godinu (Report of the Croatian State Attorney's Office for the year 2012), Zagreb, August 2013, p. 26, available at

In other words, these offenders entered some mode of diversion programme, but there is no available statistical data on the specific obligations imposed on minors in such cases. Furthermore, 77 measures were imposed in pre-trial proceedings: 47 supervisions by social care organization and 30 temporary internments to social care institutions.⁴⁹

In 2012, the state attorney's office indicted 778 minors (25,9%).⁵⁰ Additional 54 cases were terminated for reasons of purposefulness.⁵¹ The courts imposed a total of 626 criminal sanctions to minors: 11 juvenile imprisonments, 38 suspended juvenile imprisonments and 577 correctional measures (215 measures of warning, 270 increased supervision measures and 92 correctional institution measures).⁵² Furthermore, courts imposed 38 security measures in order to prevent minors from reoffending.⁵³

With respect to the second group of juveniles – young adults (age 18 – 21) – the Croatian Bureau of Statistics does not report the criminal justice statistics separately for this category of individuals. However, the state attorney's office reported that in 2012 they decided upon 3,435 reports of crimes committed by young adults, out of which a decision not to initiate proceedings for reasons of purposefulness was brought in 921 cases (26.8%),⁵⁴ in which some type of diversion programme was applied.

In 2012, the state attorney's office indicted 1825 young adults (53,13%).⁵⁵ The courts convicted 1695 young adults and imposed the following sentences: 189 imprisonments, 78 suspended imprisonments, 33 fines, 1208 suspended fines, 10 court reprimands and 179 sanctions for minors.⁵⁶

<http://www.dorh.hr/fgs.axd?id=1414>.

49 Državni zavod za statistiku (Croatian Bureau of Statistics), Priopćenje (First Release), 29 April 2013, available at http://www.dzs.hr/Hrv_Eng/publication/2013/10-01-02_01_2013.htm

50 *Ibid.*

51 *Ibid.*

52 *Ibid.*

53 *Ibid.*

54 Izvješće Državnog odvjetništva Republike Hrvatske za 2012. godinu (Report of the Croatian State Attorney's Office for the year 2012), Zagreb, August 2013, p. 26, available at <http://www.dorh.hr/fgs.axd?id=1414>.

55 *Ibid.*

56 *Ibid.*, p. 138.

B. Restorative approach within juvenile justice

B.1. Where do you see a restorative approach within the juvenile justice system (this questionnaire follows a process based definition of restorative justice)?

B.2. What are the types of restorative justice measures provided for juveniles (e.g. victim-offender mediation, family conferencing, circles)? Please also refer to their legal basis.

B.3. Do these restorative measures play a role in juvenile justice (sentencing) practice?

B.4. What are the main actors involved in delivering restorative justice measures (public institutions, NGOs...). Who bears the costs of restorative justice measures?

In Croatia, victim-offender mediation initially began its promotion in 2001 with the project “Alternative Interventions for Juvenile Offenders – Extrajudicial Settlements” undertaken in a joint cooperation between the Ministry of Health and Social Welfare, the State Attorney’s Office and the Faculty of Education and Rehabilitation Sciences (University of Zagreb).⁵⁷ The project resulted in 24 professionals being educated and certified by Austrian mediators and educators from the association “Neustart”.⁵⁸ In the course of this project, Croatia has developed its own victim-offender mediation model in juvenile justice, which is gaining more and more attention in Croatian literature and in practice.⁵⁹

However, the statutory provisions regulating restorative justice in juvenile criminal matters are still very poor. As noted in Part A.1.4. and A.2., according to the provisions of Art. 71 and 72 of the JCA, public prosecutors can rely on reasons of purposefulness when

⁵⁷ Zizak, Antonija, Mediation in cases of juvenile offenders in Croatia, *in*: Melinda Gyokos and Krisztina Lanyi (eds.), European best practices of restorative justice in criminal Procedure. Budapest, 2010, pp. 173-174, available at http://www.eucpn.org/download/?file=RJ_ENG.pdf&type=8.

⁵⁸ *Ibid.*

⁵⁹ The Croatian model was designed after the Austrian model (*Aussergerichtlicher Tatausgleich*), and is also similar to the German model (*Täter-Opfer-Ausgleich*). See Koller-Trbović, Nivex (ed.), Izvansudska nagodba u kaznenom postupku prema mladima u sukobu sa zakonom u Republici Hrvatskoj, UNICEF, Zagreb, 2013, p. 6, available at http://www.unicef.hr/upload/file/385/192555/FILENAME/Prirucnik_ISN_web.pdf

deciding on dropping the charges against juvenile offenders and diversion programmes. The charges can be dropped if the defendant accomplishes the conditions ordered by the state attorney and one of these conditions is “participation in extrajudicial mediation” (Art. 72(1)(c) of the JCA). Two other possible conditions that are relevant for a restorative justice approach to juvenile justice are apologising to the victim and compensation of the damage caused by the defendant (Art. 72(1)(a)-(b) of the JCA). These provisions represent the sole legal basis for the restorative justice approach in dealing with juvenile crime.

In 2003, the Croatian Association for Extrajudicial Settlements and Mediation in Criminal Procedure was established and victim-offender mediation began with its work. This Association gathers professionals, social pedagogues, social workers and psychologists who work with juvenile offenders as extrajudicial mediators. Its activities include: (a) managing the procedure of extrajudicial settlements in criminal matters upon request, (b) providing education and supervision of professionals engaged in processes of extrajudicial settlements and victim-offender mediation in criminal matters, and (c) promoting restorative justice in criminal matters.

The main role in the victim-offender mediation processes is distributed to three offices for extrajudicial settlements in three major Croatian cities: Zagreb, Split and Osijek. In 2005, the Government published a strategy to establish 21 such offices in Croatia.⁶⁰ The mediators in these centres are individuals who have received training and education to be mediators, but they are not employed as mediators.⁶¹

The victim-offender mediation procedure consists of five phases. In the first phase, the police normally inform the state attorney’s office that a juvenile has committed a crime and the case is passed to a state attorney for juveniles. In the second phase, if certain relevant criteria⁶² are met, the state attorney for juveniles decides to apply the principle of purposefulness pursuant to Art. 71-72 of the JCA and conditions the dismissal of charges with successful participation in extrajudicial mediation and settlement. In the next phase, the case is brought before a competent mediator in one of the offices for extrajudicial settlements. In the fourth phase, the mediator reports to the state attorney for juveniles

60 Strategija Ministarstva pravosuđa RH (*Croatian Ministry of Justice’s Strategy*): Razvoj alternativnih načina rješavanja sporova (*Development of Alternative Dispute Resolutions*), Zagreb, 2005. However, the plan was never fulfilled, although there is still an ongoing project, which has a goal to establish one office in each county in Croatia (21 in total).

61 They have different occupations and work mainly as social pedagogues, social workers, psychologists or academics, while they do mediation only occasionally and outside from their working hours and workplace.

62 Throughout years, in Croatian law, theory and practice, certain legal and technical criteria have been established for victim-offender mediation in juvenile matters: (1) there is a reasonable ground to believe that the juvenile concerned committed a criminal offence; (2) the prescribed punishment for the offence is a fine or imprisonment up to 5 years; (3) that the crime is not justifiable or excusable; (4) first time offenders are a priority (but recidivists are not excluded); (5) in principle, the offender should not have committed a crime as an accomplice or as a member of a group (accomplices should only exceptionally be allowed to enter victim-offender mediation); (6) juvenile’s consent to victim-offender mediation; (7) victim’s consent to victim-offender mediation; (8) purposefulness and effectiveness of victim-offender mediation. See Zizak, p. 173.; See also Mirosavljević *et al.*, Evaluacija uspješnosti izvansudske nagodbe u stručnoj službi za izvansudsku nagodbu Zagreb, Kriminologija i socijalna integracija Vol. 18 (2010), No. 2, pp. 77-78.

about the results of the mediation process. Based on this report, in the last phase, the state attorney for juveniles decides either to dismiss the case or to institute criminal proceedings. Finally, the victim-offender mediation is considered to be successful if it meets the following criteria: the juvenile offender accepts responsibility for the offence; victim and offender give their informed consent to participate in the mediation process; an agreement is reached and signed by both parties; fulfilment of the agreement by both parties; report on the success of the mediation to the public prosecutor for minors; the public prosecutor decides not to institute criminal proceedings.⁶³

Annually in Croatia there are approximately 3,000 to 3,500 reported criminal offences committed by minors⁶⁴ and only around 150 juveniles (5%) are brought to victim-offender mediation.⁶⁵ However, the restorative models of victim-offender mediation have much more potential since more offices for extrajudicial settlements need to be established. Various researches have demonstrated successful results and significant benefits of the Croatian model.⁶⁶ The latest scientific research, on a sample of 209 cases that have been brought to victim-offender mediation, demonstrated that in 76% of all cases the parties reached an extrajudicial settlement.⁶⁷ Recidivism was registered in 13% of all cases directed to victim-offender mediation and in 16, 98% of cases concluded with settlement.⁶⁸ Again, these numbers certainly show that this method is successful and that its expansion is desirable.

The necessary finances for victim-offender mediation have been covered through joint projects between the Croatian Ministry of Social Policy and Youth, Croatian State Attorney's Office, Faculty of Education and Rehabilitation Sciences of Zagreb University, Aussergerichtlicher Tatausgleich (Graz, Austria) and UNICEF.

63 See Zizak, p. 175.

64 In 2012, 3.113 minors as perpetrators of criminal offences had been reported to the public prosecutor's offices in Croatia, which was by 7.8% less than in 2011. Croatian Bureau of Statistics, First Release, 29 April 2013, available at http://www.dzs.hr/Hrv_Eng/publication/2013/10-01-02_01_2013.htm

65 Helenca Pirnat-Dragičević & Lidija Schauper, in Nivex Koller-Trbović (ed.), *Izvansudska nagodba u kaznenom postupku prema mladima u sukobu sa zakonom u Republici Hrvatskoj*, UNICEF, Zagreb, 2013, p. 6, available at http://www.unicef.hr/upload/file/385/192555/FILENAME/Prirucnik_ISN_web.pdf

66 See Koller-Trbović *et al.*, *Model izvansudske nagodbe u kaznenom postupku prema maloljetnicima i mlađim punoljetnicima*. Ministarstvo rada i socijalne skrbi, Državno odvjetništvo RH, Edukacijsko-rehabilitacijski fakultet, Zagreb, 2003.; See also Kovačić V., *Evaluacija uspješnosti izvansudske nagodbe u stručnoj službi za izvansudsku nagodbu Zagreb*. Diplomski rad. Edukacijsko-rehabilitacijski fakultet Sveučilišta u Zagrebu, Zagreb, 2008.

67 Anja Miroslavić *et al.*, p. 88

68 *Ibid.*

C. Foster care within the juvenile justice system

C. 1. Does foster care play any role in your juvenile justice system?

C. 2. Under which conditions can foster care be imposed within the juvenile justice system (at pre- or post-sentencing level or in case of diversion)? Can foster care be imposed as an alternative to custody or pre-trial/police detention? If so please describe the regulations for foster care (length, rights of the children/the foster carers etc.) If there are possibilities in law, how are they used in practice?

C. 3. Does your system know any other alternatives to custody like alternative care in case of pre-trial detention (e.g. in closed juvenile welfare institutions instead of prisons) or in case of juveniles sentenced to youth prison or comparable forms of custody? If there are possibilities in law, how are they used in practice?

Foster care is not considered to be directly linked to the Croatian juvenile justice system, but rather it constitutes a measure within the Croatian family law and social security law. Thus, it cannot be imposed as an alternative to custody or pre-trial/police detention.

Alternative family care is provided under the provisions of Social Care Act and Foster Care Act.⁶⁹ There are two types of alternative family care: (1) accommodation service (temporary accommodation in social care provider's home), and (2) family-based foster care (accommodation in an unrelated family's home). Both measures are generally designed for children without parents, neglected or abused children, children with anti-social behaviour and in other cases when such accommodation is in the child's interest. Accommodation services in a social care provider's home are applied to children waiting to be placed in a foster family. According to Art. 8 of the Foster Care Act, there are 4 types of family-based foster care: (1) traditional (generally for children without adequate care), (2) specialised (for children with special needs), (3) urgent (for children in a crisis situation), and (4) occasional (for children that will be placed in a foster-family permanently and for children that need to be prepared for family life after a period spent in an institution). Various support/supervision is available to foster carers, children and young people in foster care, and their birth families: financial support (maintenance,

69 Foster Care Act (*Zakon o udomiteljstvu*), "Narodne novine" (*Official Gazette*) No. 90/11, 78/12.

food expenses, accommodation costs, textbooks for school expenses, salary for the foster carer etc.), assistance (provided by a foster-care team of experts, centres for foster care, social workers etc.), training and education of foster carers (provided by centres for foster care), supervision of foster carers (by centres for foster care).

As noted in Part A.1.4. and A.2., according to Art. 71 of the JCA, for less severe criminal offences (punishable by a prison sentence of up to 5 years or by a fine), the state attorney may decide not to request that the criminal proceedings be instituted, if the state attorney considers that it would not be purposeful to conduct the proceedings against the minor, bearing in mind the nature of the criminal offence and the circumstances in which the offence was committed, as well as the minor's earlier life and their personal characteristics. Pursuant to Art. 72 of the JCA, various conditions can be imposed on minors in order to rehabilitate and prevent them from reoffending, but the JCA does not have a provision on alternative family care. However, such care is applicable under the provisions of the Family Act. Under Art. 111 of the Family Act, the court⁷⁰ will take away a child from his parent(s) who significantly neglect(s) the raising and upbringing of a child or where there is a danger to the proper development of the child, and will confide the child to the care and upbringing of another person, an institution or another legal entity that carries out the activity of social care. It is deemed that a parent significantly neglects the raising and upbringing of a child if e.g. they do not prevent the child from engaging with some harmful associations, from going out at night in a forbidden way, from vagrancy, begging or stealing.

There is no official data on the extent to which children are remanded at home with their birth families. However, official data shows that, for example, in 2011 the number of children to whom criminal sanctions were pronounced amounted to 814. Out of that number, 766 were correctional measures, that is, 94.1%. In the same year, there were 15 juvenile imprisonment sentences (0, 02%). One can estimate that in about 80-90% of cases, children are remanded at home with their birth families with conditions. These include various correctional measures (e.g. court reprimand, special obligations, referral to a correctional centre, intensified care and supervision, intensified care and supervision with daily stay in a correctional institution) or security measures (e.g. mandatory psychiatric treatment, mandatory addiction treatment, mandatory psychosocial treatment).

Regarding other alternatives to custody-like alternative care, in pre-trial and during proceedings, certain temporary measures are applicable to minors and one of them is temporary accommodation in a social care institution (Art. 65(1) of the JCA). This measure can last until the termination of criminal proceedings, but the court needs to review *ex officio* its groundedness every two months. In 2012, 30 minors were temporarily accommodated in a social care institution in pre-trial and an additional 22

⁷⁰ The competent courts for establishing alternative family care are not the juvenile courts, but ordinary civil courts in a special civil procedure regime.

during criminal proceedings.⁷¹ As noted in Part A.2., correctional measures *inter alia* include: (a) intensified care and supervision with daily stay in a correctional institution, (b) referral to a discipline centre, (c) referral to a correctional institution, (d) referral to a reformatory, and (e) referral to a special correctional institution (Art. 7(1) of the JCA). In 2012, the juvenile courts ordered 92 correctional measures.⁷²

Intensified care and supervision with daily stay in a correctional institution shall be ordered when the court assesses that, in order to achieve the purpose of correctional measures with regard to a minor, it is necessary to undertake more permanent and intensive correctional measures, especially by means of education and professional training under the supervision of youth counsellors and other professionals, and that, at the same time, complete and permanent separation of that minor from his or her earlier surroundings is not necessary (Art. 12(1) of the JCA). The duration of this measure may not be shorter than 6 months nor longer than 2 years (Art. 12(2) of the JCA).

The court shall apply a measure of a *referral to a discipline centre* when it assesses that in order to achieve the purpose of correctional measures, it is necessary to influence the minor's personality and behaviour by resorting to appropriate short-term separation from their surroundings (Art. 13(1) of the JCA). This measure may last from several hours on weekends to continuous confinement in a discipline centre of a duration of up to 15 days (Art. 13(2) of the JCA).

The court shall order a *referral to a correctional institution* when it is necessary to separate a minor from the surroundings in which he or she lives and, with the assistance, care and supervision of youth counsellors and other professionals; make sure that a more permanent influence is exerted on his or her personality, development and upbringing, particularly with regard to his or her education and vocational training (Art. 15(1) of the JCA). The duration of this measure may not be shorter than 6 months nor longer than 2 years and the court needs to review *ex officio* its groundedness every six months (Art. 15(3) of the JCA).

The court shall refer a minor to a reformatory when it is necessary to separate him or her from his or her earlier surroundings, and when, because of the minor's noticeable behaviour disorders and insufficient willingness to accept correctional influence, he or she shall be subjected to intensified correctional measures (Art. 16(1) of the JCA). The duration of this measure may not be shorter than 6 months nor longer than 2 years and the court needs to review *ex officio* its groundedness every six months (Art. 16(2) of the JCA).

The last measure – *referral to a special correctional institution* – is envisaged for minors with psycho-physical impairments (Art. 17(1) of the JCA). The duration of this measure

⁷¹ Državni zavod za statistiku (Croatian Bureau of Statistics), Priopćenje (First Release), 29 April 2013, available at http://www.dzs.hr/Hrv_Eng/publication/2013/10-01-02_01_2013.htm

⁷² *Ibid.*

lasts until as long as treatment is necessary, but it may not exceed 3 years and the court needs to review *ex officio* its groundedness every six months (Art. 17(3)-(4) of the JCA).

Furthermore, in the past several years home curfew has been introduced in Croatian legislation as a substitute for detention and imprisonment,⁷³ but it is not applicable in practice because electronic tags have not been bought yet and the costs of police surveillance are too high for such a purpose. However, the Ministry of Justice has organized several events in which the technology of electronic tagging has been presented and several official statements were made in the past 10 years that electronic tags shall be purchased in order to exonerate the prison system.

73 See Art. 119 of the Criminal Procedure Act and Art. 44(4) of the Criminal Code.

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