



# ALTERNATIVES TO CUSTODY FOR YOUNG OFFENDERS

NATIONAL REPORT ON JUVENILE JUSTICE TRENDS

Slovakia



Miroslava Vráblová



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Miroslava Vráblová,  
University of Trnava



## 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?**

Until 1993 the territory of Slovakia was part of the Czechoslovak Federation; therefore, Slovakia shared a common history of juvenile justice with the Federation, seeing the *first substantive juvenile law being passed in 1931* and the subsequent socialist legislation of the 1950s and 1960s. Juvenile Justice Act No. 48/1931 Coll. was the first individual act concerning juvenile justice. By embracing substantive and procedural law and emphasizing post penitentiary care issues, the mentioned act adjusted issues of juveniles in a complex and systematic way. The leading idea was to highlight the individual

educational and preventive measures rather than criminal repressions. This act was abolished in 1950. The next juvenile justice adjustment from the beginning of the 1960s was criticized because of the narrowly profiled sanctions and emphasis on imprisonment as a form of punishment. There was also an insufficient individual approach towards juveniles. The main changes concerning the juvenile justice system were introduced in the 1990s.

*After the state's independence in 1993 the new Slovakian legislation did not establish separate juvenile justice legislation, but rather incorporated specific regulations for juvenile offenders in the substantive Penal Law as well as in the general Code of Criminal Procedure. Juvenile justice is part of the general adjustment of criminal law with specific articles related to punishment and criminal procedure against juveniles. Issues such as criminal liability, sanctions, protective and educational measures and body of crime are all part of the general criminal adjustment. The articles concerning prosecuting juveniles can be found within the articles of specific forms of criminal procedures. Juvenile justice legislation in Slovakia - substantive and procedural conception of legal adjustment of juvenile justice - is formulated as an exception from the general criminal adjustment.*

Criminal responsibility and sanctioning of juvenile offenders is regulated in Title IV of the General part of the Criminal Code (*Criminal Code, Act No. 300/2005 Coll.*) entitled "General Provisions on Prosecution of Juveniles". Specific provisions relative to criminal proceedings against juvenile offenders are included in the Code of Criminal Procedure (*Code of Criminal Procedure, Act No. 301/2005 Coll.*).

The criminal law distinguishes several age categories of perpetrators enjoying a special position and privileges with respect to sentences to be imposed (mitigating circumstances). A *child* is a person under 18 not having acquired majority; a *juvenile* is a person between 14 and 18, a *young adult* is a person between 18 and 21.

With respect to age, a minimum age limit for criminal responsibility is set. It is defined in negative terms; anyone not having attained the age of 14 at the time of committing an act otherwise constituting a criminal offence, is not criminally responsible. Criminal responsibility of a juvenile offender depends also on his individual intellectual maturity. The law requires a juvenile offender to be able to realize that his conduct constitutes a substantial breach of rules of the society of which he is a member (intellectual element) and to be able to control his conduct accordingly (will element). In case of a juvenile offender not having attained the age of 15 at the time the act was committed, it is always necessary to examine whether he was capable of discerning the illegality of his conduct and of controlling his conduct. The level of intellectual and moral maturity of persons between 14 and 15 years of age must (and, of persons between 15 and 18 years of age, may) be examined by two experts in the field of psychiatry or youth psychology.

So, the age of criminal liability is 14 (in the special case of sexual abuse 15). *14 year old juveniles are criminally liable only if they are capable of recognition of their wrongdoing and they are also capable of controlling their actions, while juveniles aged 15- 17 are*

*always criminally responsible.* Young adults aged 18-20 are considered as an age group where punishment should be mitigated, contrary to adults aged 21 and above. They also receive special treatment with regard to their imprisonment, in that they can stay in juvenile prisons or departments of the prison system in order to finish their schooling or vocational training and be released subsequently.

*Children under 14 are not criminally responsible. Their criminal responsibility is totally excluded. Only educational measures according to Family Law can be imposed, including placements in residential homes as a last resort.* The system of welfare placements in substitute families and homes is differentiated according to the educational, mental and health needs of children and juveniles.

Slovakia does not have specific criminal law books for juveniles but special regulations within the criminal justice act. These regulations are assorted into special sections. The juvenile justice system in Slovakia is opened if the juvenile breaks rules of the criminal law. Juvenile justice authorities cannot start their work before the age of criminal responsibility has been reached.

In Slovakia, responsibility for conducting the preliminary proceedings and for making indictment decisions lies in the hands of the public prosecution service of a country. The prosecution service is assisted by police during the investigation. *Slovakia does not yet have a separate juvenile court system.* In general, adult courts are competent to decide about juvenile offenders. Penal matters involving juveniles are dealt with by the Lower District Courts. However, there is discussion about opening the floor for some specialisation within these courts.

*In any case, juveniles are always represented by a defence counsel and the procedural safeguards are taken seriously, although in general the trial concerning juvenile matters is public, which can infringe on the educational interests of the juveniles.*

The Code of Criminal Procedure regulates special types of criminal proceedings. One of them is proceedings against juveniles. The specificities of criminal proceedings against juveniles are based on the position of juveniles requiring a special assessment of the circumstances of the case in order to arrive at a just decision and to choose the most appropriate sentence or measure with a view to reforming juvenile offenders. Proceedings against juveniles differ from ordinary criminal proceedings, in particular, in the following ways: the juveniles must be represented by counsel from the moment the accusation is made; the degree of intellectual and moral development of the juvenile, his character, the circumstances and the environment where he lived and was brought up and his behaviour before and after committing the criminal offence must be duly ascertained; the right means and suitable educational activities for his reform must be chosen; the youth protection authority in the place of residence of the juvenile must be associated with the proceedings in order to eliminate any obstacles to the educational effect of the proceedings; the proceedings against juveniles should be performed by persons having professional knowledge and experience in the field of youth education;

in the case of a juvenile not having attained 15 years of age at the time of commission of the offence, it must always be ascertained whether he was able to discern the illegality of his action and to control his action; a juvenile accused may be remanded in custody only if the purpose of custody cannot be achieved otherwise; joint court proceedings against a juvenile and a person over 18 years of the age is possible only in exceptional cases justified with compelling reasons; the trial or a public hearing cannot be held in the absence of the juvenile; upon application by the juvenile, his counsel or statutory representative, the court excludes the public form of the trial or orders that the juvenile not be present in the courtroom for a certain time; instead of a sentence, the court may impose protective custody on a juvenile offender; additional persons are entitled to file requests for relief.

## **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?**

The provisions concerning the purpose of sanctions and educational measures reflect the principle of a special approach with respect to imposing sanctions, protective and educational measures and to deciding criminal cases involving juvenile offenders. They also reflect the necessity of special care that must be given to youths in the interest of

society as a whole.

The *purpose of imposing a sentence on a juvenile offender* is, first and foremost, to educate him to be a good citizen. The sentence should, at the same time, prevent illegal conduct and also protect society. The sentence imposed should also restore disturbed societal relations and integrate the juvenile offender into his family and social environment. The purpose of sentences and the specificities of juvenile offenders are reflected also in the limited scope of sentences.

The *purpose of imposing protective measures and educational measures* on a juvenile offender is to exert positive influence on his mental, moral and social development, taking account of the degree of his intellectual and moral development, his personal characteristics, family upbringing and his environment of origin, and to protect him against negative influence and to protect society against criminal offences. Protective measures and educational measures are intended to make an effective contribution to resolving current problems in the juvenile offender's life and causes of his criminal activity, to motivate him to lead a life without conflict with the law and to mend the damage caused.

The sentence, the protective measure or the educational measure imposed must reflect the juvenile offender's personality as such; must reflect his age, intellectual and moral maturity, health condition, as well as his personal, social and family situation; and it must be proportionate to the nature and gravity of the offence. The judge is responsible for gathering this information and factoring it into the decision-making process.

The court sanctioning system comprises a *variety of educational measures and penalties* such as *community service orders* (40-150 hours), *fines*, *suspended sentences* (up to two years) and *suspended sentences with supervision* (up to three years) and *final unconditional imprisonment* (maximum 15 years or life imprisonment). The minimum and maximum sentences for juveniles are reduced by half compared to adults (the minimum must not be longer than two years, the maximum no longer than seven years, kedy 15 rokov). There are special mitigating circumstances for juveniles described by law, but there are also increased penalties for recidivist ("persistent") offenders and even *preventive detention as a security measure* after finishing a prison sentence, which seems also possible for juveniles (although the law is not entirely clear in this regard).

**Waiver of sentence** is an educational instrument. The court may refrain from punishing a juvenile offender if three basic conditions are met (he committed a contravention, he regrets committing it and displays an effective effort to reform) and given the nature of the offence committed and the juvenile offender's previous life, it may be expected that the trial will be sufficient for achieving his reform or the court accepts a guarantee for the reform of the juvenile offender and is satisfied that, given the educational influence of the guarantor, the nature of the offence committed and the person of the juvenile offender, imposition of a sentence is not necessary.

Specific cases where the court may refrain from punishing a juvenile offender are cases where he committed the offence in a state caused by a mental disorder and the court is satisfied that the protective treatment imposed will ensure his reform better than a sentence and where a protective measure or an educational measure is already in course and, therefore, imposition of a sentence is not necessary for achieving the aim pursued by the law.

If the court refrains from imposing a sentence, the juvenile offender is regarded as not having been convicted.

In case of juvenile offenders, the court may ***conditionally refrain from imposing a sentence*** if it comes to the conclusion that, even though the conditions of waiver of punishment are satisfied, it is necessary, for a certain period, to supervise the conduct of the juvenile offender in question. The court will determine a probationary period which can also be combined with restrictions and duties in order to encourage the juvenile offender to lead a regular life. This institution is specific since, until the court decides that the juvenile offender has passed probation (or until the fiction of passing probation applies by operation of law), a sentence may still be imposed.

The Criminal Code defines the sentences that may be imposed on juvenile offenders; *community work, pecuniary penalty, forfeiture of things, prohibition of a certain activity, expulsion and imprisonment*. The leading principle of imposition of a sentence on juvenile offenders is the educational purpose of punishment. The Criminal Code prefers imposition of a sentence not connected with imprisonment. In the structure of sanctions imposed on juvenile offenders, the sentence of imprisonment is the criminal sanction of last resort (*ultima ratio*). The list of sentences is exhaustive and therefore may not be extended.

The provisions on sentences imposed on juvenile offenders are of special application with respect to the general provisions of the Criminal Code regulating imposition and execution of individual sentences. In case of juvenile offenders the general provisions are modified as follows:

- Punishment by community work may range from 40 to 150 hours. This sentence may not, given its nature or the circumstances of its execution, endanger the health, safety and moral development of the juvenile offender.
- Pecuniary penalty may range from €30 to €16,590. It may be imposed if the statutory conditions are met, the juvenile offender receives income or his property situation allows this sentence to be imposed. The law allows also conditional suspension of pecuniary penalty, in which case the court will impose a probationary period of up to three years. It may impose also adequate restrictions and duties in order to encourage the juvenile offender to lead a regular life.
- Sentence of forfeiture of things.



- Sentence of prohibition of a certain activity may range from one to five years in the case of a juvenile offender. The maximum term of this sentence may not exceed five years. This sentence may be imposed on a juvenile offender only if it does not interfere with his preparation for his profession.
  
- Sentence of expulsion may be imposed on a juvenile offender under the general conditions, ranging from one to five years. The court will also take into account the personal and family situation of the juvenile offender. This sentence must not expose the juvenile offender to risk of decadence.
  
- Sentence of imprisonment – in the case of juvenile offenders, prison terms set forth in the Criminal Code are reduced by half, the maximum limit of the reduced prison term not to exceed seven years and the minimum limit not to exceed two years. In the event that a juvenile offender commits a particularly serious crime and the degree of gravity of his crime for society is exceptionally high, given the despicable manner of action, the despicable motive and the serious result that is difficult to correct, the law provides for an exceptional prison term of seven to fifteen years. In the case of offenders under 18, a sentence of imprisonment is served in correctional institutions intended for juvenile offenders. The Criminal Code allows also a conditional suspension of sentence and a conditional suspension of sentence with probationary supervision, which are alternatives to an unconditional sentence of imprisonment. A sentence of life imprisonment may never be imposed on a juvenile offender.

As for ***protective measures***, the Criminal Code contains special provisions on protective measures regulating *protective custody* which may be imposed only on a juvenile offender. Protective measures regulated in the General Part of the Criminal Code such as protective treatment, detention and confiscation of things are intended both for juvenile and adult offenders. The Criminal Code explicitly prohibits imposing protective supervision on juvenile offenders.

*Educational measures* are a specific type of sanction imposed on juvenile offenders. The Slovak Criminal Code distinguishes between these types of educational measures; *educational duties and restrictions and admonition with warning*. They may be imposed only with the consent of their addressee. With respect to their preventive effect, educational measures are very useful because they allow the prosecutor or the judge to exert positive influence on a juvenile offender and to prevent him from a life of crime by separating him from his criminogenic environment or by ensuring supervision over his behaviour.

*Educational duties and restrictions* include the duty to submit to probationary supervision, to live with a parent or another adult, to seek to settle with the injured party and to compensate for the damage caused, the duty to perform activities of general interest without remuneration or to submit to addiction treatment, social training, and psychological counselling or a different programme.

*Admonition with warning* means that the court and, in the preparatory proceedings, the prosecutor firmly reprimand the juvenile offender in the presence of his statutory representative for his illegal conduct and warn him about the sanctions under the Criminal Code that he may face if he commits a criminal offence in the future. Admonition with warning is intended to prevent the juvenile offender's recidivism.

Since 1961 the sanctioning system has provided different forms of diversions, with such possibilities having been extended in 1994 and 2005. One form of diversion, *Reconciliation*, is combined with mediation but until now it has been used only rarely. *The most extensively used form is an absolute or conditional discharge for offences which are punishable with up to five years of imprisonment (Conditional Discharge)*. In 2005 a new form of diversion was introduced: a kind of guilty plea called the "*Contract of guilt*" which (with the consent of the accused) can contain also minor sanctions, particularly the compensation of the victim.

There are several possibilities to divert a juvenile from a trial, namely: **Conditional Discharge, Reconciliation** (*Criminal Conciliation Proceedings*) and **Contract of Guilt** (*Agreement of Guilt and Sentence*). All these measures are optional and could be implemented according to the decision of the prosecutor or attorney-general. The same legislative provisions are applied for adults and juveniles. The use of Conditional Discharge and Reconciliation is not restricted solely to Pre-Trial Proceedings, but it is useful and effective to implement them even in Trial Proceedings. The use of Conditional Discharge during Trial Proceedings depends on specific circumstances of the criminal proceedings.

Conditional Discharge and Reconciliation cannot be used if the offender caused death as a harmful effect of the offence, or if a public official or foreign public officer is accused of bribery or other forms of corruption.

**Conditional Discharge** can be issued only under specific circumstances (according to Criminal Procedure Code No. 301/2005 Coll.):

- a) In case of an offence of medium gravity or a less grave offence, when the Sentence of Imprisonment can be imposed within the maximum limit of 5 years.
- b) When the accused pleads guilty and there is no doubt (beyond reasonable doubt) that his Plea of Guilt (statement of confession) has been done voluntarily, seriously and intelligibly.
- c) When the accused compensated the damages or agreed to compensate damages claimed and concluded a special agreement with victims and other damaged (Agreement of compensation of damages claimed) or the accused already used other measures to compensate or, restore damages.

According to the mode of compensating damages there are several opportunities for the

accused. First of all, he/she could compensate all the damages immediately or conclude agreement of compensation for the damages claimed, if he/she is unable to compensate or restore it immediately (paying the damages in instalments), or he/she could use other suitable restorative or reparatory measure. On the other hand, if the sole pledge of the accused to compensate damages claimed is not satisfactory, other restorative and reparatory measures are required (for Conditional Discharge). The accused is obliged to compensate for all the damages to all victims of his/her offence and to other damaged persons.

d) The accused agreed voluntarily, seriously and intelligibly with Conditional Discharge (consent with diversion from the due course of criminal proceedings).

e) When Conditional Discharge is satisfactory according to the seriousness of the criminal case (less grave offences), the nature of offender (juvenile criminal), and other circumstances of the case.

To meet this criterion, it should be investigated whether the case and the offender are suitable for Waiver of Punishment and his/her ad-hoc decision should be based on surrounding material circumstances (for example personal, social and psychological characteristics of the offender as well as age, mental health and social status of the criminal). The attorney-general should take into account whether the offender is a juvenile or a recidivist, the offender acted in a state of diminished sanity (mental capacity) as well as the mode of committal (modus of criminal action), the consequences of the offence (effect of causing material and immaterial damages) and level of culpability.

Conditional Discharge means that criminal proceedings are conditionally suspended (during the Probationary period for one to five years). If the accused led a regular life during the probationary period, compensated for their damages and fulfilled other duties as well as observing imposed protective measures, the case will finally be dismissed and criminal proceedings will end (Unconditional Discharge Statement issued by the attorney-general or the court). The Conditional Discharge Statement may involve some restrictions for the accused, namely prohibition against attending sporting events, consuming alcoholic beverages or gambling, as well as an order to fulfil his/her nourishment obligations in due course. If the accused does not observe imposed measures and other restrictions or does not fulfil his/her duties in due course, the trial proceedings restart and the criminal proceedings will continue.

**Reconciliation** takes place at various stages of criminal proceedings and in theory at each stage of criminal proceedings there could be an agreement concluded (Agreement of Criminal Reconciliation), namely as a part of Pre-Trial Proceedings or Trial Proceedings. Reconciliation takes place outside the main criminal proceedings and it is a non-compulsory part of the Pre-Trial Proceedings. Even the Reconciliation is subject to supervision of the attorney-general, who is obliged to accept the agreement (as a Decision of Reconciliation Agreement) or withdraw the agreement (if required circumstances and other criteria are not met).

Mandatory requirements for admissibility of a Reconciliation Agreement are:

a) In the case of an offence of medium severity or less, where the maximum Sentence of Imprisonment that can be imposed is 5 years.

b) Both the accused and the victim agreed voluntarily, seriously and intelligibly with Conciliation Proceedings as well as with a final Decision of Reconciliation Agreement (consent with diversion from the due course of criminal proceedings). The right to agree with the Reconciliation is reserved only for the accused and the victims. Reconciliation is not admissible unless all victims and damaged persons agree. Even if there is discontent by one of the victims based on subjective or personal reasons (the victim thinks he/she deserves more compensation), then it is deemed a discontent with the whole criminal conciliation and cancels the possibility of a Reconciliation Agreement.

c) The accused pleads guilty and there is no doubt (beyond reasonable doubt) that his Plea of Guilt (statement of confession) has been done voluntarily, seriously and intelligibly. The accused is not required to plead guilty. The statement of guilt should be done voluntarily as a foundation for compensating damages in order to restore and repair damaged social relationships, especially between the accused and the victim.

d) The accused compensated the damages caused by the offence or agreed to compensate damages claimed and concluded special agreement with victims and other damaged persons (Agreement of compensation of damages claimed) or the accused already used other measures to compensate or restore damages. Obligation to compensate the damages does not only mean material damages, but includes also non-material damages caused by committing the offence. Restitutio in integrum (natural restitution) is preferred, but it is hardly ever possible to achieve 100% restoration and reparation of damaged social relationships. On the other hand, the most common form of compensating damages is monetary compensation (compensation in reluto).

e) The accused gives certain amount of money in trust to the court (during Trial Proceedings) and to the office of attorney-general (during Pre-Trial proceedings) for the specific addressee for community purposes (public interest purposes only), unless the amount of money in question is inadequate given the gravity of the offence committed. The adequacy of the sum will be judged by the attorney-general (Pre-Trial Proceedings) or by the judge (Trial Proceedings) according to the material circumstances of the case. The attorney-general or judge ought to take into account the gravity of the offence committed as well as the social and economic status of the offender.

f) This form of decision is adequate and acceptable according to the essence and gravity of the offence as well as the public interest which has been harmed and taking into account the offender's person and his/her personal, social and proprietary status. The court ought to take into account the fact whether the offender is a juvenile or person at the age proximate to juvenile age, as well as mental health and possible pro-social and anti-social behaviour before and after the offence is taken into account. Moreover, the

court must take into account whether the offender has been convicted yet or not as well as the personal, social and proprietary status of the offender (namely social and labour status, working record, personal and marital status, and wealth, income, proprietary rights and financial status in general).

**Contract of guilt (Agreement of Guilt and Sentence)** is an agreement between the attorney-general (prosecution) and the accused (defence); in specific cases, the victim and other injured person also take part to expresses his/her consent or disagreement. The object of Plea Bargaining is the agreement on guilt and sentence, as well as the agreement of compensation and reparations of damages and other harms. The Agreement on Guilt and Sentence is a result of negotiation between the attorney-general and the accused of “reasonable and acceptable sentence” (called Plea Bargaining).

The first phase of Plea Bargaining is an optional part of Pre-Trial Proceedings and is supervised by the attorney-general, who negotiates with the offender in order to conclude Agreement of Guilt and Sentence. When the agreement is ready, the attorney-general submits the proposal (draft) of the agreement to the court. The agreement should be signed by the attorney-general, the accused juvenile, his/her legal representative (parent) and the solicitor, as well as the victim and other injured persons. In the second phase of Plea Bargaining the judge examines the submitted proposal in order to confirm it or reject it (content of the agreement is not legally binding for the judge). Once the proposal is confirmed, the Agreement of Guilt and Sentence came into force as a part of a condemnatory judgement. The presiding judge should reject the proposed agreement if he/she detects serious breach of the offender’s procedural rights (for example, right for defence, etc.) as well as if the agreement is clearly inappropriate (to the offence committed) or is appropriate but clearly unfair. The court cannot exercise further examination and evidence because it has already been done by policemen, prosecutors and attorney-generals (during Pre-Trial Proceedings) and the court is entitled only to examine matters of guilt and fact as well as legal conditions necessary for confirmation of the Agreement of Guilt and Sentence.

## 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<sup>1</sup>)?**

**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?**

Criminal justice in the Slovak Republic is based on traditional continental criminal procedure. On the other hand criminal justice is being influenced by current European trends, such as extending use of alternative sentences in substantive criminal law and diversions in procedural criminal law. Also international standards played an important role in the process of the re-codification of Slovak criminal law by introducing restorative measures.

There is also a new institute of Mediation, a form of formal arbitration or mitigation proceedings outside the criminal procedure. It is an alternative to the criminal procedure, which creates an opportunity for imposing alternative sentences, using diversions in criminal procedure or substituting protective custody with less harmful protective measures. However, several concepts of restorative justice have never been implemented in the Slovak Republic, namely restorative group conferencing, police cautioning, community reparation boards and sentencing circles.

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<sup>1</sup> According to Article 2 of ECOSOC Resolution 2002/12, a restorative process means “*any process in which the victim and the offender, and, where appropriate, any other individuals or community members affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.*” Such ‘encounter’-based processes include mediation, conciliation, conferencing and forms of community reparation boards.

**Mediation** is an informal model for universal reconciliation of social conflicts connected with the criminal offence in general and reconciliation in order to find an informal solution of the criminal case besides the Trial Proceedings. The Probation and Mediation Officers Act No. 550/2003 Coll. was enacted and came into force on 01 January 2004. The institute of Probation and Mediation Officers was created and they tried to solve as many criminal cases as they could outside the criminal proceedings and criminal judiciary.

The Criminal Mediation Proceedings are run and supervised by a mediator. Slovak mediators should be at least 18 years old and possess adequate education and knowledge. It is required only to have a university degree in the field of Law, Theology, Teaching and any other Masters degree in Humanities. Special compulsory education for mediators is required, too. A mediator must also have full capacity for legal actions as well as a permanent abode within the territory of the Slovak Republic, proficient knowledge of the official language of the Slovak Republic (Slovak language) and advanced knowledge of an optional foreign language. A mediator must also have required knowledge, education and training and must be in a good health.

For theoretical purposes we can divide the actions of the Mediator into four stages throughout all criminal proceedings. At the beginning, a preliminary meeting of offender and victim face-to-face supervised by the Probation and Mediation Officer takes place. The first stage of the reconciliation proceedings is focused on communication between the offender and victim and involves the introduction of both sides and a brief description of their role in the process as well as setting rules for further communication and mediator's explanation of the mediation proceedings. During the second stage, the mediator invites both parties to make statements of their claims in order to achieve their goals and the aim of the whole mediation proceedings. Furthermore, the mediator invites both parties to make their own analyses of the case and to submit evidence, if it is applicable. In the second stage the mediator tries to understand the expressions of both parties their claims and their goals. These statements and expressions will be the basis for the mediator's proposed solution of the case (proposal of Criminal Reconciliation Agreement within Mediation Proceedings). In the third stage of the mediation proceedings, the mediator summarises the statements, information and submitted evidence of both parties. Moreover, he/she helps the parties to understand the case and to find an adequate peaceful solution to the issue. The fourth stage of the mediation proceedings is the termination of the mediation procedure. Finally, the mediator submits his/her proposal for a peaceful solution of the case (proposed Criminal Reconciliation Agreement), which can be accepted or denied by both parties.

Therefore, there are three possible results of mediation proceedings in criminal cases: conclusion of Criminal Reconciliation Agreement within Mediation Proceedings (100% agreement on all issues), Compensation of Damages Agreement (agreement on issues of damages) and Record of Mediation Proceedings (when one or both parties disagree with the proposed agreement on all fundamental issues).

The impulse for implementation of Probation and Mediation Service in the Slovak Republic was the need for an efficient alternative model for solving criminal cases, as well as the very positive results of foreign research. Since 01 August 2001, the Office of Head Coordinator-Clerk (as an officer of the Ministry of Justice of the Slovak Republic, Department of Criminal Law) was created for the coordination and implementation of the Pilot Project for the Probation and Mediation Service in the Slovak Republic. Immediately the Action Group for Probation and Mediation Service was created. The Action group consisted of representatives of criminal prosecution services, judges, attorneys-of-the-state, criminal police and non-profit organizations. The Pilot Project for the Mediation and Probation Service had been held in several selected courts (County Court Bratislava IV, County Court NovéZámky, County Court SpišskáNováVes) in order to test the future application and implementation of the project on a national level. Finally, the project was successful and the Probation and Mediation Service was implemented for all Slovak county courts since 01 January 2004, when the Probation and Mediation Officers Act No. 550/2003 Coll. came into force. Institutes of mediation and probation seem to be quick, inexpensive and efficient means of alternative arbitration and mitigation of minor criminal cases.

Although the Probation and Mediation Service has been a successful project for more than eight years, the Ministry of Justice is still supervising the action and decisions of Probation and Mediation Officers. However, it is not easy to supervise and evaluate the work of all Slovak Probation and Mediation Officers. The basis for evaluating and marking is the number of cases stated (by court, prosecution service or attorney-of-the-state, as well as on demand of the accused or the people claiming damages) compared to the number of finished cases, as well as the efficiency of compensating damages and the total amount of awarded and paid damages.

Even though the project is very successful, there are still some problems remaining. Astonishingly, such a successful project is not used often and there are only few mediation and probation cases every month. First of all, there is a lack of coordination between national prosecution service authorities and Probation and Mediation Officers. Moreover, Probation and Mediation Officers have no effective legal means to achieve the aims of probation and mediation service efficiently. Communication with convicted persons and with victims who were awarded damages is also not easy. Furthermore, the scope of work of Slovak Probation and Mediation Officers is very specific and different from the work of Social Security Advisors and Clerks, so Probation and Mediation Officers have a very narrow field of work and cannot use the legal means of social security officials. Finally, Slovak Probation and Mediation Officers do not possess adequate education and knowledge. Last but not least, the problem is an insufficient number of Probation and Mediation Officers. While in 2006 there were 116 Probation and Mediation Officers in office all around Slovakia, in 2009 their number decreased to 78 and in 2011 there were only 62 Probation and Mediation Officers left. The main reason for such decrease of number of Probation and Mediation Officers is the very weak financial background of Slovak judiciary.



Although Mediation Proceedings are a unique instrument of restorative justice in Slovakia, there is a strong connection between criminal reconciliation supervised by a mediator and actions of Probation and Mediation Service exercised by Probation and Mediation Officers as public officials. If it is suitable, Probation and Mediation Officers intervene in the Mediation proceedings in order to influence the offender, the victim and other injured persons to resolve the criminal case using some diversions from the due course of the criminal proceedings. Probation and Mediation Officers intervene in the Criminal Conciliation Proceedings in order to replace custody with less harmful non-custodial protective measures and to impose one of the alternative sentences instead of the Unconditional Sentence of Imprisonment.

For the purposes of public interest, Probation and Mediation Officers seek for evidence or other surrounding circumstances of the criminal case and of the offender in order to enable a peaceful solution of the case or at least solve some issues via Mediation (Criminal Conciliation Proceedings). Their aim is to achieve a peaceful solution such that an Unconditional Sentence of Imprisonment is substituted by a less harmful punishment or ideally by an alternative sentence. For instance, they try to influence the offender and victim to agree on the form of paying damages and restoration and reparation of other harmful effects of the crime. If the Criminal Conciliation Proceedings is successful and Probationary Supervision is imposed, the same Probation and Mediation Officers execute the supervision over the juvenile offender. Of course, Probation and Mediation Officers as civil servants cannot act voluntarily; they exercise their duties *ex offio* according to the orders and instructions of the sole judge, presiding judge (Trial Proceedings) or attorney-general (Pre-Trial Proceedings). When is it suitable, they can also act on the impulse of the mediator, offender, victim or other injured person.

## 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?**

Alternative family care is used in our country (in Slovakia) to protect and support the welfare of children and young people not able to be parented in their own families. This issue is a subject of Slovak Family Law. Family law deals with three types of relationships: relationships between spouses, relationships between parents and children based on filiations, and finally *relationships based on various forms of surrogate custody*.

Since family law is part of the civil law, the principles of civil law also apply in family law. However, the general *principle of equality* of parties is often moderated, with respect to factual inequality of parents and children, in the provisions of the Family Act by privileging the child. If the exercise of parental authority is not balanced, the Family Act allows the court to intervene and modify the exercise of parental authority. The *principle of the best interest of the child* is of primary importance in family law. The UN Convention on the Rights of the Child of 1989 recognized the best interests of the child as a primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies.

Alternative family care is provided by family law which is regulated in a particular act (*Family Act No. 36/2005 Coll.*, as amended, hereinafter referred to as the “Family Act”).

Pursuant to Section 44 alternative family care consists of temporary measures replacing personal custody of a minor child where the child's parents do not or cannot provide personal custody. The Family Act regulates three types of surrogate custody: surrogate personal custody, foster care, and institutional care. Surrogate custody is established by a court decision. The system of welfare placements in alternative family care is differentiated according to the educational, mental and health needs of children and juveniles. The support is provided by an *Act on Social Legal Protection of Children and Social Curatorship (No. 305/2005 Coll.)*.

A child may be given into the **surrogate personal custody** of a natural person permanently resident in Slovakia and having full legal capacity whose health, personality and moral characteristics, and way of life guarantee that surrogate personal custody will be in the child's interest. The child's relatives are preferred when choosing eligible persons for surrogate personal custody. The person having a child in surrogate personal custody has the duty of personal care for the child, but not the duty of maintenance of the child. The persons having the duty of maintenance towards the child provide maintenance to the person having the child in surrogate personal custody.

If the parents do not or cannot provide personal custody of a minor child and if it is necessary in his interest, the court may place the child into **foster care**. The foster parent must have a permanent residence in Slovakia and full legal capacity and his health, personality and moral characteristics, and way of life must guarantee that foster care will be in the child's interest. Just like in the case of surrogate personal custody, the foster parent has the duty of personal care for the child, but not the duty of maintenance towards the child. However, the persons having the duty of maintenance towards the child provide maintenance to the Office for Social Legal Protection of Children, which provides allowances to the foster parent.

**Institutional care** is used only if the child cannot be placed in surrogate personal custody or foster care. The persons having the duty of maintenance towards the child provide maintenance to the institution where the child is placed.

One of the protective measures according the Criminal Code is preventive custody which may be imposed only on a juvenile offender, not young adult or adult offenders. **Protective custody** is a protective measure that may be imposed only on a juvenile or a minor. The objective of protective custody is to exert positive influence on the mental, moral and social development of a juvenile person, to protect him against negative influence and to protect society against criminal activity and to eliminate the juvenile person's negative tendencies and habits by means of re-education.

The principal condition of imposition of protective custody on a juvenile person is his conviction or his declaration of guilt. The court may impose protective custody in criminal proceedings if:

- The juvenile person's upbringing is not being taken care of properly and a proper up-

bringing is not possible in the family where he lives,

- His previous upbringing was neglected, or
- The environment where he lives does not guarantee his proper upbringing.

Protective custody may be imposed separately if the court refrained from sentencing the juvenile offender or in addition to a sentence.

Protective custody must be imposed by the court in civil proceedings on a person having attained the age of 12 and not yet attained the age of 14 and having committed an offence that may be sanctioned under the Criminal Code with a sentence of life imprisonment. Protective custody may be imposed also if it is necessary for ensuring the proper upbringing of a person younger than 14 having committed an act otherwise constituting a criminal offence. A specific case is the imposition of protective custody on a person younger than 15 having committed a criminal offence of sexual abuse.

Protective custody is executed in special custody facilities (“institutional protective custody”) or in professional foster families (“family protective custody”) or, if required by the juvenile person’s health, in a medical custody facility.

If the juvenile person’s re-education has reached a stage where he is likely to behave properly in a different environment, the court can refrain conditionally from protective custody and place the juvenile person outside the custody facility or the foster family.

Protective custody is executed as long as it is required in order to attain its objective, provided that the juvenile offender has not attained the age of 18. If required in the interest of the juvenile offender, the court may extend protective custody until he turns 19.

Foster care can’t be imposed as an alternative to custody or pre-trial/police detention. According to the Slovak criminal law custody may be replaced by the guarantee of an interest association or of a trustworthy person, on the recognition of the accused, by the supervision of a probation and mediation officer and bound under the conditions stipulated in Sections 80 to 82 of the Code of Criminal Procedure. There is no further special possibility for a juvenile offender as an alternative to pre-trial/police detention.

Supplement  
**Chart 1: Diversion**

|             | Conditional Discharge |             | Reconciliation         |                   | Agreement of Guilt and Sentence   |                   |
|-------------|-----------------------|-------------|------------------------|-------------------|---|-------------------|
|             | by prosecutor         | by judge    | approved by prosecutor | approved by court | completed in pre-court level by proposal of Agreement of Guilt and Sentence | approved by court |
| <b>2006</b> |                       |             |                        |                   |   |                   |
| Juvenile %  | 584<br>16.49          | 125<br>3.53 | 74<br>2.08             | ---               | 341<br>9.63   | 281<br>7.93       |
| <b>2007</b> |                       |             |                        |                   |   |                   |
| Juvenile %  | 705<br>15.54          | 72<br>1.58  | 159<br>3.50            | 36<br>0.79        | 567<br>12.50  | 487<br>10.73      |
| <b>2008</b> |                       |             |                        |                   |   |                   |
| Juvenile %  | 637<br>13.60          | 52<br>1.11  | 154<br>3.28            | 23<br>0.49        | 704<br>15.03  | 616<br>13.15      |
| <b>2009</b> |                       |             |                        |                   |   |                   |
| Juvenile %  | 557<br>12.99          | 66<br>1.53  | 181<br>4.22            | 26<br>0.60        | 691<br>16.12  | 673<br>15.70      |
| <b>2010</b> |                       |             |                        |                   |   |                   |
| Juvenile %  | 505<br>18.49          | 18<br>0.65  | 170<br>6.22            | 8<br>0.29         | 702<br>25.71  | 659<br>24.13      |
| <b>2011</b> |                       |             |                        |                   |   |                   |
| Juvenile %  | 523<br>13.29          | 35<br>0.88  | 139<br>3.53            | 16<br>0.40        | 809<br>20.56  | 756<br>19.21      |
| <b>2012</b> |                       |             |                        |                   |   |                   |
| Juvenile %  | 316<br>8.58           | 32<br>0.86  | 103<br>2.79            | 12<br>0.32        | 708<br>19.22  | 705<br>19.14      |

Source: Statistical data of General Prosecutor's Office

**Table 1: Sanctions imposed by criminal courts against juveniles in the years 2000-2012**

|                            | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 |
|----------------------------|------|------|------|------|------|------|------|------|------|------|------|------|------|
| Unconditional imprisonment | 11.8 | 8.9  | 11.1 | 12.2 | 10.9 | 12.4 | 12.9 | 9.6  | 9.8  | 8.5  | 10.4 | 8.6  | 8.5  |
| Suspended prison sentence  | 69.9 | 72.8 | 71.6 | 67.6 | 70.7 | 68.7 | 69.4 | 63.0 | 62.3 | 59.8 | 60.5 | 60.1 | 57.2 |
| Monetary fine              | 0.2  | 0.4  | 3.0  | 0.2  | 0.2  | 0.4  | 0.6  | 0.4  | 1.3  | 1.0  | 1.2  | 1.0  | 0.7  |
| Other sanctions            | 0.4  | 0.8  | 0.8  | 1.2  | 0.8  | 14.0 | 0.9  | 7.1  | 8.7  | 11.8 | 10.1 | 13.8 | 14.5 |
| Waiver of punishment       | 17.7 | 17.1 | 16.0 | 18.8 | 17.4 | 17.4 | 16.2 | 19.9 | 17.9 | 18.9 | 17.8 | 16.5 | 19.1 |

Source: Statistical data of Ministry of Justice SR

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