



ALTERNATIVES TO CUSTODY FOR YOUNG OFFENDERS

NATIONAL REPORT ON JUVENILE JUSTICE TRENDS

Slovenia



MSc. Danijela Mrhar Prelič

Slovenia

MSc. Danijela Mrhar Prelič



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?

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.)?

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”)?

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?

At the beginning of the 20th century the Slovenian juvenile system was developed. Under the influence of Austria (since Slovenia was at that time part of the Austro- Hungarian monarchy) it was decided that juvenile delinquency should be dealt with by a specialized judge at a general court. The first juvenile judge started to work in Ljubljana in 1909.

In 1959 the provisions concerning the juvenile offenders were amended. New law

brought a relaxation of sanctions, but it also brought changes in the field of juvenile law. Educational measures were seen as appropriate sanctions for juvenile offenders, since the categorization of juveniles as criminally responsible and irresponsible was abolished. Educational measures were imposed only on younger juveniles aged between 14 and 15, and the court had to establish a psychological profile of a juvenile's attitude in order to choose the right measure. For juveniles aged between 16 and 18, imprisonment could be imposed, but only in an educational measure would not be appropriate.

The Criminal code was accepted in 1995 and it was amended in 1999, 2004, 2008 and, finally, 2012. The Criminal Code from 1995 included the section "Educational Measures and Penalties for Juveniles" and it stayed till 2004. In 2008, when the new Criminal Code was imposed, the section about juveniles was abolished, since the politicians decided that the new law about juveniles must be prepared. So far, we still do not have a special juvenile law, and the judges are using the articles regarding juvenile offenders from the Criminal code that was accepted in 2004.

The purpose of imposing a sanction for a criminal offence against a juvenile offender is to ensure the juvenile's education, re-education, and adequate personal development. In article 73¹ it is said "*The purpose of educational measures and sentences imposed on juvenile offenders shall be to ensure their education, reform and proper personal development so as to provide custody, assistance, supervision, vocational education and support in helping them to develop a responsible personality.*"

The chronological age of an offender is the main criteria for imposing either an educational measure or a juvenile penalty. In Slovenian criminal law, juvenile offenders are divided into several groups:²

- **Children** - under the age of 14; those under 14 years of age at the time of committing an offence can only be dealt with by social welfare agencies (in Slovenia these agencies are Social Work Centers), regardless of the seriousness of the committed offence;
- **Younger juveniles** - aged 14 to 16, against whom only educational measures may be applied;
- **Older juveniles** - aged 16 to 18; as a rule, educational measures are imposed on them and only in exceptional cases may a special sentence be imposed, for instance a fine or juvenile prison.
- The Slovenian criminal legislation also uses a term **young adults**. These are persons who commit criminal offences as adults, aged 18 or more, but who are under 21 at the time of the trial. If the court finds out that educational measure would be much more

1 The Criminal Code 2004

2 Šugman, Jager, Peršak & Filipčič, 2004

appropriate than a prison sentence, the court can impose educational measures. When deciding, the court takes into account the personality of the young adult and the circumstances in which the criminal offence was committed.

For the juvenile offenders in Slovenia there are no special courts. The juvenile offenders are dealt with by juvenile judges, followed by a panel for juvenile offenders at the District Court level. The first phase of court proceedings against juveniles is the conducting of a preliminary analysis of the case by the juvenile judge - the data and evidence are gathered. The panels are constituted by one professional judge and two lay judges. The legislation³ determines that lay judges are elected by professors, teachers, educators and other persons with experience in the education of juveniles. The juvenile judges preside over panels; all together decide on the commission of a criminal offence and impose a sanction. Therefore, a juvenile judge never decides on the perpetration of a criminal act and on the sanction alone, but always together with two jurors. A panel decides at an 'in camera' deliberation or at the main hearing (a fine, imprisonment and institutional measures may be imposed only at a hearing). A decision is reached by a vote of the panel members. Lay judges cooperate with a professional judge on equal terms in deciding on the liability of a juvenile and in selecting a sanction.

The courts in second instance and the Supreme Court panels for juvenile offenders are composed of three (professional) judges. They are competent to decide on legal remedies.

The principles of dealing with an adult offender and a juvenile offender are quite different. The juvenile offender has all the rights that are guaranteed to adult offenders and also some additional entitlements, designed to diminish the possible detrimental effects of the procedure on a juvenile's development.

The proceedings start with a preliminary phase that is only initiated upon the request of the state prosecutor; the victim cannot act in lieu of the prosecutor. The request is filed with the juvenile judge. The purpose is to establish facts connected to a criminal offence and particularly to establish the circumstances necessary for the evaluation of the juvenile's maturity, an insight into juvenile's personality, and the circumstances in which the juvenile lives. It is similar to the investigation in ordinary proceedings against adults, with a key difference - the goal in adult cases is to investigate a criminal offence, while in juvenile cases the preliminary phase focuses on understanding the juvenile's personality. A further important distinction is that the preliminary phase may not be omitted, although this is possible under certain conditions in adult cases.

The juvenile is entitled to a defence counsel from the beginning of the preliminary phase. The obligatory defence, provided ex officio, is valid if a juvenile has committed an offence for which imprisonment of more than three years is foreseen if committed by an adult.

The Code of Criminal Procedure prescribes that the juvenile judges must, in addition to

3 The Code of Criminal Procedure, 2013

the examination of a juvenile, meet with the juvenile’s parents, the juvenile’s guardian, and other persons who can provide information; these persons have the obligation to testify with respect to the personality of a juvenile and the conditions in which the juvenile lives. The juvenile judges must also request a report from a social welfare agency on these circumstances.

In order to determine the juvenile’s state of health, degree of mental maturity and psychological characteristics, a juvenile judge may order that the juvenile is examined by experts such as a physician, psychologist or teacher.

When the juvenile judge has examined all the circumstances referring to the criminal offence and the juvenile’s personality, the judge sends the files to the state prosecutor, who may decide to file charges. If the charge is filed, the juvenile judge may refer the case to a mediation process or to a court panel for juvenile offenders, which subsequently decides upon the imposition of a sanction. When it finds that it would not be appropriate to pronounce either a penalty (juvenile imprisonment or a fine) or an educational measure on a juvenile, the case is dismissed.

The panel for juvenile offenders decides either at a panel meeting or at a main hearing. At a panel meeting (which is less formal) only non-residential measures can be pronounced. At a (main) hearing the panel can impose penalties, institutional (residential) or non-residential measures. A hearing is organized similarly to the main hearing in adult cases. The important difference from an adult hearing is that the public is always excluded. The presence of the state prosecutor is obligatory and in the case of the offence for which imprisonment of more than three years is foreseen, the presence of the defence counsel is also obligatory. The representative of the social agency and one of the parents have to be invited to participate in the main hearing but their presence is non-obligatory.

In the last 10 years, Slovenia has not experienced increases in the number of juvenile crime (for comparison: the number of crimes committed by adults increased by 100% in the last 10 years). Around four percent of juveniles aged between 14 and 18 are dealt with by the police while less than one percent receive an educational measure or are sentenced by the court. Since the year 2000, we have seen a decreasing trend in reported juvenile offences (see Table 1) - a small increase was noticed in 2009, but there was no significant change in figures.

Table 1: Number of reported offences committed by juvenile offenders⁴

Year	2005	2006	2007	2008	2009	2010	2011
Number	2853	2787	2630	2573	2671	2619	2428

4 Source: Ministry of Internal Affairs (reports 2005 – 2011)

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 what is the maximum length for liberty depriving measures?

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

A.2.6.. What does in practice happen with most juvenile offenders? Are they regularly subject to diversion schemes or to court trials? Do you have any reliable data about the diversionary and sentencing practice?

As stated above, the Slovenian legislation reflects the idea that a juvenile criminal offence is in most cases a manifestation of a personality disorder. The main criterion is the age of the offender. Slovenian courts only deal with those juveniles in special criminal proceedings who have committed a criminal offence and who, regarding their mental maturity (formally determined by the age of 14), are considered to understand the meaning of their conduct.

When the proceeding against the juvenile offender is in its final stage, the judge for juvenile offenders can choose among the following measures and penalties:

- Educational measures.
- Psentence.
- Fine.

In Slovenia, institutional educational measures encompass two types of measures:

- Placement within an institution under the jurisdiction of the Ministry of Labour, Family and Social Affairs and in which the juvenile offenders are placed together with juveniles with behavioural problems (who have not committed a criminal offence);
- Placement within the institution under the jurisdiction of the Ministry of Justice. Approximately two thirds of the juveniles that were given an institutional measure are placed within the first group of educational institutions. Educational institutions by nature are not penitentiary institutions; within them juvenile offenders represent merely ten percent of the population.

The court can impose an educational measure for juvenile offenders aged between 14 and 18, in some rare cases even between 18 and 21. Judges can choose among six different **educational measures**:

1. Reprimand.⁵ The court imposes this measure if it is believed that it will achieve the purpose of an educational measure. The goal is to note the harmfulness and irregularity of the juvenile's conduct and to warn that a more severe criminal sanction will be imposed if the juvenile commits a new criminal offence.

2. Restrictions and prohibitions.⁶ The following instruction and prohibition may be issued by the court to a juvenile offender: (1) to make a personal apology to the injured party; (2) to reach a settlement with the injured party by means of payment, work or otherwise in order to recover the damages caused in the course of committing the offence; (3) regular school attendance; (4) to take up a form of vocational education or to take up a form of employment suitable to the offender's knowledge, skills and inclinations; (5) to live with a specified family or in a certain institution; (6) to perform community service or work for humanitarian organizations; (7) to submit oneself to treatment in an appropriate health institution; (8) to attend sessions of educational, vocational, psychological or another type of consultation; (9) to attend a social training course; (10) to pass an examination for obtaining a driving license; (11) under conditions applying to adult offenders, prohibition from operating a motor vehicle may be enforced.

3. Supervision by a social welfare agency (Social Work Centers).⁷ The court orders supervision for an indefinite period of time ranging from a minimum of one year to a maximum of three years. They also organize different preventive programmes. The social agency must send the report about the improvement of the juvenile's behaviour to the juvenile judge every six months and the judge could order for the implementation of this measure to be stopped.

5 The Criminal Code, 2004, Art. 74

6 The Criminal Code, 2004, Art. 77

7 The Criminal Code, 2004, Art. 78

4. *Committal to an educational institution.*⁸ The offender could stay in the educational institution for not less than six months and for no longer than three years. This measure is ordered for an indefinite period of time and the juvenile judge subsequently orders its discontinuation. In Slovenia we have 3 youth centers and 7 educational institutions and 19 housing communities. They are organized as small communities, where juveniles live with the educator in small units (like apartments). The main purpose is that a juvenile offender is involved in a proper education (elementary school, secondary school, high school, vocational school). Another main purpose is also to teach juveniles to be independent, to learn how to take care of themselves, how to connect to family and society and to respect the social values. The family or foster family is engaged in this measure, since the juvenile can spend some time at home. The role of the family is very important, especially if the criminal offence of a juvenile offender involved family members. In these cases, the institution must make every effort to ensure that positive and effective family bonds are established. Institutions are placed under The Ministry of Education, Science and Sport.

5. *Committal to a re-educational institution.*⁹ In deciding whether to impose such a measure, the court shall in particular consider the nature and gravity of the crime as well as the juvenile's criminal record. If a juvenile offender between the ages of 14 and 18 needs intensive expert help and needs to be excluded from his environment, the court places a juvenile into a correctional home (in Slovenia there is only one institution). Often these are juveniles who have already been sentenced (reoffenders). When admitted to the correctional home, an expert group, together with the juvenile, comes up with an individual rehabilitation plan. This plan includes the starting-points,¹⁰ the work of the juvenile, his/her general and vocational education, his/her employment, the specific therapeutic forms to be used, the forms of cooperation within the work and life of the facility as well as forms of social and post-penal aid. When dealing with a juvenile, special attention is paid to the problem of alcohol and drug abuse. The court does not define the duration at sentencing; instead this decision is reached later on, depending on its success. Thus, the administration at the correctional home has to report changes in the juvenile's behaviour and school success at least once every six months. The juvenile offender shall stay in the re-educational institution for no less than one and no longer than three years. Most juveniles remain in the correctional home approximately two years. They can be released by the judge, who decides upon the positive opinion of the Correctional home. Usually this form of sanction is used in the case of young adults (aged between 18 and 21) who commit a criminal offence.

6. *Committal to an institution for physically or mentally handicapped youths.*¹¹ If a juvenile is diagnosed with a physical or mental handicap, the court can impose this measure. The juvenile shall stay for a maximum of three years; after one year of staying it is

8 The Criminal Code, 2004, Art. 79

9 The Criminal Code, 2004, Art. 80

10 Prelić 2007

11 The Criminal Code, 2004, Art. 81

assessed if there is still a need to impose the measure.

The main characteristics of residential (institutional) care are group counselling. All institutions organize various educational programmes and try to integrate the juvenile into local schools where the institution is situated. They also ensure that programmes are carried out within the institution with their own teachers, but with the consent of the local school. At this point it must be said that the school certificate does not show that the juvenile has finished an educational programme within an institution.

The imposed educational measure can be replaced with another measure if it is decided that the implementation of this new measure makes it more probable that the purposes of the educational measures will be achieved.

The most severe sanction is ***juvenile imprisonment***. It may be only imposed if two formal conditions are fulfilled. Firstly, the offender must be an older juvenile, aged 16 or 17 at the time of an offence. Secondly, the committed offence must be a serious one, for which a minimum sentence of five years or more may be imposed if committed by an adult.

The court can impose juvenile imprisonment for not less than six months and no more than five years. In the case of criminal offences punishable by 30 years' imprisonment for adults (e. g. aggravated murder) the sentence of juvenile imprisonment cannot exceed 10 years.

In ordering a sentence of juvenile imprisonment, the court shall – apart from assessing all mitigating and aggravating circumstances – take into account the degree of maturity of the juvenile and the time necessary for the juvenile's education, reformation and vocational training. The juvenile judge has to consider the purpose of imposing this sanction and the judge needs to explain why an educational measure would not be appropriate. The purpose of prison sentence is the same as that of educational measures – to ensure that the juvenile receives the necessary education and appropriate support for his/her personal development.

Slovenia has taken into account the recommendations that are stipulated in international documents – the purpose is rehabilitation and not punishment. It also belongs to the group of countries in which criminal law does not allow the transfer of juveniles to adult courts, regardless of the seriousness of the committed offence. This model can be defined as the strict model, in which the upper age limit for treating an offender within a juvenile system is absolutely defined – a trial in a general court is ruled out.

The minimum prison sentence for juveniles in Slovenia is higher than the minimum prison sentence for adults; the minimum prison sentence for juveniles is six months, while for adults it is merely 15 days. This is not a reflection of a more repressive approach for juvenile offenders, but the reflection of the rehabilitation purpose of the prison sentence and the belief that rehabilitation and treatment programmes cannot be successful within

a short period of time.

The statistical analysis shows that a trend of imposing longer prison sentences does not exist in Slovenia. Even though a prison sentence of up to ten years can be imposed in Slovenia, in the period between 2002 and 2012 this sentence was only imposed on a single juvenile offender, while approximately 75% of the imprisoned juveniles received prison sentences of up to two years.¹² The statistical analysis shows that a trend of imposing longer prison sentences does not exist in Slovenia. A low percentage of juvenile prisoners serve the entire sentence; most of them are released on probation before the full sentence runs out. Once the juvenile serves one third of his sentence a special Ministry of Justice committee makes the decision regarding probational release.

The data show (see Table 2) that less than one third of all juveniles who are reported to the police are sentenced by the court. Among tried juveniles, less than 2 percent receive a prison sentence (this is one of the lowest rates in Europe); in the period between 2008 and 2012, this was less than one percent. As we can see, educational measures are most commonly pronounced; only in rare cases are prison sentences or fines pronounced.

Table 2: Number of juvenile offenders on whom an educational measure or sentence was imposed¹³

	2008	2009	2010	2011	2012
Prison sentence	6	3	2	1	4
Educational measure	480	410	323	367	394
The fine	3	1	2	1	-
Non	-	4	3	-	-
Together	489	418	330	369	398

The juvenile judge may order ***a pre-trial detention*** against the juvenile. Any juvenile aged between 14 and 18 can be detained, while only a juvenile aged 16 or more can be sentenced to prison. The Criminal Procedure Code explicitly defines that a juvenile offender can be detained only in exceptional cases.

The main difference between the pre-trial detention for adult and juvenile offenders lies in its duration. Juveniles can be detained for a maximum of three months (the judge can order detention for one month and the panel for juvenile offenders may, on the proposal of the state prosecutor, extend it for a further two months) prior to the charge being filed, while adults can be detained for six months. Once the charge is filed, detention can last for an additional two years (the same as for adult offenders) and only the panel for

12 Source: The Prison Administration, 2013

13 Source: Statistical Office of the Republic of Slovenia, 2013

juvenile offenders may order it. Every two months it must be determined whether the reason for the detention is still valid.

If the young offender is sentenced to prison, the time spent in pre-trial detention is taken into account. If the judge imposes an institutional measure, the time spent in pre-trial detention is not taken into account.

Juvenile pre-trial prisoners are placed within adult prisons (in pre-trial detention units) that do not have specially determined spaces for juveniles. The Criminal Procedure Code defines that juvenile detainees have to be separated from adults, but allows for an exception to this rule: the juvenile can be detained together with adult pre-trial prisoners if this is in the benefit of the juvenile. Detaining a juvenile together with an adult is not decided by the prison administration but by the judge for juvenile offenders. This is a safety valve to ensure that the reason behind the joint placement is not the lack of space in the prison.

The comparison with other European systems shows that in Slovenia the duration of the pre-trial detention is one of the longest in Europe; only Turkey has a longer maximum detention (Dünkel, et al., 2009). This is the critical point of the Slovene system of treating juvenile offenders. The UN Committee on the Rights of the Child evaluated such a duration as unsuitable, and recommended that Slovenia should change its legislation as this does not offer appropriate protection of the children's rights. Regardless of this explicit recommendation the Criminal Procedure Code has not been changed so far. This is probably because the state does not consider such a legislative act to be problematic as statistics show that juveniles do not spend more than three months in detention. There are only a few international comparisons of the frequency of pre-trial detention, mainly because countries use different terminology for the closed institutions for juvenile pre-trial prisoners. Regardless of this methodological reservation the comparison of the share of juvenile pre-trial prisoners amongst all prisoners in European countries can be interesting. Such a comparison for 2007 (van Kalmthout, Knapen & Morgenstern, 2009) indicates that Slovenia is one of the countries with the lowest share of juveniles in pre-trial detention (Slovenia and Denmark 0,7%, Belgium and Portugal 0,2%, Finland 0,3%, France and Germany 1%, United Kingdom 2,7%, Ireland 3,2%, Austria 3,4%).¹⁴

The last possibility for a juvenile judge is imposing *a fine*.¹⁵ This sanction can be imposed on a juvenile who has been convicted of an offence punishable up to five years and if the juvenile can pay the fine himself/herself. The fine cannot be converted into imprisonment, which is the case in the adult sanctioning system, but must be converted into a non-residential educational measure (reprimand, instructions and prohibitions, supervision by the Social Work Center).

14 Filipčič, Prelić 2011

15 Criminal Code 2004, Art. 88

The state prosecutor has the discretionary power to decide not to bring a case before court because the juvenile does not need any judicial intervention despite the fact the juvenile committed an offence. This discretionary power of the state prosecutor is limited to less severe offences – for which imprisonment of up to three years or a fine is prescribed.

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 for the costs of restorative justice measures?

In Slovenia different forms of restorative justice have been introduced: *mediation, restitution or reparation of damages and reintegration of offenders through the delivery of community service*. Mediation and deferment of prosecution can only be implemented if both the victim and the offender agree to it after referral of the case.

The greatest attention is devoted to **mediation**. One of the reasons for this attention is because it is a good principle for solving everyday problems on the one hand, and on the other hand it is a possibility to disburden the court system. Also it is an approach that has been tested in other states and has proven to be a good alternative. "Mediation is not a right or a privilege. It is a legal possibility, recognized by law under certain conditions and available to anyone, if so determined by the State Prosecutor."¹⁶

Mediation is used in pre-trial procedures and it can also take place once court proceedings have been introduced. For juvenile offenders aged 14 to 18 mediation is also available as a court sanction. Before deciding, the state prosecutor has to consider the type of offence, its nature, the circumstances in which it was committed, the offender's personality and his or her past conduct. The victim or the offender cannot initiate the mediation procedure independently from the prosecutor, nor (at least formally) can they demand it or suggest it to him. Their desire for (or opinion on) mediation can only be expressed

16 Mežnar 2000, p. 488

once the prosecutor has referred the case to mediation. Once the prosecutor has decided to refer a case, the mediator invites them to express their opinion.

The prosecutor can refer less serious cases (criminal offences punishable with up to three years of imprisonment) to mediation even after the indictment has been filed (since 2001).

At the main hearing, he announces that he will refer the case to mediation and the judge postpones the main hearing for a maximum of six months.

The offender's acceptance of responsibility for the criminal act before the case is referred for mediation has never been a legal requirement for the prosecutor's decision but it is highly unlikely that the prosecutor would refer a case to mediation where a defendant denies and refuses to accept responsibility, because such a case would have no real prospect for success. There are no institutions or agencies that are specialized in mediation. A lay mediator supervises each case and this is quite a unique solution in Europe. There are currently about 190 specially trained mediators, a quarter of which are mediators in cases involving juvenile offenders.

Mediation is successful when the offender and victim reach an agreement and the offender fulfills the obligations stipulated in this agreement. The statistical data show that the number of referred cases to mediation is decreasing.

Table 3: Number of cases referred to mediation (adults and juveniles)¹⁷

	2004	2005	2006	2007	2008	2009	2010	2011
Adults	1939	1476	1660	1563	1450	1386	1425	1532
Juveniles	344	225	191	194	155	100	155	88

The rate to which mediation is successful according to this definition of success is more than 60% in the case of juvenile offenders and about 50% in the case of adult offenders. Statistical data show that in over half of all cases the victim and offender agreed for the offender to apologize to the victim, while the second most popular obligation was the payment of damages.

Table 4: Success rate of mediation in %¹⁸

	2004	2005	2006	2007	2008	2009	2010	2011
Adult	47	47	47	47	50	52	55	44
Juvenile	68	62	63	69	70	61	76	67

¹⁷ Source: Office of the State Prosecutor General

¹⁸ Source: Office of the State Prosecutor General

If the mediation is successful, the prosecutor withdraws the criminal charge, the court proceedings are terminated and the offender doesn't receive any entry on his criminal record. If the mediation is not successful the judge continues with the main hearing. If the offender is found guilty, the unsuccessful mediation does not have any negative consequences for him; it is not a factor in sentencing.

The State Prosecutor can conditionally defer prosecution. Dealing with juveniles in alternative ways is possible in all cases involving criminal offences punishable by up to five years of imprisonment (if the offender is an adult, this is also possible for all offences punishable with up to three years in prison, and only for some offences punishable with up to five years of imprisonment). ***Deferment of the prosecution – conditional dismissal*** is used when it would be inappropriate for the offender to pass without some form of intervention, but where punishment is not absolutely necessary. The state prosecutor may drop a case if the suspected juvenile performs certain actions to remove the harmful consequences of the criminal offence:

- The repair of or compensation for any caused damage.
- Paying a contribution to a public fund, to a charity institution or to the compensation fund for victims of criminal offences.
- Performing community service.

The State Prosecutor invites the offender and the victim to the Public Prosecutor's Office. A defence lawyer also can be present. If the victim is a juvenile, the prosecutor invites his parents (and the juvenile victim, depending on the circumstances of the case) to the hearing and if the offender is a juvenile, the juvenile's parents need to be present. If one of the parties fails to respond (and the victim does not send written consent for prosecution to be deferred) it is considered that the conditions for a deferred prosecution have not been reached. If the offender and the victim agree on deferred prosecution, the prosecutor sets the task and defines how long prosecution will be deferred for and how much time the offender has to fulfill his/her obligations (up to a maximum of six months). Deferred prosecution was introduced into legislation in 1995, but it did not define the scope of tasks. Since this was subject to criticism in 2004 the State Prosecutor General adopted the instruction to precisely define the scope of the tasks. The statistical data show that in 2011, the tasks given for the juvenile offenders were community service (72,3 %) and compensation of damage (40,8 %).

If the suspect fulfills the obligation undertaken within six months, the criminal complaint is dismissed.

Table 5: Number of cases where the deferred prosecution was proposed¹⁹

	2005	2006	2007	2008	2009	2010	2011
Adult	3423	3300	2842	2442	2481	2800	2588
Juvenile	360	417	332	317	284	286	264

Generally, in almost 50% of cases the offender fulfilled the given tasks. In approximately 67% of these cases juveniles fulfilled the obligations and the case was subsequently dismissed.

Table 6: Success of deferred cases in %²⁰

	2005	2006	2007	2008	2009	2010	2011
Adult	38,6	41,8	46,2	50,1	46,5	45,8	47,8
Juvenile	60,5	55,9	70,5	72,6	79,2	63,6	67,8

By Slovenia's legislation, in the case of juvenile offenders, the court can impose the sanctions with restorative justice elements, including **community service**. This is the reason why the prison sentence imposed on juveniles cannot be served by community service (which is the possibility in the case of adult offenders for criminal acts sanctioned by up to two years of prison); the judge can impose community service as an educational measure instead of imposing a prison sentence which involves community service.

We can also find the element of restorative approach in the educational measure "Instructions and Prohibitions" (see p.7), which can entail one or more instructions. A strong element of restorative justice can be found in the provision in the Criminal Code, which stipulates that when selecting instructions, the court has to take the juvenile's will to cooperate into account. An apology to the victim and a settlement with the victim should be delivered through a mediation process and this is another important element of restorative justice.

If the juvenile fails to comply with the imposed instructions, the court can replace this measure with a different one called "supervision by a social agency". The judge informs the juvenile and his parents regarding this option when ordering the original educational measure of "Instructions and Prohibitions".

As we can see from the above mentioned statistics, the number of cases referred to mediation or deferment of prosecution is decreasing. It is hard to identify the reasons. One of the reasons was the introduction of new forms of simplified procedures for dealing with petty offences and these new forms did not include the elements of the restorative approach, though they were well received by the prosecutors. Because of this the cases are

19 Source: Office of the State Prosecutor General

20 Source: Office of the State Prosecutor General

closed swiftly. On the other hand, the prosecutors will need to be additionally educated as regards the advantages of mediation, so that they do not regard bringing the case to a close as soon as possible as their primary goal.²¹

²¹ Filipčíř 2011

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?

In proceedings against juveniles, during the preliminary phase the juvenile judge may order that a juvenile be sent to a diagnostic center or be placed under the supervision of a social welfare agency or another family, if this is necessary to take the juvenile out of the environment in which juvenile lives, or to provide the juvenile with assistance, protection, or accommodation. The measure ordered by the juvenile judge may last for the entire duration of the proceedings, or the judge may end it at any time. Any of the above-stated measures can be appealed to the panel for juvenile offenders at a higher court.²² Even though this is a possibility it is not often used in practice.

Therefore, foster care is not possible as an alternative to the sentence, but it can be a part of it. As said above, a really small number of juveniles who have been reported to the police are tried and sentenced by the court. The Slovenian practice is also to use all other possibilities first and court proceedings as the last resort. A lot of educational measures are pronounced by the Social Work Centers.

²² Filipčič 2010

In the Slovenian system is also not possible to place the juvenile in a juvenile institution because of detention reasons. In some cases, juvenile are placed into an institution while the court proceeding are going on, but this is because the juvenile was already placed there. The only possibility for detention is prison detention, which is also not often used.

If we look at the statistics about juvenile delinquency and about pronounced measures we can see that at the moment there is no special need to implement foster care as an alternative to custody/detention (since in more than 98% of cases educational measures are pronounced).

References

- Dekleva, B. (1991). Renewal of Residential treatment in Slovenia. In J. Junger-Tas, L. Boendermaker & P. van der Laan (Eds.), *The Future of the Juvenile Justice System, L'avenir du système pénal des mineurs* (pp. 401-410). Leuven, Amersfoort : Acco.
- Dekleva, B. (1993). Normalizacija in zavodska vzgoja v Sloveniji. *Revija za kriminalistiko in kriminologijo*, 44 (1): 20-33.
- Dekleva, B. (Ed.). (1996). *Nove vrste vzgojnih ukrepov za mladoletnike*. Ljubljana: Inštitut za kriminologijo pri Pravni fakulteti v Ljubljani.
- Bošnjak, M. (2000). Postopki restorativne pravičnosti. *Revija za kriminalistiko in kriminologijo*, 51 (1), p. 32-41
- Mežnar, A. (2000): Poravnavanje med storilcem in žrtvijo kaznivega dejanja – nov institut v naši procesni kazenski zakonodaji, *Pravnik* 55 (6-8), p. 475 – 501.
- Filipčič, Katja (2010). Slovenia. V: DÜNKEL, Frieder (ur.). *Juvenile justice system in Europe: current situation and reform developments*, (Schriften zum Strafvollzug, Jugendstrafrecht und zur Kriminologie, ISSN 0949-8354, 36). Mönchengladbach: Forum Verlag Godesberg, str. 1263-1286.
- Filipčič, K. (2011): Victim offender mediation: promising alternative to criminal procedure in Slovenia. In: FENYVESI, Csaba (ur.), HERKE, Csongor (ur.). *Pleadings: Celebration volume of professor Tremmel Flórián's 70th birthday*, (Studia Iuridica Auctoritatis Universitatis Pécs Publicata, 148). Pécs: Universitatis Pécs, p. 69-77.
- Ministry of the Interior: Annual Reports on the Work of the Police. <http://www.policija.si/eng/index.php/statistics>
- Ministry of Justice; The Prison Administration Annual Reports. http://www.mp.gov.si/si/o_ministrstvu/ursiks_organ_v_sestavi/dokumenti/letna_porocila/
- Office of the State Prosecutor General of the Republic of Slovenia: Annual Reports. <http://www.dt-rs.si/sl/>
- Prelič, D. (2007). Učinkovitost vzgojnega ukrepa oddaje v Prevezgojni dom z vidika socioterapevtske usmeritve, *Magistrsko delo*. Ljubljana : Univerza v Ljubljani, Pravna fakulteta.
- Skalar, V. (2000). Vzgojni zavodi v funkciji preprečevanja delinkventnosti in disocialnosti pri otrocih in mladostnikih. In A. Šelih (Ed.), *Prestopniško in odklonsko vedenje*

mladih: vzroki, pojavi, odzivanje (pp. 151-164). Ljubljana: Bonex.

- Šugman, K. (2000). Criminal Procedure in Slovenia. In R. Vogler & B. Huber (Eds.), Criminal Procedure in Europe (pp. 483-539). Berlin: Duncker & Humbolt; Freiburg i.Br.: Max-Planck-Institut.
- Šugman, K., Jager, M., Peršak, N., Filipčič, K.. (2004).Slovenia. In Criminal Justice Systems in Europe and North America. Helsinki, Heuni - The European Institute for Crime Prevention and Control, Affiliated with the United Nations.
- Završnik, A. (2008). Konceptualne zagate restorativne pravičnosti - nova paradigma modernega odzivanja na kriminaliteto?. Revija za kriminalistiko in kriminologijo, 59 (2): 125-140.
- The Criminal Code, 2004. <http://www.dz-rs.si>
- The Criminal Code, 2008. <http://www.dz-rs.si>
- The Criminal Code, 2012. <http://www.dz-rs.si>
- The Code of Criminal Procedure. <http://www.dz-rs.si>

**European Project ‘Alternatives
to Custody for Young Offenders -
Developing Intensive and Remand
Fostering Programmes’**

JUST/2011-2012/DAP/AG/3054



With financial support from the Daphne III Programme of the European Union