



LOST IN THE JUSTICE SYSTEM

**Children in conflict with
the law in Eastern Europe
and Central Asia**

unite for children

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Photo credits

All of the photos in this report were taken at the Pre-sentence Detention Facility in Chisinau, Moldova, in May 2007.

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Acknowledgements

This report is based on data provided by National Statistical Offices from 20 countries in Central and Eastern Europe and the Commonwealth of Independent States (CEE/CIS) through the MONEE project. The report is also informed by additional studies undertaken in the region.

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PREFACE

This report sheds light on an issue, which is often kept in darkness – children who come into conflict with the law. It reveals that the juvenile justice systems in many parts of Eastern Europe and Central Asia are not serving children or society well, and in many instances cannot fairly claim to be delivering justice.

While reform is occurring and governments are working to align their systems with international standards, it is a slow process.

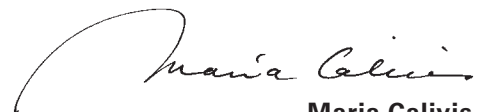
In the mean time many children are simply dropping through the cracks, or disappearing into a ‘twilight zone’. By that the report refers to children who are arrested, then held in pre-trial detention. It is called the twilight zone because of the legal ambiguities concerning this phase of the justice process and the dire lack of knowledge and hard data about these children – the numbers, the duration of their stay, and the conditions they face.

The importance of this report is that it provides an overview of the whole juvenile justice system by providing the most up-to-date information including documentation of recurrent trends, such as:

- **Children are being deprived of their liberty outside of the justice system:** The report highlights the concern for children who are young (aged below the ‘minimum age of criminal responsibility’) or children who have committed petty offences. These children are often placed in ‘educational institutions’ by Local Commissions for Minors that operate outside the justice system. Some children also are placed in custody in the name of their own protection. Such measures, often called ‘protective custody’, are not within the mandate of the justice system and signal the failure of social services.
- **Justice systems are not ‘child friendly’:** Currently both national and international legislation is being breached, and the rights of children are not sufficiently respected. For example, the so called ‘lenient’ approach of halving the length of adult sentences for juveniles, all too common in the region, represents a fundamental misunderstanding of international standards.

I believe the report shows the way on how we can comprehensively reform juvenile justice systems and we are confident that, through a close examination of vital questions and priorities, the report will make an effective contribution to the growing debate on juvenile justice in the region and worldwide.

With facts comes change.



Maria Calivis

Regional Director, UNICEF CEE/CIS

FOREWORD

Within the children's rights field as a whole, the international community has devoted unprecedented energy to drawing up comprehensive and detailed standards regarding all aspects of juvenile justice. At the same time, as is clear from the Committee on the Rights of the Child's Concluding Observations on State party reports and its recent General Comment¹ inspired by its 15 years of experience to date, adherence to both the letter and the spirit of these norms constitutes one of the major challenges worldwide.

It is hence not surprising that assessments of responses to juvenile offending, and to juvenile offenders themselves, rarely make encouraging reading, whatever the country or region concerned. The present report from the CEE/CIS region is characteristically unsettling in a number of respects, pointing for example to misinterpretation of certain approaches suggested in relevant international standards, including the non-punitive thrust, use of 'deprivation of liberty' and 'diversion'.

Nonetheless, the report also finds more indications of progress than of regression and this against a general background of apparently stable or even decreasing juvenile offending rates. The reflections on the current systems' shortcomings are intended to contribute to future policy decisions that will continue to move in the progressive direction.

The fundamental reason for setting up a distinct juvenile justice system lies in recognition of the fact that, before the age of adulthood, emphasis needs to be placed squarely on assisting a young person to avoid further behaviour that will bring him or her into conflict with the law, as opposed to punishing him or her for an offence committed. In other words, the juvenile justice system should be focused mainly on non-punitive responses that are constructive for the individual child concerned. All too often, however, this non-punitive thrust is wrongly interpreted as a call for 'leniency', i.e., simply being less severe towards children. One result of this interpretation is that sentencing is based on lower tariffs for young people compared to adults. In this context, many systems foresee a maximum custodial sentence for a child that is typically half the length of that applicable to an adult for the same offence. However, the international standards call for a different *type* of response, not a more lenient one. In the CEE/CIS region, the approach of 'less severity' leads, among other things, to potential custodial terms of 10 to 15 years for juveniles found guilty of the most serious crimes, a duration that the Committee on the Rights of the Child has roundly criticized.

Leniency serves no one: not society, not the victim of the offence, and not the child. It neither addresses the issues behind the child's behaviour nor satisfies the victim, and it therefore does not serve to bring about a more cohesive society. Not surprisingly, therefore, neither the term itself nor the approach that leniency implies figures in the Convention on the Rights of the Child or other international instruments. Instead, in addition to promoting non-punitive responses, these instruments set out the principle of 'proportionality' whereby measures decided should be geared not only to the offence but also to the circumstances of the offender.

The 'less severe' approach widely adopted in the CEE/CIS region also results in children being deprived of their liberty for less serious offences where, objectively, such a measure bears no relation to preventing recidivism. In this respect, another frequent misconception should be noted: that standards governing 'deprivation of liberty' apply only to sentences to be served in penal institutions. In fact, international standards see deprivation of liberty in a far broader light, covering also pre-trial detention and, importantly, any placement ordered by the authorities in a facility from which the individual may not leave at will. From this standpoint, therefore, placements in various kinds of ostensibly 'educational' or 'rehabilitative' institutions, extensively used in the region, fall within the scope of deprivation of liberty and must consequently be viewed as 'a last resort'. This implies *inter alia* determining that educational and rehabilitative measures dispensed in a facility could not be similarly or better furnished by services that would allow the child to remain at home. Thus, placements have to be justified as positive responses and the potentially most effective option from among a range of other available measures, not the 'last resort' simply because they are or seem to be the only available solution.

1 Committee on the Rights of the Child, General Comment No. 10, Children's rights in juvenile justice, United Nations document CRC/C/GC/10, 9 February 2007.

Alongside the 'last resort' requirement is the injunction that deprivation of liberty be used for 'the shortest appropriate period of time'. This has somewhat more complex implications.

We know that short residential placements (e.g., under three or even six months) are invariably not only inadequate for 'rehabilitation' efforts to achieve the intended aim but, interestingly, are also unnecessary and ineffective as a punitive deterrent. Hence the importance of the term 'appropriate', which means 'useful' as well as 'no longer than necessary'. While a number of factors will determine what placement period should be ordered, the assessment must therefore ensure that the child concerned remains in the facility only as long as he or she will genuinely benefit from the specific services administered in a closed setting – and, if necessary, also from services to the family while he or she is there. If a placement is ordered, it needs to be terminated as soon as this is no more the case. Conversely, however, it should never be prolonged on the grounds that it has been ineffectual to date, that the child continues to need the services, or for any other reason.

According to international standards, the bedrock of juvenile justice must be a formal judicial procedure, since this alone can guarantee due process, and the obligation to establish a specific system in this respect is clear and uncontested. In this context, the role, composition and mandates of 'Commissions for Minors' across the CEE/CIS region have to be carefully examined and aligned with international provisions.

At the same time, these standards also underline the desirability of establishing alternative 'diversion' schemes, whereby a significant proportion of juvenile cases can be dealt with without recourse to court proceedings. Under the right conditions – including the child's free admission of the alleged offence, the qualifications and motivation of those responsible for decision making, and the array of options effectively at their disposal – such schemes constitute a far more positive alternative to the involvement of a court of law. In this way, young offenders can be dealt with on a case-by-case basis and the responses can comprise the levels and kinds of support, guidance and supervision warranted by his or her overall needs. The aim should always be that of tackling the reasons that could lead the child to come into further conflict with the law.

Under these conditions, if the use of diversion measures is generalized, the benchmark for juvenile justice responses will then correspond to the majority of young people in conflict with the law, i.e., those who admit to having committed petty or non-violent offences. We still need to examine closely how best to respond to the small but high-profile group who have committed serious and violent crimes. But this should not be an obstacle to diversion being the norm, and – since diversionary schemes must be authorized only to result in non-custodial responses – deprivation of liberty could thereby become the exceptional measure that it is supposed to be under international standards.

As the Council of Europe's Commissioner for Human Rights has emphasized, moves such as this, which avoid criminalizing children, are in no way intended to treat young offenders leniently, as if their responsibility was being denied: "On the contrary, it is important that young offenders are held responsible for their actions and, for instance, take part in repairing the damage that they have caused."² This is far better ensured through the constructive responses available under diversion – including mediation, mentoring, life skills and restorative justice options – than by punitive sanctions.



Nigel Cantwell

Geneva, 23 July 2007

2 Speech by Thomas Hammarberg, the Council of Europe's Commissioner for Human Rights, at the Conference of the Prosecutors General of Europe, Moscow, 5-6 July 2006.

EXECUTIVE SUMMARY

In every country in Eastern Europe and Central Asia the juvenile justice systems need to be reformed, if not created. This fact is confirmed by the Committee on the Rights of the Child, which notes in its 'Concluding Observations' that provisions of law or practice in these countries are not compatible with international standards. In response to the Committee's concerns, UNICEF began its work on reforming juvenile justice systems throughout the region, where 12 UNICEF Country Offices have explicitly included juvenile justice reform as a priority.

UNICEF works with National Statistical Offices to collect data on juvenile offending and justice response from the region, which is referred to by UNICEF as 'Central and Eastern Europe and the Commonwealth of Independent States (CEE/CIS)'. For this report, basic quantitative and qualitative data spanning the years 1989 to 2005 were obtained through the MONEE project for a total of 20 countries.³ Viewpoints and recommendations put forward in the report have been informed by a range of sources, but fundamentally reflect UNICEF's approach to juvenile justice – including emphasis on child rights, prevention and the principles of restorative justice – as well as the lessons learned from a recent four-country evaluation of UNICEF's contribution to juvenile justice reform in the region (UNICEF and DRN, 2007).

Key findings and conclusions

- **There is a grave lack of data on juvenile justice.** Poor data collection systems, along with a lack of transparency and data sharing, mean that there is much we simply do not know.
- **Juvenile offending is not increasing in recent years.** In most countries, the rates of offending between 2000 and 2005 were either stable or fluctuating/decreasing. In Belarus and the Russian Federation, rates of juvenile offending increased from 2002 to 2005, though more slowly than offending amongst the general population.
- **The minimum age of criminal responsibility (MACR) is generally set suitably high** (at 14–16 years), but this is no guarantee that children aged below or above it will be treated appropriately and according to international standards within the justice system.
- **The extent to which Local Commissions for Minors are truly diversionary is questionable.** It has been argued that local commissions serve a useful diversionary role as they direct children away from judicial proceedings, who therefore avoid unnecessary and potentially counterproductive stigmatization associated with the judicial process. However, the composition and mandates of some of these commissions, especially their powers to authorize a custodial response, are not in line with international standards. It should also be noted that the potential of commissions to be 'diversionary' only applies to children who are old enough to be prosecuted. Many children brought before commissions are under the age of criminal responsibility.
- **The period between arrest and conviction is a 'twilight zone'**, due to the lack of clear information about children arrested and held in police custody or pre-trial detention.
- **'Deprivation of liberty' is still the norm.** Reports from all countries in the region clearly show that sentencing children to deprivation of liberty is a common response to juvenile offending, often in the name of 'rehabilitation' or 'education' rather than purely as a 'punitive' measure. Although the 'educational' approach sounds progressive on the surface, there is cause for misgiving as many of these institutions do not have the resources to truly rehabilitate children. While it is encouraging to observe a decline in the number of children deprived of their liberty, the numbers are likely to be an underestimate due to the lack of comprehensive data on children in 'educational' institutions and in pre-trial detention.
- **The use of alternative community-based sentences is being increasingly reported**, and there are some examples of countries where legislative change has led to changes in the responses. However, a lack of comparable data across the region hampers ability to monitor progress.

3 Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Romania, Russian Federation, The former Yugoslav Republic of Macedonia, Serbia and Montenegro (data combined), Tajikistan, Turkmenistan, Ukraine and Uzbekistan.

- **The placement of children in ‘protective custody’ is a sign of a failing system of care.** Children may be taken into custody and placed in institutional care for their own ‘protection’. This phenomenon is evidence of law enforcement and the wider justice system ‘stepping into the vacuum’ created by the lack of effective social services for children and their families. The functions and mandates of the institutions where children are placed are rarely articulated, and they tend to be poorly regulated with no inspections or quality assurance.
- **While awareness is growing for the need for prevention and rehabilitation, action is limited.** Some efforts are being made in primary prevention (creating safer environments), but little has been achieved on a tertiary level (reintegrating offenders). It is of great concern that some countries are showing an increasing reliance upon the institutionalization of children as a means of prevention. Data on recidivism are currently lacking, a crucial indicator of the success of prevention and rehabilitation strategies in reducing reoffending.
- **The common approach of giving children the same type of adult sentences, but shorter – often deemed to be showing ‘leniency’ – is not necessarily in the best interest of the child,** nor is it in the best interest of the victim or the community as a whole. In fact, it is argued that this ‘lenient’ approach represents a fundamental misunderstanding of the international standards for juvenile justice. There is particular concern for children who are too young to be prosecuted, as the report has revealed an obvious lack of regulation of specific measures that can be imposed on this category of children, and an absence of preventative and rehabilitative services. Overall, this study reaffirms the need to challenge mindsets and attitudes towards children and their rights, and to tailor justice responses to their individual needs and circumstances.
- **The window of opportunity for reform is open.** This report has found more indications of progress than of regression, which, coupled with visible examples of good practice, suggests that potential for improvement is currently great. Many countries in the region are experiencing a decline in juvenile offending and a rise in economic growth. At the same time, child populations are shrinking, thereby strengthening the argument for investing in ‘human capital’. Sweeping political changes have resulted in increasing receptivity of governments to reform in all areas concerning human rights, further supported by the existence of an increasingly vibrant civil society.

Recommendations

The recommendations presented here are addressed primarily to governments and international organizations working in juvenile justice reform in Central and Eastern Europe and the Commonwealth of Independent States (CEE/CIS).

1. There is a need to articulate the basic aims of juvenile justice and outline a clear ‘vision’ to guide juvenile justice reform towards these aims.
2. All forms of ‘deprivation of liberty’ need to be acknowledged, and their purpose and functions reassessed in relation to international standards.
3. Criminalization of children needs to be limited with the establishment of effective diversionary schemes that correspond to international standards and, in this light, the mandates of Local Commissions for Minors need to be assessed.
4. A range of services for children and their families must be established, both preventative and rehabilitative.
5. Systematic data collection systems must be established or developed, building upon a regional consensus on indicators and targets for reform.
6. Good practices and lessons learned must be synthesized and shared.



INTRODUCTION

1. INTRODUCTION

In every country in Eastern Europe and Central Asia, the juvenile justice systems need to be reformed, if not created. This fact is confirmed by the Committee on the Rights of the Child, which notes in its 'Concluding Observations' that provisions of law or practice are not compatible with international standards. All countries in the region have ratified the Convention on the Rights of the Child, and States parties have been called upon to set in place laws, procedures, professional standards and decision-making processes that are specifically applicable to children and qualified to take into account the child's specific needs and evolving personality. However, progress has been slow and serious challenges continue to prevail.

In response to the Committee's concerns, UNICEF began its work on supporting governments to reform juvenile justice systems in the region, which is referred to by UNICEF as 'Central and Eastern Europe and the Commonwealth of Independent States (CEE/CIS)'. Twelve UNICEF Country Offices have explicitly included juvenile justice reform as a priority, and key activities include the support of law reform, promotion of non-custodial sentences and diversion schemes, protection of rights of children and demonstration of system change through pilot projects. A recent four-country evaluation of UNICEF's strategy concluded that its activities had a positive influence on overall reform and recommended continuation and scaling up of its activities across the region (UNICEF and DRN, 2007).

For this report, data spanning the years 1989 to 2005 were obtained through the MONEE project, including country reports submitted by 13 countries⁴ in 2006 and data from the TransMONEE database⁵ that were available for these countries and another seven.⁶ In total, data from 20 countries were available for analysis and provided the basis for this report (Box 1). UNICEF provided guidance to the National Statistical Offices to aid data collection for the 2006 country reports. Due to the known limitations of data availability, it was suggested that data collection should be restricted to basic quantitative indicators, thereby deliberately avoiding the more subjective issues related to 'quality' of services and 'conditions', for which reliable data do not exist in most countries. The lack of data and clear definitions of terms and indicators are both limitations of this study and a major finding. In addition to the above-mentioned reports and data, other sources have been used to inform the interpretations and viewpoints articulated in this report, which have been listed at the back of the report. Definitions of terms are provided in Appendix 1 and TransMONEE statistical tables in Appendix 2.

Box 1 CEE/CIS subregions and countries included in this report

South-Eastern Europe	Bulgaria Romania Albania Bosnia and Herzegovina Croatia FYR Macedonia Montenegro* Serbia*
Western CIS	Belarus Moldova Russian Federation Ukraine
Caucasus	Armenia Azerbaijan Georgia
Central Asia	Kazakhstan Kyrgyzstan Tajikistan Turkmenistan Uzbekistan

*Due to the cession in June 2006 of Montenegro from the State Union of Serbia and Montenegro, and its subsequent admission to the United Nations on 28 June 2006, disaggregated data for Montenegro and Serbia as separate States was not available when data were analysed for this report. Aggregated data presented are for Serbia and Montenegro pre-cession.

4 Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Kyrgyzstan, Moldova, Romania, Russian Federation, Tajikistan, The former Yugoslav Republic of Macedonia and Ukraine.

5 Since 1992, the UNICEF Innocenti Research Centre has been gathering and sharing data on the situation of children and women in countries of Central and Eastern Europe, the Commonwealth of Independent States and the Baltic States. The TransMONEE database, which contains a wealth of statistical information covering the period 1989 to the present on social and economic issues relevant to the welfare of children, young people and women, is published annually and is available electronically at <http://unicef-icdc.org/resources/transmonee.html>.

6 Croatia, Georgia, Kazakhstan, Montenegro, Serbia, Turkmenistan and Uzbekistan. It should be noted that TransMONEE data are not available for all countries for all indicators. Data for Montenegro and Serbia are combined.

This report will examine trends in juvenile offending and responses of justice systems. It will explore the innate conflict between ‘punishing’ and ‘protecting’ young offenders (or ‘juveniles’ – referred to hereon as children aged 14 to 17 years). It will also examine the heavy reliance on deprivation of liberty, all too common in the region. The recommendations will build upon lessons learned (see Box 2 for examples) and will reflect key principles of UNICEF’s approach to juvenile justice:

1. The **rights of the child** should form the basis of justice systems, and the **best interests** of the child prioritized
2. **Prevention** is the key to reform
3. The values of a **‘restorative justice’** approach should be adhered to (a balanced approach to address the needs of the community, victim and offender).

Box 2 Good practices and lessons learned: Key findings of thematic evaluation of UNICEF’s contribution to juvenile justice system reform in Central and Eastern Europe and the Commonwealth of Independent States (UNICEF and DRN, 2007)

An evaluation was undertaken of UNICEF’s activities with respect to juvenile justice, 2006–2007, in four countries (Montenegro, Romania, Serbia and Tajikistan) selected to represent different contexts and stages of development of juvenile justice systems. The evaluation concluded that UNICEF’s activities had a positive influence on overall reform. In Romania, Serbia and Tajikistan, the interventions together impacted upon thousands of children’s lives. Many of the children who previously would have been sent to closed facilities were spared trial or given non-custodial sentences. Other good practices were identified:

- In **Montenegro**, the creation of the National Commission for Juvenile Justice Reform had a positive effect on the way the professionals dealt with children and empowered them to call on the government to commit to the reform.
- In **Romania**, the situation analysis made a valuable contribution to debate on alternatives to deprivation of liberty and promoted a wider acceptance of the idea of diversion among judges, prosecutors and policy makers in the area of justice.
- In **Serbia**, children in custody have benefited from improved life skills and support for reintegration after release.
- In **Tajikistan**, a pilot in the capital city promoting diversion, prevention and non-custodial sentencing led to a noticeable reduction in recidivism and overall rates of offending.

A few activities were considered ‘best investments’, i.e., activities that turned out to be especially important to the overall process of juvenile justice reform. These were:

- Undertaking a **situation analysis** to be disseminated and presented to government bodies: A situation analysis helped with sensitization on the social importance of juvenile justice reform and contributed to a keen appreciation of the value of data collection, evidence-based planning and monitoring.
- Advocacy and support for the establishment of **interministerial, intersectoral bodies**: These bodies provided opportunities for dialogue and a way of leading the process of juvenile justice reform.
- The creation of **community-based alternatives**: These varied from country to country. Not only did they have positive effects on the lives of children, but they also – by the force of example – strengthened support for reform amongst professionals and decision makers.
- **Capacity building** of the actors involved in juvenile justice reform: This took the form of training and constant exchange of information and ideas.
- Support for the existence of an **ombudsman for children**: An ombudsman contributed to law reform by providing children with a voice and promoting child rights.



SETTING THE SCENE

JUVENILE OFFENDING

2. SETTING THE SCENE: JUVENILE OFFENDING

In many parts of the world, governments are under pressure to reduce juvenile offending and ‘get tough on crime’. Often the disproportionate media attention on juvenile offending reinforces the public misconception about the nature and extent of offences committed by children. In CEE/CIS, like many other regions of the world, governments have aimed to reduce juvenile offending through a repressive response by the justice system.

The aim of the work by UNICEF and other international organizations in the region has primarily been on improving the justice system, largely through the implementation of human rights standards and reform of underlying structures and processes. This aim is not incompatible with governments’ objective of reducing juvenile offending. On the contrary, experience has shown that the effective implementation of juvenile justice standards normally leads to a reduction in recidivism (repeat offending) as well as upholding children’s rights.

2.1 Not all children in contact with the justice system are ‘in conflict with the law’

The majority of children who get in contact with the justice system are said to be ‘in conflict with the law’. That is, they have committed or have been accused of having committed an offence. The vast majority of these children are accused of petty or non-violent offences, many of whom have been living on the streets and engaged in begging, scavenging, petty thieving or prostitution.

There are concerns that children, in some countries, can be criminalized – arrested, detained and considered to be ‘in conflict with the law’ – for offences that are classified as a crime only when committed by children. Such ‘status offences’ include running away from home, truancy and ‘being beyond parental control’ (see Box 3).

There are also children, within the justice system, who are not ‘in conflict with the law’, but who are nevertheless treated as if they were. Children living or working on the streets, for example, may be rounded up and taken into custody. Children who are victims of sexual exploitation, such as trafficked children or children working in the sex industry, may also be detained as criminals. These are children who are considered to be in danger by virtue of their behaviour or the environment in which they live, and who may be detained in the name of ‘protection’. Important concerns about the ‘protective custody’ of children will be discussed further in Section 3.4.

Box 3 Status offences

A status offence is a type of misbehaviour best described as a conduct illegal only for children, including running away, incorrigibility or being beyond parental control, and habitual truancy, as well as tobacco and alcohol use. Adults who perform these same acts or have similar problems are not subject to court sanction. Such offences are not mentioned explicitly in the Convention on the Rights of the Child, but the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) calls for legislation to be enacted “to ensure that any conduct not considered an offence and not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person” (para. 56). The aim is to avoid criminalizing an act that in fact requires a non-punitive response.

2.2 Why are children in conflict with the law?

Children come into conflict with the law as a result of several factors. The majority of young offenders lack support and guidance at home. In CEE/CIS, the transition period has placed added strain on families who can begin to lose their ability to support and protect their children when they experience unemployment, low income, migration, divorce, and disability or illness – all of which are common in the region. Family ‘dysfunction’ and breakdown, which is often associated with and exacerbated by domestic violence and alcohol and drug abuse, can lead to children running away, spending time on the streets, or getting involved with drugs and alcohol. Inadequate social support for youngsters trying to advance their education or find employment heightens risks, especially for those young people who have been living in institutions during their childhoods. Risks are further heightened by the lack of early identification and timely response to unlawful or unacceptable behaviour.

Interaction with police and the justice system at a young age may increase a child’s probability of offending in the future. When living on the streets, children frequently face harassment by police who extort money and may be violent. They may be taken into custody and detained with other older, more experienced offenders

who can ‘teach them the ropes’.⁷ The impacts of physical, sexual and psychological violence by staff or other inmates while in police custody, coupled with the lack of employment opportunities, can make it harder for youngsters to avoid recourse to illegal or unacceptable behaviour.

2.3 Trends in juvenile offending⁸

In almost all countries, rates of juvenile offending have not been increasing. Between 2000 and 2005, rates were either relatively stable or fluctuating/decreasing. Most encouraging is the observation that the countries, which experienced ‘juvenile crime waves’ in the 1990s, have displayed impressive declines since this period (for example Romania, Russian Federation, The former Yugoslav Republic of Macedonia and Ukraine) while other countries have displayed stabilizing rates, such as Kazakhstan and Moldova (Table 1). Nevertheless, Belarus and the Russian Federation have shown rises in juvenile offending rates within the last three and four years respectively (Appendix 2).

It should be noted that differences between countries are difficult to interpret because countries have different ways of reporting offences; some reporting systems are more effective than others. For example, a ‘high’ rate of reported offending may reflect both an efficient reporting system and a high frequency of offences being committed. Furthermore, what is considered to be a ‘crime’ also varies between countries. In some countries, children may be criminalized for committing acts that are only considered illegal if the perpetrator is a child, such as vagrancy or being beyond parental control (see Box 3). Although the number of such ‘status offences’ is unknown, it is thought that the decriminalization of status offences would reduce the number of children who come into conflict with the law and, therefore, the number of recorded crimes.

One way of assessing the severity of juvenile offending is to calculate the proportion of all offences committed by juveniles. The results in Table 1 show that in 2005 juveniles accounted for 5 per cent of all offences recorded in the region, down from 8 per cent in 1990. While part of this reduction may be explained by a demographic trend towards smaller child populations, it may also be explained by a faster reduction in offending among juveniles than other population groups. This trend is reflected in Figure 1, which shows that the average rate of offending for the total population has slightly increased since the early 1990s whereas juvenile offending has generally been falling, so that by 2002 the rate of juvenile offending became lower than the 1989 level. The recent increase in the average rates of juvenile offending for the region is explained by upward trends in the Russian Federation, which, given its size, will dominate the estimated regional averages.

A closer look at the situation in Belarus and the Russian Federation reveals that the increase in offending among juveniles observed in these two countries (since 2002) is significantly lower than the increase observed for the general population for the same time period. This suggests that, while there is a general rise in offending and possibly in the ‘criminalization’ of citizens’ behaviour, juveniles are not a particular problem group within the population. Current rates for juvenile offending in Belarus and the Russian Federation are still not as high as the peaks observed in the mid-1990s (Appendix 2).

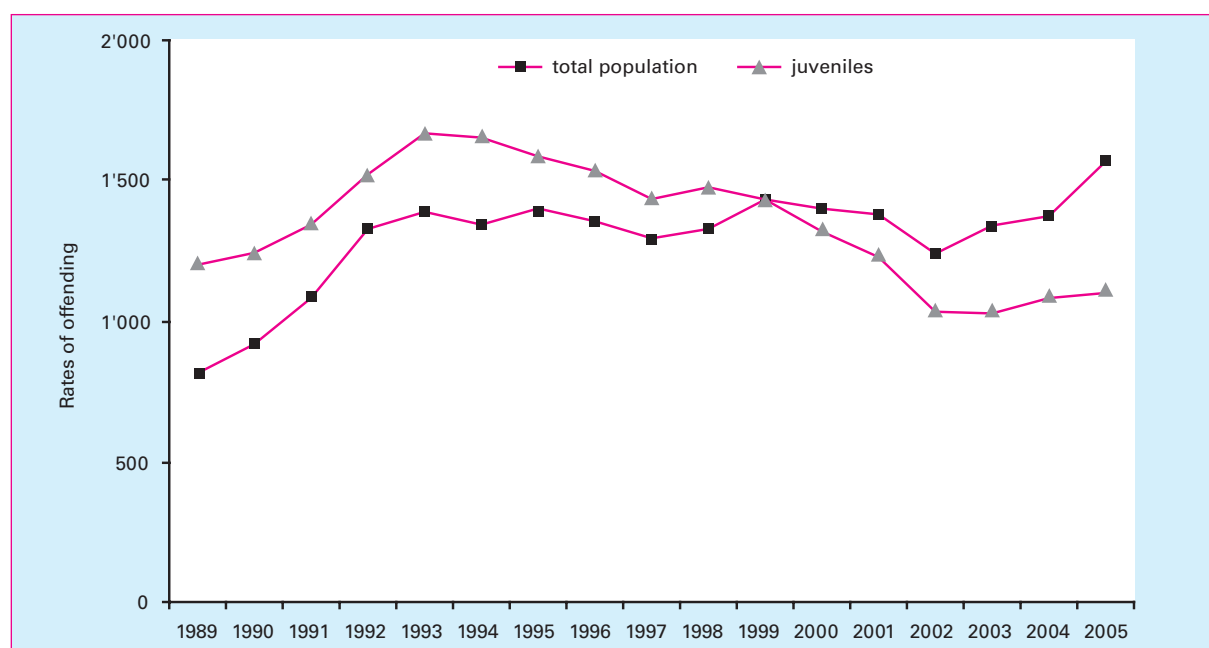
Figure 2 shows that the South-Eastern Europe and Western CIS subregions have the highest rates of juvenile offending, but also that these rates have been coming down. Differences in absolute rates between countries and subregions can be explained by actual differences in juvenile offending behaviour and/or by variations in countries’ approach to defining and measuring ‘crime’. Still, comparing data over time – i.e., trends – enables us to draw firm conclusions about the direction of change. It is therefore encouraging to observe the general decline or stabilization in juvenile offending rates in all subregions, despite concern over the recent increase in Western CIS.

Table 1 presents country-level variations in the proportion of all offending committed by or with the participation of juveniles. While in Albania, Bulgaria, Romania, Moldova and The former Yugoslav Republic of Macedonia, juveniles accounted for 8 to 11 per cent of all offending in 2005, the equivalent proportion was only 3 to 4 per cent in Azerbaijan, Croatia, Georgia, Kyrgyzstan, Turkmenistan and Uzbekistan. It should be noted, however, that in addition to the known dangers of cross-country comparisons, petty crimes are more likely to be committed by juveniles than adults, and that many of these petty crimes are not reported. This limits the conclusions that can be drawn by a direct comparison between rates of offending by juveniles and the total population.

7 The Beijing Rules refers to the “danger to juveniles of criminal contamination”.

8 The term ‘juvenile offending’ is used in preference to ‘crime’ (i.e., an offence under penal law). Note, however, that the TransMONEE indicator, which is the basis of data on juvenile offending in this report, is denoted as ‘crime’.

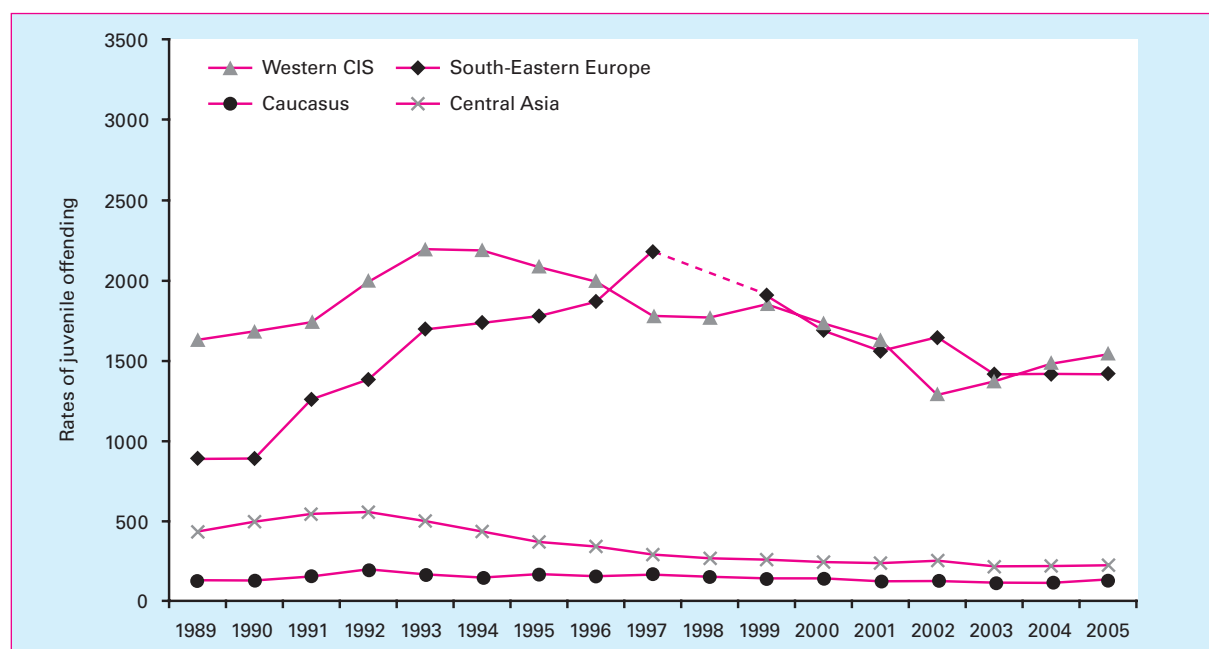
Figure 1 Regional trends: Total offending rates (number of crimes per 100,000 total population) and juvenile offending rates (number of crimes per 100,000 population 14–17 years) in CEE/CIS, 1989–2005



Note: Data exclude Albania and Bosnia and Herzegovina for 1989–1999 and Serbia and Montenegro for 2003–2005. Averages are weighted by country population size.

Source: TransMONEE database 2007.

Figure 2 Subregional trends: Juvenile offending rates (number of crimes per 100,000 population 14–17 years) in CEE/CIS, 1989–2005



Note: Data exclude Albania and Bosnia and Herzegovina for 1989–1999 and Serbia and Montenegro for 2003–2005. Averages are weighted by country population size.

Source: TransMONEE database 2007.

Table 1 Rates of offending: Registered total and juvenile offending rates (number of crimes per 100,000 population 14–17 years) and proportion of all offences committed by or with the participation of juveniles in years 1990, 1995, 2000 and 2005

	Total offending rates				Juvenile offending rates				Proportion of all offences committed by or with the participation of juveniles (%)			
	1990	1995	2000	2005	1990	1995	2000	2005	1990	1995	2000	2005
South-Eastern Europe												
Bulgaria	772	2,452	1,828	1,771	1,309	3,173	4,286	2,772*	10	7	13	8
Romania	422	1,309	1,576	963	604	1,734	1,958	1,446	9	9	7	9
Albania	–	195	161	262	–	–	221	273	–	–	–	8
Bosnia and Herzegovina	–	–	–	–	254	–	199	255	–	–	–	–
Croatia	1,123	1,018	1,038	1,720	1,025	851	992	1,217	5	4	5	3
FYR Macedonia	784	1,178	978	1,111	2,805	3,711	2,346	1,856	24	21	16	11
Serbia and Montenegro	1,144	1,268	888	–	817	827	589	–	4	4	4	–
Western CIS												
Belarus	743	1,293	1,355	1,969	1,279	1,772	1,344	1,508	10	8	7	5
Moldova	986	885	1,051	768	1,036	702	1,007	948	7	5	8	9
Russian Federation	1,243	1,857	2,014	2,484	1,985	2,367	1,943	1,740	9	8	7	4
Ukraine	716	1,252	1,124	1,035	974	1,428	1,201	975	8	6	7	5
Caucasus												
Armenia	342	270	317	276	106	142	199	200	2	4	5	6
Azerbaijan	215	260	173	215	96	161	92	70	3	5	4	3
Georgia	362	332	340	578**	298	299	279	269	4	4	4	3
Central Asia												
Kazakhstan	907	1,163	1,013	966	905	829	607	691	7	5	5	6
Kyrgyzstan	675	899	790	651	372	297	284	186	4	3	3	3
Tajikistan	318	256	234	176	277	199	81	62	7	7	3	4
Turkmenistan***	497	331	223	104	371	219	60	23	6	6	2	2
Uzbekistan	432	295	300	305	324	188	129	100	6	5	4	3
Total	919	1,399	1,391	1,569	1,243	1,588	1,326	1,117	8	7	7	5

* Data for 2005 include only crimes committed by juvenile offenders, excluding crimes 'with the participation of juveniles'.

** Data refer to 2004.

*** Data refer to the number of offenders (not crimes).

Note: Averages based on data exclude Albania and Bosnia and Herzegovina for 1989–1999 and Serbia and Montenegro for 2003–2005. Averages are weighted by country population size.

Source: TransMONEE database 2007.

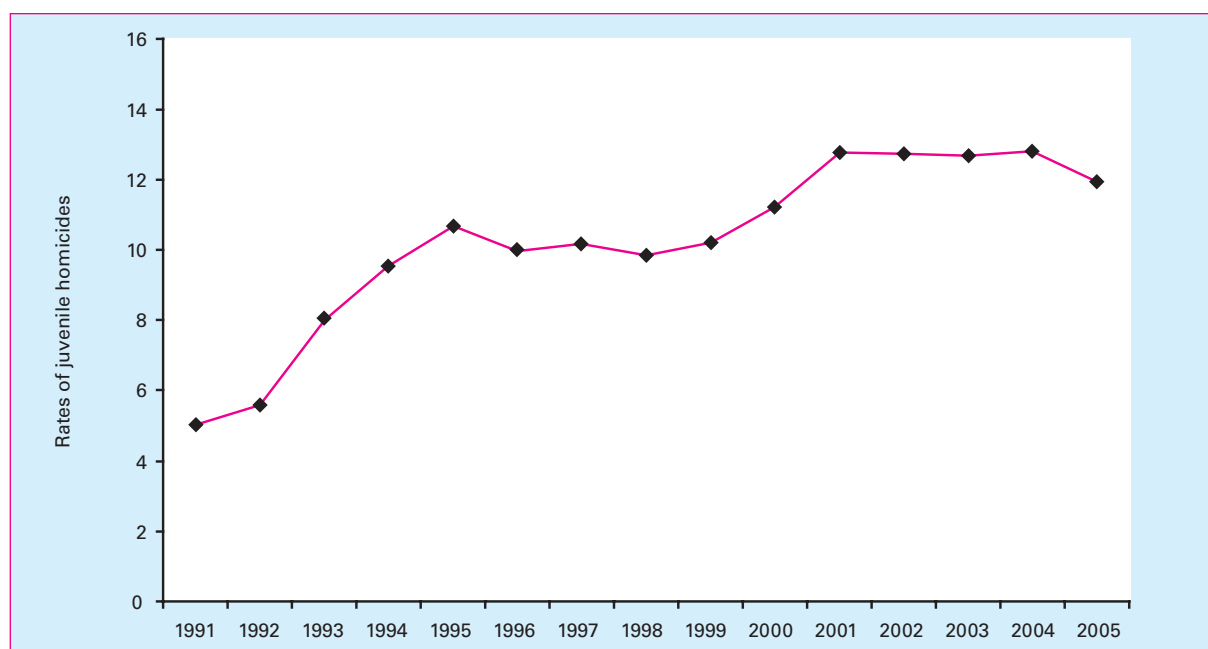
2.4 The severity of offences

There is a perception that violent crime committed by juveniles has been increasing. Indeed, the rates of homicides committed by juveniles rose during the 1990s (Figure 3). However, they have stabilized since 2001. In 2005, 'violent crime' – which usually includes homicide, rape and assault – accounted for 3 to 10 per cent of all convictions in CEE/CIS (Table 2).

On average, data suggest that the vast majority of juvenile offences are 'property crimes' (Table 2). Further analysis of available data suggests that perpetrators are usually male (91 to 99 per cent). Often juveniles commit offences in groups, but this varies from around 20 per cent of convicted juveniles in Belarus and Moldova to 80 per cent in Ukraine. In around 10 per cent of offences, the perpetrator was recorded to have been under the influence of alcohol or drugs at the time of committing the offence. Again, these results are highly dependent on the type and efficiency of countries' reporting systems.⁹

The vast majority of crimes are 'non-violent', but many of these – including theft or 'property crime' – are classified as 'serious' in CEE/CIS, leading to harsher sentencing than for 'non-serious' offences (see Table 4). The categorization of offences according to severity and type varies from country to country. International comparisons of data, such as the data presented in Table 2, must therefore be interpreted with some degree of caution.

Figure 3 Juvenile homicides: Rates of homicides committed by or with the participation of juveniles (number of homicides per 100,000 population 14–17 years) in CEE/CIS, 1991–2005



Note: Regional rates are calculated using data that exclude Albania and Bosnia and Herzegovina for 1991–1999, Serbia and Montenegro for 2003–2005, Kyrgyzstan for 1991–2000 and Uzbekistan. Averages are weighted by country population size.

Source: TransMONEE database 2007.

9 Data from Country Analytical Reports and Statistical Annexes 2006 provided by National Statistical Offices.

Table 2 Type of offence: Percentage of offences committed by convicted juveniles classed as 'violent' or as 'property crime'

<i>a) Violent offences</i>						
	2000	2001	2002	2003	2004	2005
South-Eastern Europe						
Romania	9	9	9	11	11	9
Albania	–	–	–	3	6	4
Bosnia and Herzegovina	4	8	7	9	9	8
FYR Macedonia	3	3	3	3	3	4
Western CIS						
Belarus	3	3	3	3	3	3
Moldova	2	2	2	3	2	3
Russian Federation	4	6	9	9	10	9
Ukraine	3	3	3	3	2	3
Caucasus						
Armenia	–	–	–	–	–	7
Azerbaijan	8	8	7	15	12	10
Central Asia						
Kyrgyzstan	3	3	5	5	3	5
Tajikistan	–	6	6	5	8	7

<i>b) Property crime</i>						
	2000	2001	2002	2003	2004	2005
South-Eastern Europe						
Romania	85	83	83	81	81	84
Albania	–	–	–	46	66	68
Bosnia and Herzegovina	79	77	82	76	75	76
FYR Macedonia	78	75	74	77	73	74
Western CIS						
Belarus	71	63	55	61	64	62
Moldova	87	80	79	76	78	78
Russian Federation	85	81	76	78	83	84
Ukraine	81	65	81	81	80	80
Caucasus						
Armenia	–	–	–	–	–	65
Azerbaijan	48	48	48	41	41	42
Central Asia						
Kyrgyzstan	84	84	83	80	80	79
Tajikistan	–	75	79	73	65	66

Source: Country Analytical Reports and Statistical Annexes 2006 provided by National Statistical Offices.

2.5 Recidivism: How bad is it?

One of the most important challenges of the juvenile justice system is to respond to first-time offenders in a way that ensures their first brush with the law is their last. Unfortunately, recidivism (repeat offending) is thought to be a huge problem in the region and to be driven by the overuse of custodial sentencing.

The Russian Federation, for example, notes:

“...youth recidivism is high...and ranges from 34.2 per cent to 36.2 per cent...The high level of youth recidivism is...largely explained by the fact that young people fail to receive proper education at the place of their imprisonment and experience considerable difficulties in a search of livelihood. In this situation, young people have no other way but to engage in criminal activity again.”

(Country Report, Russian Federation, 2006)

Recidivism rates – generally defined as the proportion of convicted juveniles who reoffend within a certain period – are vital to the monitoring of progress towards an effective justice system. Unfortunately, recidivism rates, on a national or international scale, are notoriously difficult to define and estimate. Furthermore, there is no universal definition of the time period within which a reoffence may occur, or exactly what types of offences are to be taken into consideration. Data collection in the region is additionally hampered by the common practice of recording details of the crime rather than details of the perpetrator. The absence of systematic data collection on recidivism is an issue that warrants immediate attention.

A positive example of how local recidivism rates have been used for advocacy purposes comes from Tajikistan. A pilot project was undertaken in the capital city, Dushanbe, for diversion, prevention and non-custodial sentencing for convicted children. At the end of the first year, statistics not only showed a low rate of recidivism amongst participants, but also a decrease in the number of offences registered in the district. This data was invaluable in convincing policy makers of the value of community-based alternatives (UNICEF and DRN, 2007).



JUVENILE JUSTICE

STRUCTURES AND PROCESSES

3. JUVENILE JUSTICE: STRUCTURES AND PROCESSES

The response to juvenile offending remains largely repressive in CEE/CIS, with emphasis on punishment and custodial sentencing rather than prevention and rehabilitation. While many countries are currently embarking on reform of their justice systems, the infrastructure and decision-making processes rely heavily and almost 'automatically' upon the institutionalization of children with social and behaviour problems. Key issues of concern noted by the Committee on the Rights of the Child are summarized in Box 4.

Box 4 Committee on the Rights of the Child: Concerns noted in Concluding Observations regarding major discrepancies between domestic legislation in CEE/CIS and the principles and provisions of the Convention on the Rights of the Child – The Juvenile Justice System

1. Deprivation of liberty is not used as a last resort.
2. Absence of specialized juvenile judges and/or courts and trained professionals (legal professionals, social workers, community educators and supervision officers).
3. Children's rights to legal assistance and judicial review are not always upheld.
4. Lack of mechanisms for the registration of complaints by children of ill-treatment and for the full and impartial investigation of those complaints.

3.1 The minimum age of criminal responsibility (MACR)

One of the key areas where countries in CEE/CIS are respecting international standards is in terms of stipulating a high minimum age of criminal responsibility. The Convention on the Rights of the Child constantly refers to the desirability of setting the highest possible minimum age. In CEE/CIS, the MACR is generally set at 14 years, which is higher than many other regions in the world. Unfortunately, however, a high MACR is not an automatic guarantee of appropriate response to offenders who are below or above the age limit. What happens to children who commit offences for which, because of their age, they cannot be criminally prosecuted? Are children who are older than the MACR treated appropriately and in accordance with the principles of the rights of the child?

It is essential to consider the situation of children whose behaviour has violated criminal law, but who are too young to be prosecuted because they are below the MACR. The United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") is, in principle, applicable to any child who has committed an offence, and not only children old enough to be prosecuted.¹⁰ However, the General Comment on 'Children's rights in juvenile justice', adopted by the Committee on the Rights of the Child in February 2007, says little about how children under the minimum age for prosecution should be treated when they have committed a criminal act.¹¹

While the MACRs are set high in the region, further analysis of country reports suggests that attention needs to be focused on the children younger than the MACR, for whom there is an obvious lack of regulation to date of specific measures that can be imposed, as well as a lack of adequate services. Often these children are referred to local Commissions for Minors rather than to formal courts (see Section 3.2).

The way in which children and youths are treated in the justice system is, in addition to the MACR, determined by the way in which offences are classified by severity. In Ukraine for example, the Committee on the Rights of the Child has noted its concern about the harsh treatment of children above the MACR, especially those aged 14 to 16 years, and the Committee recommends that the State party reviews its classification of serious crimes in order to minimize the scope of criminal responsibility of these children.¹² The recent evaluation undertaken by UNICEF in Montenegro, Romania, Serbia and Tajikistan showed that, while there have been some improvements in the facilities for juveniles, few changes have been made in the facilities for children who have committed offences but are too young to be prosecuted (UNICEF and DRN, 2007).

¹⁰ The Beijing Rules, Rule 2.2.

¹¹ Committee on the Rights of the Child, General Comment No. 10, Children's rights in juvenile justice, CRC/C/GC/10, 2007, paras.16 to 19.

¹² Committee on the Rights of the Child. Consideration of reports submitted by States parties under article 44 of the Convention. Concluding Observations: Ukraine. CRC/C/15/Add.191, 9 October 2002.

3.2 Local Commissions for Minors... Do they offer a potential form of ‘diversion’?

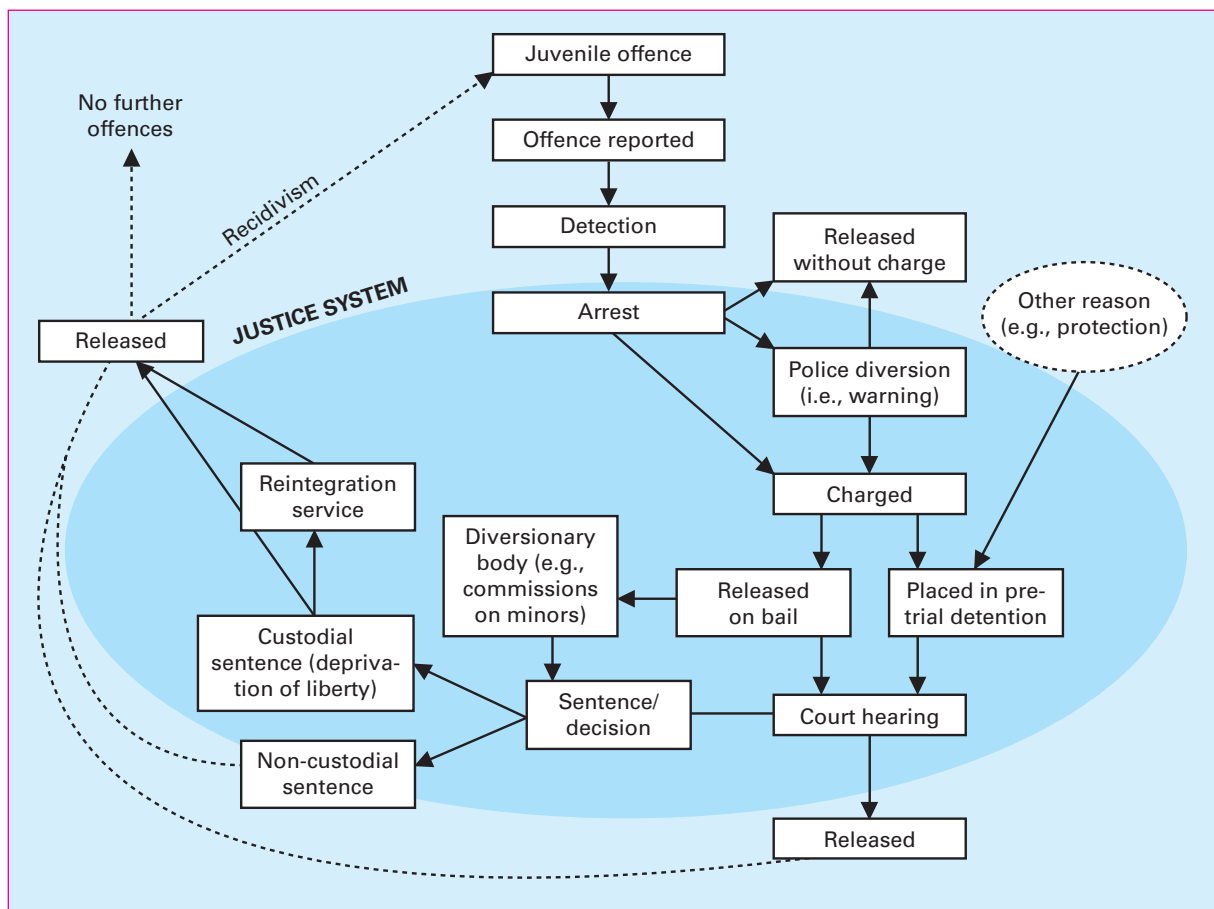
In CEE/CIS, there is nothing new about the concept of ‘diversion’ as such, referring to schemes that direct children away from judicial proceedings, who thereby avoid unnecessary and potentially counterproductive stigmatization associated with the judicial process. The principles of diversion, encouraged by the Beijing Rules, are outlined in Box 5. How children enter and leave the justice system is illustrated in Figure 4.

Children who are too young to be prosecuted, or children accused of ‘non-serious’ offences, administrative offences¹³ or status offences (see Box 3) are often referred to the local ‘Commission for Minors’. These are intersectoral bodies linked to local government whose members include representatives of the police, prosecutors, schools and social protection agencies.

The extent to which referral to Local Commissions for Minors constitutes an appropriate and effective diversion is highly questionable. The commissions’ decisions, which may include placement of a child in a closed institution, are not always subject to judicial review. The composition of commissions is rarely based on competency to decide on children’s issues, and there is often a high turnover of personnel coupled with a lack of motivation to organize meetings (given that these constitute extra unpaid work for commission members). Their powers to order residential placements for long periods of time and without judicial review (i.e., deprivation of liberty) are clearly incompatible with international standards.

In Bulgaria, for example, the Local Commissions for Combating Antisocial Acts of Minors and Adolescents impose disciplinary measures, which do not require the presence of guilt and may be enforced on children (Boev, 2002). While many such measures are non-custodial (e.g., warnings, supervision, counselling, apologizing to the victim and corrective labour or community service), other measures relate to the placement in special institutions, such as a Social Educational Boarding School (for a maximum of three years) and a Correctional Boarding School (six months). Disciplinary measures may be imposed against offenders who are as young as eight years old.

Figure 4 Juvenile offending and the justice system



13 Administrative offences include vagrancy, truancy, the use of alcoholic beverages and, in some cases, vandalism.

While Local Commissions for Minors might have the potential to be diversionary in nature, the way in which they currently operate is not ‘diversionary’ as perceived by the Beijing Rules (see Box 5). Their measures are not always based on the principles of restorative justice, their ability to place children in institutions is contrary to international standards, and consent to the diversion of the case is not always secured of the young offender or of the parent or guardian. For example, diversion to community service without consent would contradict the Abolition of Forced Labour Convention.¹⁴ It should be noted that the potential of commissions to be ‘diversionary’ only applies to children who are old enough to be prosecuted. Many of the children brought before commissions are under the age of criminal responsibility.

3.3 From custody to trial... the ‘twilight zone’

It is generally understood that ‘arrest’ is the point in which children, suspected or accused of having committed a crime, enter into the justice system. Arrest can be done by police under their own authority in circumstances that law or regulations usually define clearly, for a limited period of time. There is a general understanding that ‘police custody’ is detention within police stations before the case of an arrested person is presented to a judge or similar authority, and that this precedes ‘pre-trial detention’. Pre-trial detention implies that the person has been formally charged and a judge or prosecutor has authorized deprivation of liberty. The maximum duration of pre-trial detention will also be defined by national law.

When comparing justice systems between countries, one discovers ambiguities and inconsistencies in the definition of terms used to describe each step of the judicial process, which contribute to the difficulties of obtaining comparable data. In fact, the period between arrest and conviction has been referred to as a constitutional ‘twilight zone’ due to the lack of a clear defining point at which arrest ends and pre-trial detention begins (Baker, 2001). In CEE/CIS, it is the lack of data that contributes to these children ‘remaining in the dark’ and their situations remaining unrecorded and unknown.

To confuse matters further, some children – and we do not know how many – are treated as being in conflict with the law and taken into custody but remain ‘invisible’ due to the absence of systematic data collection or the lack of transparency that hampers the sharing of statistics. There is therefore special concern over instances where a child or young person is arrested, held in police custody and then released without there being any trace of his or her interrogation or detention, and without the police registering the case.

The fact that it is so difficult to get data on the numbers of children arrested and of children held in police custody and in pre-trial detention, for what duration and in what conditions, is of great concern. It may be argued that the lack of transparency is in fact an indicator of governments’ attitudes and behaviour towards its citizens and its overall respect for human rights.

The specific risks for children in police custody

Despite the challenges involved, it is important to distinguish between children in police custody (interrogated in police premises and potentially detained in police cells or lock-ups) and those in pre-trial detention because the risks they face are different. In custody and at the hands of the police, children face the greatest risk of harassment, violence and even torture, even if they are only held a few hours. Girls are especially vulnerable to sexual abuse (Pinheiro, 2006). The absence of protection from adults – parents, social workers and legal representatives – compounds children’s vulnerability to violence. In fact, the ill-treatment of children and unlawful investigative methods used on arrest are concerns noted by the Committee on the Rights of the Child. Meanwhile, in pre-trial detention the risks children face are similar to those in detention more generally, as explained below.

Conditions in pre-trial detention

There is very little information available from CEE/CIS on the conditions in which children are held in pre-trial detention. Recognizing the problem of violence, the Moldova Country Report stated,

“...the fact that minors imprisoned for the first time might be kept together with the ones accused of very heinous crimes including the recidivists is rather worrying...Thus, during the imprisonment before trial, the child or the teenager faces much more risks to be in contact with adult offenders and to become victim of brutal treatment as compared to minors that are already sentenced to prisons.”

(Country Report, Moldova, 2006)

14 The Beijing Rules. Rule 11.3 Commentary. See http://www.unhcr.ch/html/menu3/b/h_comp48.htm

Overcrowding, non-separation from adults, limited physical recreation and no access to educational facilities are concerns for children in pre-trial detention. Standards of hygiene and health care are often poor and the right to legal defence is often violated. Although the Convention on the Rights of the Child is clear that detention should always be a last resort and used for the shortest possible time (Art. 37), it is observed through reports from countries in the region that detention is widely used as a first measure taken by the authorities when dealing with children who have come into conflict with the law. Unfortunately, there is a lack of quality data available to properly assess the extent of pre-trial detention of children in this region.

Box 5 What do we mean by ‘diversion’?

A child is diverted when he or she is in conflict with the law but has their case resolved without recourse to the usual formal hearing before the relevant competent authority. The aim is to address the root causes of the child’s illegal or unacceptable behaviour and preventing it from happening again. The child and/or his or her parents or guardian must consent to the diversion of the child’s case. Diversion may involve measures based on the principles of restorative justice. The Beijing Rules states the following with regards to diversion (Rule 11):

- “Consideration shall be given, wherever appropriate, to dealing with juvenile offenders without resorting to formal trial by the competent authority...”
- “The police, the prosecution or other agencies dealing with juvenile cases shall be empowered to dispose of such cases, at their discretion, without recourse to formal hearings, in accordance with the criteria laid down for that purpose in the respective legal system and also in accordance with the principles contained in these Rules.”
- “Any diversion involving referral to appropriate community or other services shall require the consent of the juvenile, or her or his parents or guardian, provided that such decision to refer a case shall be subject to review by a competent authority, upon application.”
- “In order to facilitate the discretionary disposition of juvenile cases, efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.”

Examples of diversion are outlined below, with more in-depth explanation provided elsewhere (see, for example, Save the Children UK, 2004):

- Police cautions (warnings).
- Mediation programmes (resolving a dispute in which an impartial third party helps the people involved to reach an agreement).
- Victim-offender mediation (to help victims, offenders and the wider community deal with the psychological impact of crime).
- Family-group conferencing (enabling family, friends and others to reach a consensus on how to resolve the conflict, thereby improving the chance of young offenders to be reintegrated into the community).
- Pre-trial community service (the young offender commits to serving the community for a certain number of hours instead of going to court).

Duration of pre-trial detention

Again, comprehensive data are lacking on the duration of pre-trial detention in CEE/CIS. However, some useful information was available in the country reports. For example, the Bulgaria Country Report stated,

“In pre-trial proceedings, remand in custody cannot exceed one year if the accusation is for a grave intentional crime for which the provided punishment is imprisonment for 5 years and more, and 2 years if the accusation is for a particularly grave intentional crime for which the provided punishment is imprisonment not less than 15 years or life imprisonment. In all other cases, it cannot last more than 2 months.”

(Country Report, Bulgaria, 2006)

For 2003, the Moldova Country Report stated,

“...43 per cent of detained minors were kept in imprisonment before trial for more than four months. There were even registered cases when children were imprisoned for more than 10 months.”

(Country Report, Moldova, 2006)

3.4 Arbitrary or unlawful detention in the name of ‘protection’

There are no available data from CEE/CIS on the number of children in ‘protective custody’ and, therefore, we do not know the scale of the problem. However, the country reports do make reference to this phenomenon, and experience from other regions of the world suggests that protective custody may be a common practice. Children, often homeless or living on the streets (see Box 6), may be taken into custody without formally being arrested or suspected of having committed a crime and placed in closed/locked ‘temporary shelters’ or residential institutions for short or longer periods of time. Many of these children have been accused of ‘status offences’ (see Box 3). Other children are detained in ‘educational’ institutions because they have committed crimes but are too young to be held criminally responsible, or because they have run away from home or are in need of protection and shelter. The aim of protective custody is considered to be the provision of temporary care and secure accommodation in order to protect children from danger. However, a heavy reliance on ‘protective custody’ can signal failing systems of social welfare and care provision.

‘Temporary shelters’ can play an important role in providing short-term accommodation and protection to children who (for whatever reason) have no home they can safely return to, while an assessment is undertaken to inform a longer-term care plan. These shelters may house children who have been picked off the streets, children who are without parental care or children running away from violent homes. There is, however, concern that in CEE/CIS these facilities do not always have articulated functions and mandates and that they are poorly regulated with no inspections or quality assurance. It is thought that the ‘temporality’ of the solutions is rarely defined or monitored – which can lead to protracted stays – and that children held in protective custody have little legal protection and may face arbitrary or harsh treatment.

In Kyrgyzstan, the ‘Children’s Social Adaptation and Rehabilitation Centre’, formerly known as the ‘Centre for Temporary Isolation and Rehabilitation’, is run by uniformed militia and houses children as young as three years who are referred to as neglected/abused, runaways, homeless, illegal migrants or underage offenders. The children ostensibly stay at the Centre for up to one month, with a possible extension of 15 days, while their family situation is ascertained. In certain cases, the duration of the stay has to be prolonged even further while a solution is found. The vast majority are reportedly returned to their family. These centres tend to cater for a widely different group of children, in terms of their situation and age, including children who are abandoned and homeless, as well as those accused of offences for which they would have been prosecuted

Box 6 Justice and children living or working on the streets

Children living or working on the streets are more likely than other children to come into conflict with the law, or to be accused of such. As they come from poor and marginalized sections of society, these children are particularly vulnerable and may face added stigmatization and discrimination – if not violence – during interrogation by the police, in custody and in detention. In societies where vagrancy is criminalized and where harsh sentences are used for petty theft, children living or working on the streets become the victims. There is an urgent need to assess the number of arrests of street children by the police, the conditions and treatment of children in detention, and laws that allow children living or working on the streets to be prosecuted (Save the Children UK, 2004).

if they had been over the age of criminal responsibility. Children living in these centres are not free to leave and are therefore being deprived of their liberty. The situation of children in the custody of the militia is of special concern and requires remedial action without delay (Cantwell, 2004).

Similar concerns apply to 'juvenile reception centres' in Tajikistan where children aged 7 to 18 years are detained before trial. These centres form a structural division of the Ministry of Internal Affairs. They are custodial institutions with uniformed guards, and their stated purpose is to provide temporary protection to minors. These centres house children who are without parental care, as well as juveniles whose cases are being investigated (Country Report, Tajikistan, 2006).

3.5 Sentencing: An overview

In CEE/CIS, and in accordance with international treaties, neither capital punishment nor life imprisonment may be ordered in respect of a crime committed by a juvenile in any country of the region. The sentences, which are applicable to children above MACR, are presented in Table 3. The type and duration of sentence is matched according to the severity of offence, as outlined in Table 4.

In general, justice systems in CEE/CIS remain retributive rather than restorative. While an increasing number of prisons are being renamed 'rehabilitation centres' or similar, the conditions remain almost the same: they are locked and military run. The Committee on the Rights of the Child has identified a number of key concerns with the sentencing of children in CEE/CIS (Box 7).

There is, however, some evidence of progress. Prior to the transition, non-custodial options were rare. Today on the other hand, the availability of sentencing options varies greatly and so, consequently, does the recourse to custodial sentences. For example, in countries where probation services exist, they tend to be frequently used in addition to or instead of custody. When probation is unavailable, the recourse to suspended sentences, with or without supervision, is gaining favour. Although suspended sentences avoid the problem of imprisonment and can be effective deterrents, they rarely constitute 'positive sentencing', as they seldom succeed in preventing the child from future recourse to illegal or socially unacceptable behaviour (UNICEF, 2000).

Box 7 Committee on the Rights of the Child: Concerns noted in Concluding Observations regarding major discrepancies between domestic legislation in CEE/CIS and the principles and provisions of the Convention on the Rights of the Child – Sentencing

- The lack of alternative measures of detention for children above and below the MACR.
- The placement of young children in 'educational institutions' and vague legal provisions for the issuance of such decisions.
- Insufficient education and guidance provided in corrective and other institutions, and inadequate forms of reintegration for children in conflict with the law.
- Juveniles, in particular girls, being detained with adults.
- Incidents of violence in detention.

Table 3 Sentencing for juveniles in CEE/CIS: Summary of the types of sentences currently applicable to children aged above MACR¹⁵

Measures involving deprivation of liberty		
	Imprisonment	Putting a person in prison or jail or otherwise confining him/her as punishment for committing a crime; it is a penalty imposed by a court under which the individual is confined to an institution.
	Placed in locked educational institution	Placement in locked specialized educational/rehabilitation centres; this may be imposed by court as well as other official bodies.
Measures not involving deprivation of liberty		
	Fines	Usually given to juveniles with independent earnings; juveniles may be liable to compensate for any damage caused.
	Disciplinary measure	Warning; freedom under supervision from parents or guardians; limiting leisure hours.
	Educational measure	Placement in an unlocked specialized educational/rehabilitation centre; or making the minor follow a medical course of psychological rehabilitation.
	Probation	Non-custodial measure involving the monitoring and supervision of a child whilst he or she remains in the community. General conditions may include maintaining employment, abiding by a curfew, living where directed, abstaining from unlawful behaviour, following the probation officer's orders and not absconding.
	Community service	Work on behalf of charity or local community.
	Corrective labour	A punishment that may be imposed on a juvenile offender at the place of his/her regular employment for a particular length of time. In the course of corrective labour, deductions from the offender's earnings shall be made in favour of the state in the amount specified in the court ruling within a certain limit.
	Public censure	A public denouncement of the offender.
Other		
	Postponement of sentence	A delay in the carrying out of a sentence or the making of a decision or judgment.
	Release from sentencing	The child/juvenile has been convicted of a crime but deemed to have already sufficiently served his/her sentence prior to trial.

15 This table provides a general overview of the types of sentences currently applicable in CEE/CIS, based on country reports and other sources. It should be noted, however, that they are not necessarily in line with international standards.

Table 4 Offence categorization in CEE/CIS: A typical classification of offences and sentences to be served if found guilty¹⁶

Category of offence	Description of offence	Possible sentence
Not serious	Hooliganism (engaging in fights) Possession of small quantities of drugs	Up to three years in custody Possibility of using educational measures, such as apologies and small fines, as well as community service. Possibility of using suspended sentence if first offence.
Serious	Theft Robbery Breaking and entering	From two to five years in custody. Possibility of using suspended sentence if first offence. Obligation to deprive of liberty if there is a previous conviction.
Very serious	Murder Attempted murder Assault Sexual assault Rape	Up to 10 to 15 years in custody.

3.6 Deprivation of liberty

A child is deprived of liberty when he or she is placed by order of any competent authority in any form of detention or imprisonment in a public or private setting from which the child is not permitted to leave at will. It includes:

- Detention during police custody
- Pre-trial detention
- Imprisonment in penal institution/detention facility
- Placement in educational/correctional institutions
- Placement in ‘temporary locked centres’

A frequent misconception, however, is the belief that standards governing ‘deprivation of liberty’ – for example, that it should be used as a ‘last resort’, as per the Convention on the Rights of the Child – apply only to sentences to be served in penal institutions. In fact, international standards use a broader definition of deprivation of liberty, which includes not only penal institutions but also educational institutions, pre-trial detention and, importantly, any placement in a facility ordered by the authorities from where the individual may not leave at will. From this standpoint, therefore, placements in various kinds of ostensibly ‘educational’ or ‘rehabilitative’ institutions, extensively used in the region, also constitute deprivation of liberty.

According to the country reports, deprivation of liberty remains an important punitive and ‘educational’ measure used by all countries in the region. The maximum prison term for juveniles convicted of ‘very serious’ offences is 10 to 15 years. This excessive length of sentence has been noted by the Committee on the Rights of the Child as a serious concern. Often children in detention are not separated from adults and are therefore at greater risk of exploitation, abuse and negative influences. Girls are especially vulnerable. The detention of girls together with older women is widespread, both at pre-trial facilities and those where sentences are served, and is usually justified by the ‘impossibility’ of providing separate accommodation for the relatively small number of girls involved with the justice system. As a result, girls are far more likely than boys to be held at long distances from their families and home communities, a situation that inhibits the monitoring and reporting of maltreatment and rights’ violations even more.

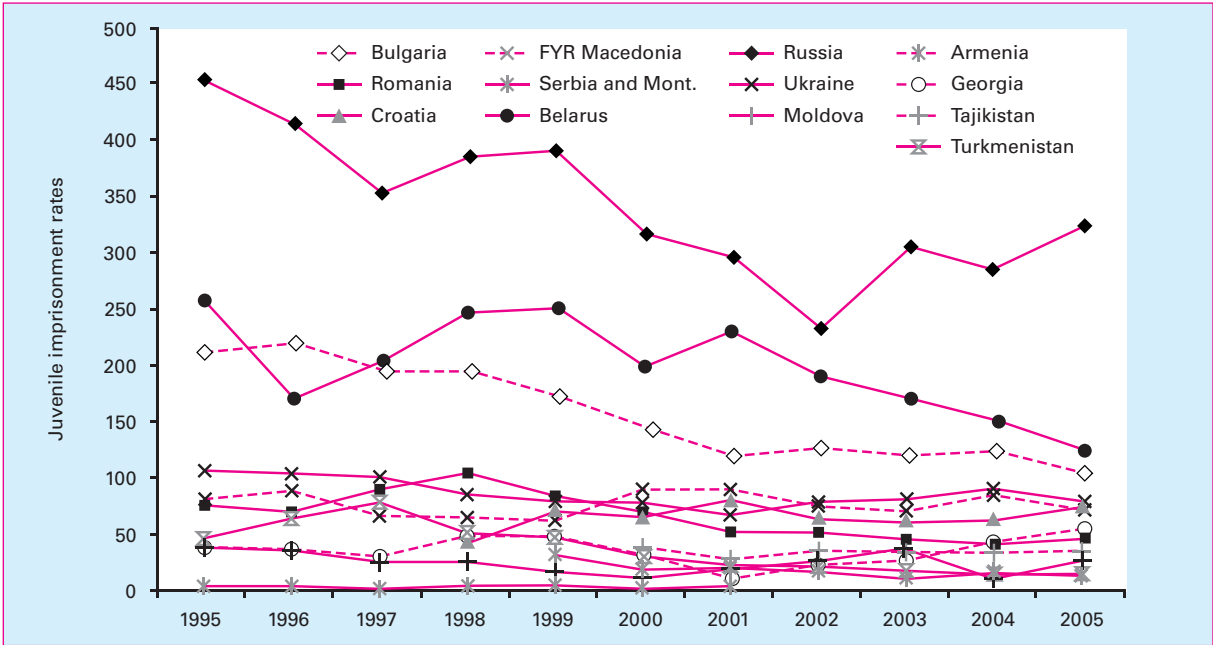
¹⁶ This table provides a typical offence classification system in CEE/CIS, based on country reports and other sources. It should be noted, however, that this classification is not necessarily in line with international standards.

Analysis of data suggests that the rate of juveniles sentenced to closed correctional/punitive institutions and prisons has for most countries remained relatively flat, though there are a few exceptions to this rule (Figure 5). In the Russian Federation, the rate has been increasing since 2002. While historical trends in Belarus have largely mirrored those of the Russian Federation, a divergence can be observed in recent years: Since 2001, the rate of children placed in closed correctional/punitive institutions and prisons in Belarus declined from 232 to 125 in 2005 (per 100,000 juveniles aged 14 to 17 years). Bulgaria also successfully reduced its rate of imprisonment in the late 1990s. While the downward trends observed in Belarus and Bulgaria are highly commendable, it should be noted that the rates of juvenile imprisonment are still high (Figures 5 and 6). Of most concern is the situation in the Russian Federation, which has the highest – and rising – rate of juvenile imprisonment in the region.

Rates of imprisonment vary over time and are often correlated with fluctuations in juvenile offending, but may also reflect shifts in sentencing policy or legislative reform. Comparing trends in imprisonment rates with offending rates shows that the two are not always related (see Table 5 and Figure 7) and demonstrates the possibility of bringing down imprisonment rates in the face of rising crime. Bulgaria during the 1990s is a good example of this (Figure 7a).

It is important to note, however, that the number of juveniles in punitive institutions provides an underestimate of the total number of children deprived of their liberty, because it excludes children in ‘educational’ institutions who are also deprived of their liberty and children in pre-trial detention.

Figure 5 Trends in juvenile imprisonment rates: Average rates of imprisonment of juveniles in CEE/CIS (i.e., the numbers placed in closed correctional/punitive institutions and prisons at the end of the year per 100,000 population 14–17 years) by country, 1995–2005



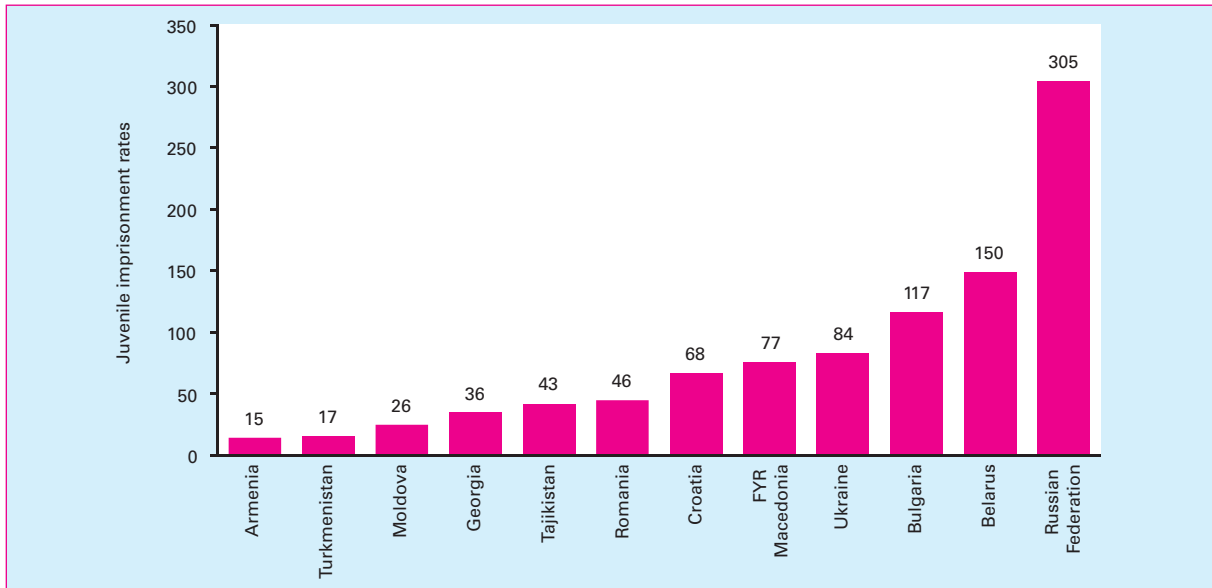
Source: TransMONEE database 2007.

Table 5 A summary of trends in juvenile offending and imprisonment rates by subregion before and after year 2000 (see Appendix 2 for raw data)

	Before year 2000	After year 2000
South-Eastern Europe (Data available from Bulgaria, Romania, Croatia and FYR Macedonia)	Juvenile offending: There was a rise in juvenile offending during the early mid-1990s (except in Croatia).	Juvenile offending: Rates have generally been declining (except in Croatia where rates have been stable). However, despite the improvement, offending rates in South-Eastern Europe are the highest in CEE/CIS , with Bulgaria at the top of the list at 2,772 crimes recorded per 100,000 juveniles in 2005, followed by FYR Macedonia (1,856).
	Juvenile imprisonment: In contrast to offending rates, imprisonment rates generally declined during the 1990s (no data for Croatia). In Romania, rates have been declining since its initial peak in 1992, and in Bulgaria and FYR Macedonia rates have been declining since the beginning of the observed period, 1989.	Juvenile imprisonment: Rates have been mildly stagnating or declining, but still remain relatively high . In 2005, Bulgaria had the highest rate of imprisonment at 106 juveniles per 100,000.
Western CIS (Belarus, Moldova, Russian Federation and Ukraine)	Juvenile offending: There was a rise in juvenile offending during the 1990s, but the 'crime wave' was milder than that of South-Eastern Europe and, by the mid-1990s, rates started to decline. Moldova is an exception, where crime rates remained relatively stable.	Juvenile offending: Rates have remained relatively stable but high . The Russian Federation has the highest rate at 1,740 per 100,000 in 2005, followed by Belarus at 1,508.
	Juvenile imprisonment: Rates largely fluctuated during the 1990s (Belarus, Moldova and Ukraine). In Moldova and the Russian Federation, the rate of juvenile imprisonment has been declining since records began in 1995.	Juvenile imprisonment: Rates have been mildly stagnating or declining, but still remain high in Western CIS. The Russian Federation has the highest imprisonment rate in the whole CEE/CIS at 323 per 100,000 in 2005.
Caucasus (Armenia, Azerbaijan and Georgia)	Juvenile offending: Rates were relatively stable throughout the 1990s.	Juvenile offending: Rates have been stable and relatively low, especially in Azerbaijan.
	Juvenile imprisonment: Rates were fluctuating in Azerbaijan (no data for Armenia and Georgia).	Juvenile imprisonment: Rates have been stable and low in Armenia and Georgia (no data for Azerbaijan).
Central Asia (Data on offending available from Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan; on imprisonment from Tajikistan and Turkmenistan only)	Juvenile offending: Rates increased in all countries during the early 1990s, and then gradually declined.	Juvenile offending: Rates have been stable, and relatively low.
	Juvenile imprisonment: In Turkmenistan, rates of imprisonment rose dramatically between 1989 and 1993, and then gradually declined (no data available for Tajikistan for this period).	Juvenile imprisonment: Rates have been relatively stable and relatively low.

Source: TransMONEE database 2007.

Figure 6 Country differences in juvenile imprisonment rates: Rates of juvenile imprisonment (placement in closed correctional/punitive institutions and prisons, per 100,000 population 14–17 years), average for 2003–2005



Source: TransMONEE database 2007.

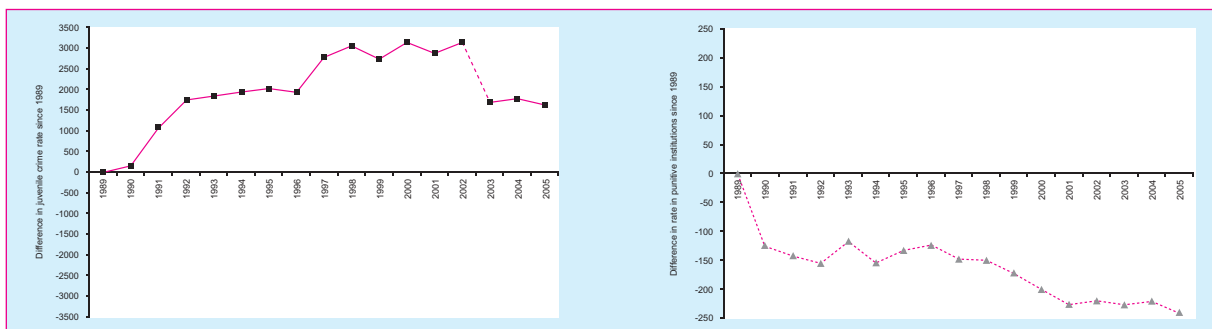
Figure 7 Relative changes in rates of juvenile offending and imprisonment in selected countries (number of crimes and number of juveniles sentenced to correctional/punitive institutions per 100,000 population 14–17 years)

The reference point is set at the year when TransMONEE records began, mostly 1989 or 1990, and the data points represent absolute differences in rate since the reference year.

a) Bulgaria

Juvenile offending rate – relative change

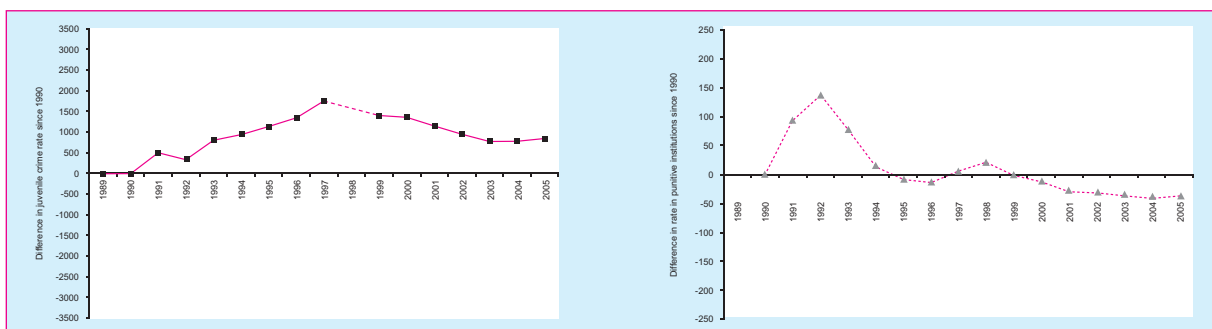
Juvenile imprisonment rate – relative change



b) Romania

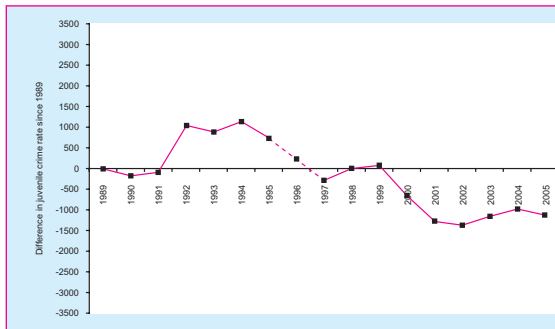
Juvenile offending rate – relative change

Juvenile imprisonment rate – relative change

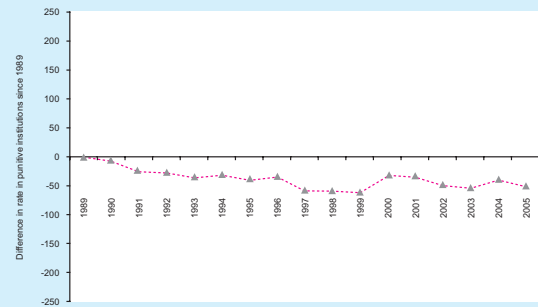


c) FYR Macedonia

Juvenile offending rate – relative change



Juvenile imprisonment rate – relative change

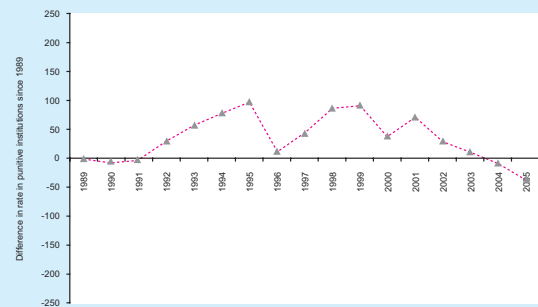


d) Belarus

Juvenile offending rate – relative change



Juvenile imprisonment rate – relative change

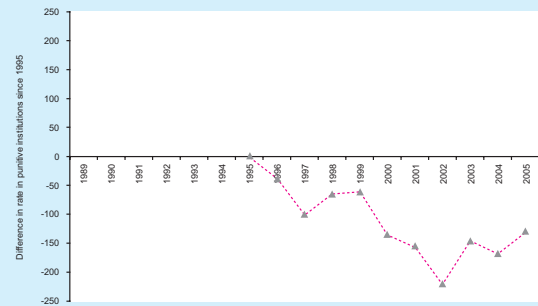


e) Russian Federation

Juvenile offending rate – relative change

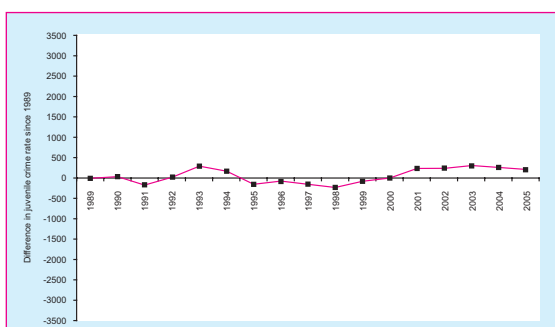


Juvenile imprisonment rate – relative change

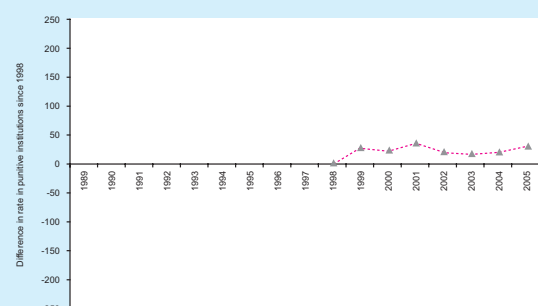


f) Croatia¹⁷

Juvenile offending rate – relative change



Juvenile imprisonment rate – relative change

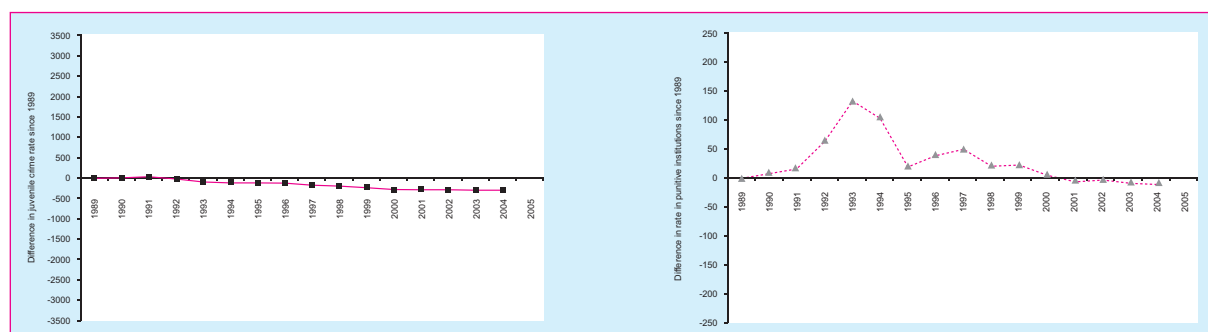


17 Similar flat trends were observed in Armenia, Azerbaijan, Georgia, Moldova, Tajikistan and Ukraine.

g) Turkmenistan

Juvenile offending rate – relative change

Juvenile imprisonment rate – relative change

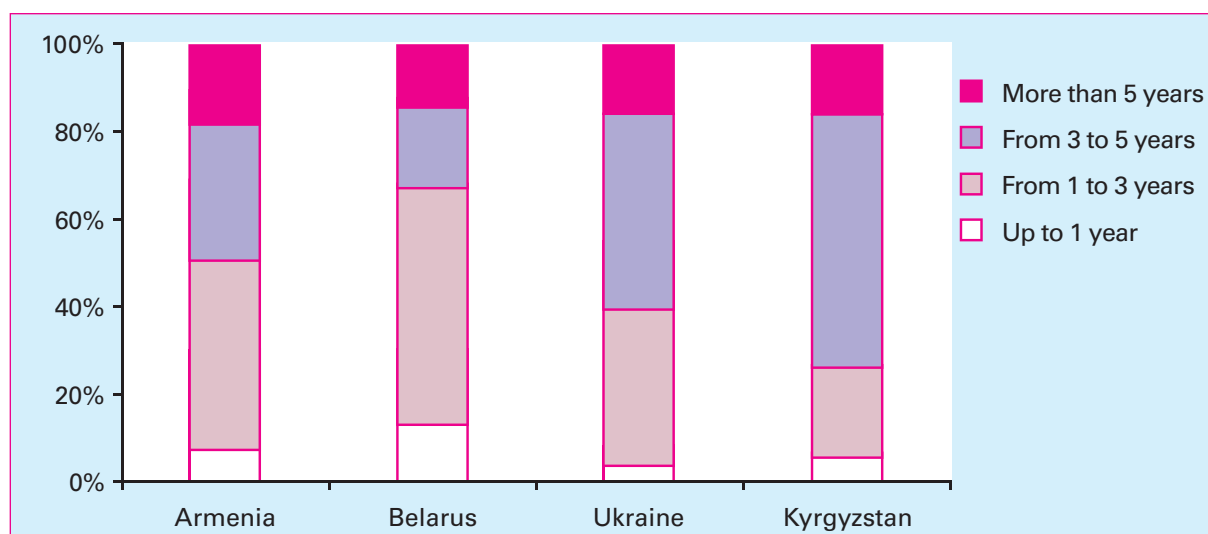


Source: TransMONEE database 2007.

3.7 Duration of imprisonment

Children can be imprisoned for several years. Estimates of the duration of imprisonment, based on data from four countries (Figure 8), suggest that the proportion sentenced to more than five years is high and similar across countries (around 16 per cent). According to country reports, more than half (54 per cent) of imprisoned juveniles have been sentenced to more than three years, ranging from 33 per cent in Belarus to 75 per cent in Kyrgyzstan.

Figure 8 Duration of juvenile imprisonment sentences: Averages for 2003–2005 (percentages)



Source: Country Analytical Reports and Statistical Annexes 2006 provided by National Statistical Offices.

3.8 Placement in 'educational' institutions

Names of institutions are increasingly being labelled 'educational', 'reformatory' or 'medico-educative' rather than 'punitive', signifying both an increasing awareness of the need for rehabilitation of minors and sometimes, but not always, a real change in conditions. Children above and below the MACR can be sentenced to deprivation of liberty within an 'educational institution'. Examples of 'educational' institutions are given below:

- In Belarus, a minor who has committed an offence before reaching the MACR can by court decision be confined to a special correctional institution for a term of two years (Country Report, Belarus, 2006).
- In Bosnia and Herzegovina, children aged 14 to 16 years can only be sentenced to education measures, which the Country Report states includes "placement in other family, home or institution" and "medical treatment in adequate health-care institution" (Country Report, Bosnia and Herzegovina, 2006).

- In Kazakhstan, the Committee on the Rights of the Child has noted serious concerns about children aged 11 to 14 years being placed in ‘special educational institutions’ as a form of punishment provided for in the commentary to the Criminal Code, and vague legal provisions for the issuance of such decisions. Children from 3 to 18 years are placed in ‘centres for temporary isolation, adaptation and rehabilitation for juveniles’ without legal grounds or procedure.¹⁸
- In Romania, juveniles are placed in a ‘reformatory centre’ or ‘medico-educational institution’. The objective of a re-education centre is to ‘help’ children above the MACR and ensure that they finish the appropriate school diploma and learn a trade. Placement in these institutions should last until the child turns 18 years, but it has been reported that children can potentially remain in the institution for two more years and that the amount of time they are deprived of their liberty can be much longer than in traditional prisons. There is almost no difference between re-education centres and prisons: both are military, closed institutions (Defence for Children International, 2003).
- In the Russian Federation, children can be placed in correctional schools, correctional schools of vocational training, residential institutions, specialized institutions for minors requiring social rehabilitation, and health-care institutions. This is of great concern.

“Correctional schools of vocational training for girls have expanded their capacity to admit girls at the age of 11 instead of 14 as before, and this practice allows these institutions to start the process of reformation and rehabilitation of young female offenders at an earlier stage.”

(Country Report, Russian Federation, 2006)

The placement of children in ‘educational’ institutions can be ordered by administrative bodies such as Local Commissions for Minors (see Section 3.2). This is of concern, as sentencing to deprivation of liberty may therefore not be subject to a judicial decision or to judicial review.

There is a grave lack of regional data on the numbers of children placed in ‘educational’ institutions and on the conditions they face. However, research suggests that there is cause for misgiving (Cantwell, 2004). While the ‘educational’ approach may sound progressive, in practice effective rehabilitation programmes are rare due to the lack of adequately trained social workers, psychologists and special teachers. A study in Kyrgyzstan, for example, showed that many of these institutions are like prisons – locked and military run. Although some efforts are being made to improve the poor and often unsanitary conditions, the lack of qualified staff and funding remains an obstacle. Children who live in these institutions rarely have visits from their family because they live far away; instead they come into contact with more experienced offenders. Research on this issue is often anecdotal (in this region as in other parts of the world), but nevertheless suggests that physical and emotional abuses are frequent and continue unchecked (Pinheiro, 2006).

3.9 Non-custodial measures

An important development in CEE/CIS has been the increasing recognition and use of alternative non-custodial sentences and ‘diversion’. There is a growing understanding that juveniles who benefit from programmes based on constructive, community-based and restorative responses, rather than punishment and retribution, are more likely to accept responsibility for their actions and understand their impact on others. They are also less likely to reoffend. Examples of non-custodial sentencing options include care, guidance and support orders, probation services, community service orders, financial penalties, compensation and restitution, treatment orders, orders to participate in group counselling or similar activities, and orders concerning foster care (Save the Children UK, 2004).

Many countries in CEE/CIS are making efforts through penal codes to establish or expand non-custodial penalties, such as fines, apologies to victims and community service (see Table 6). Such alternatives are an important basis upon which to build positive sentencing, as explained in the report from Moldova:

“The need to use the unpaid labour for society’s benefit is determined mainly by the fact that the majority of conditionally condemned minors who have committed crimes do not fully understand that they have perpetrated socially dangerous actions for which they were actually punished. Other countries’ practice proves that calling minors to social works has a positive character and directly contributes to children’s rehabilitation and re-education.”

(Country Report, Moldova, 2006)

¹⁸ Committee on the Rights of the Child. Consideration of reports submitted by States parties under article 44 of the Convention. Concluding Observations: Kazakhstan, CRC/C/15/Add.213, 10 July 2003.

A shift in attitudes in favour of non-custodial alternatives, which are tailored to the specific needs of the individual, was reflected in the report from Bulgaria:

“Incarceration is a mandatory sentence in cases of severe crimes committed by juveniles. Judges cannot refer such cases to local commissions. The legal restriction for them to do so violates a cardinal principle of juvenile justice because mandatory sentencing pre-empts individualised treatment; it categorically elevates other criminal law objectives over the rehabilitation needs of boys and girls who are in trouble with the law.”

(Country Report, Bulgaria, 2006)

In Romania, the Penal Code was amended in 1996 to introduce sentences to community service for juveniles. Meanwhile, in the Russian Federation, the changes to the provisions of the new Criminal Code concerning probation led to an increase of more than 100 per cent in juveniles receiving this sentence (UNICEF, 2006).

In Serbia, a new law on juvenile offenders made important changes in the treatment of offenders aged 14 and 15 years, with a wide range of non-custodial sentences now being recognized. This is a major breakthrough, since only two alternative sentences (intensive supervision and ‘disciplinary measures’) were recognized under the older law (UNICEF and DRN, 2007).

Even where new legislation authorizes the use of non-custodial sentencing and diversion, there is a need to establish programmes and structures to implement the whole range of measures and sentences that are authorized. Training would be needed in all relevant sectors (judges, police, prosecutors, and staff responsible for supervising sentences and orders) to improve their understanding of child rights, outline new responsibilities and accountabilities, and upgrade their relevant skills and competencies. Therefore, while there are a few examples of positive change in the region, progress in practice is on the whole slow, and there is a lack of comparable data across the region to monitor progress. Figure 9 indicates that in most countries reliance on custodial sentencing has remained relatively stagnant. The clear exception is Romania, a country that, between 2000 and 2005, successfully reduced by half the percentage of convicted juveniles who were sentenced to prison.

3.10 Criteria for imposing sentences

The ‘proportionality’ principle suggests, “...any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence” (the Beijing Rules, Rule 5).

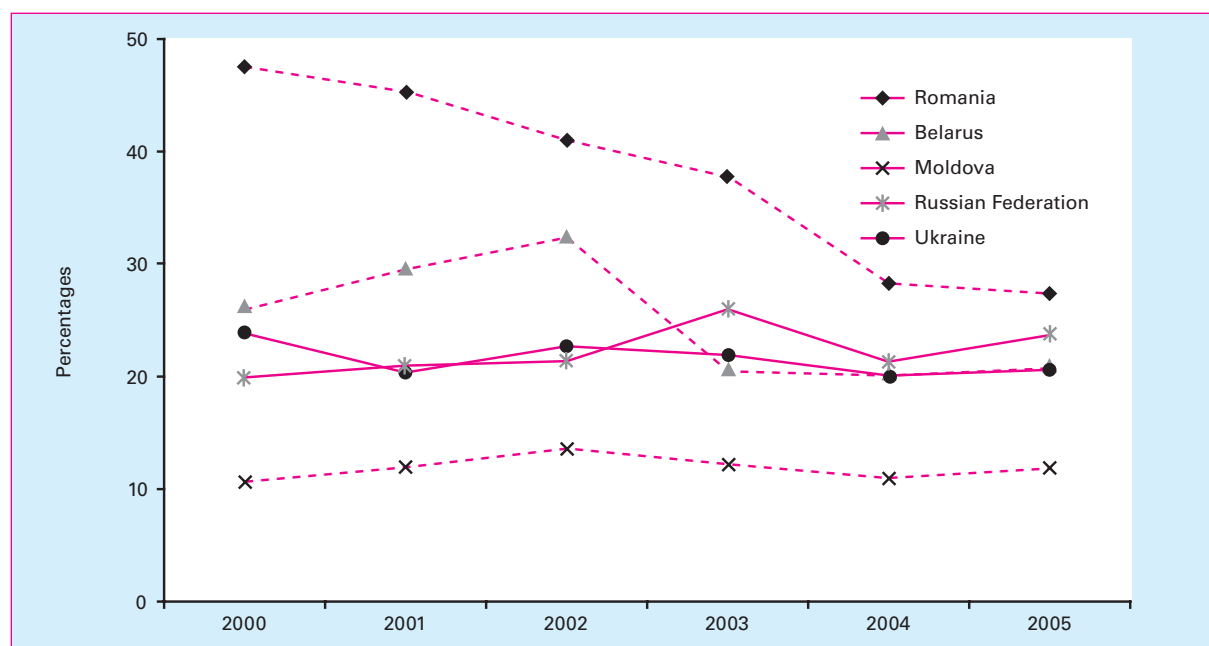
In CEE/CIS, the three main criteria used to determine the response to children in conflict with the law are the age of the child (whether or not the child is above or below MACR), whether the child has committed an offence before, and the severity of the offence. The vast majority of crimes are classified as ‘non-violent’, but many of these offences – including theft – are labelled as ‘serious’ (see a typical classification in Table 4). It should be noted that the sex of the child has also been reported as a factor in Azerbaijan for juveniles who are recidivists: While males are sent to prison, females are sent to ‘unlocked rehabilitation centres’ (Country Report, Azerbaijan, 2006). In Kyrgyzstan, other factors play a role, such as the child’s “living and upbringing conditions, the level of his/her mental development and other personal characteristics, as well as the seniors’ influence exerted on him/her” (Country Report, Kyrgyzstan, 2006).

Table 6 Various non-custodial sentencing options available in the region¹⁹

	Warning/ Reprimand	Apology	Compensation	Fine/ corrective labour	Community Service	Restrictions	Supervision/ Probation	Conditional sentence	Medical/ psychological treatment
South-Eastern Europe									
Bulgaria	✓	✓	✓	✓	✓	✓	✓	✓	✓
Romania	✓			✓	✓		✓	✓	
FYR Macedonia	✓			✓	✓		✓	✓	
Western CIS									
Belarus				✓	✓	✓		✓	
Moldova	✓		✓	✓	✓		✓		✓
Russian Federation	✓		✓			✓	✓	✓	
Ukraine	✓		✓	✓	✓	✓	✓		
Caucasus									
Armenia	✓		✓	✓	✓	✓	✓	✓	
Azerbaijan				✓	✓		✓		
Central Asia									
Kyrgyzstan	✓			✓		✓	✓		
Tajikistan	✓	✓		✓	✓	✓	✓		

¹⁹ These measures were mentioned in the country reports, but it is possible that additional measures exist but have not been listed here.

Figure 9 Reliance on custodial sentencing: Juveniles convicted to imprisonment during the year as percentage of total number of convicted juveniles in selected countries, 2000–2005



Source: Country Analytical Reports and Statistical Annexes 2006 provided by National Statistical Offices.

3.11 Are justice systems 'child friendly'?

There are many aspects of justice systems in general: the infrastructure, decision-making procedures and the range of people involved in the different steps of the justice system the child passes through.

A juvenile justice system that is 'child friendly' aims for the healthy development of the child. The police, the courts and other pillars of justice must be sensitive to the needs of children and their families, and ensure that children's physical, mental and moral integrity is respected. A child's privacy, identity and confidentiality must be valued, and efforts should be made to ensure that a child is not subjected to excessive interviews, statements and hearings or unnecessary contact with the justice process (Pinheiro, 2006).

As stated earlier, the Committee on the Rights of the Child has noted with concern that, in every country within CEE/CIS, the juvenile justice systems need to be reformed, if not created. Many children who come into conflict with the law, or who are accused of doing so, are treated as adult criminals by the justice system. We know from experience all around the world that the failure to address the basic needs of children can increase their likelihood of future recourse to unlawful or socially unacceptable behaviour.

Fundamental changes to policy and practices of the justice system are needed to guarantee the protection of children's rights and well-being. According to the Convention on the Rights of the Child, States should seek to promote the establishment of laws, procedures, authorities and institutions specifically dealing with children accused of or recognized as having infringed the penal law (Art. 40.3). This includes protecting children's privacy in court proceedings, ensuring that children are not detained with adult offenders, and training staff to be accountable for their actions and sensitive to children's rights. It may also include, but not necessarily, the creation of special juvenile courts and procedures that take into consideration the particular needs of the children.

A key aspect of a child-friendly system of justice is attention to discrimination of children on the basis of gender, ethnic group, disability or other characteristics. A major concern in CEE/CIS is the over-representation of Roma children within the administration of juvenile justice – an issue noted by the Committee on the Rights of the Child and mentioned in the country reports. Not only do these socially marginalized children appear to be more likely than other population groups to come into contact with law enforcement and the wider justice system, but they are also thought to be at higher risk of suffering discrimination and stigmatization in

the process. Eliminating discrimination towards marginalized groups of children would contribute to ensuring that justice systems become 'child friendly'.

The use of separate juvenile courts is one practical way of ensuring that children are protected during the trial process. In none of the CEE/CIS countries do such courts exist, apart from a successful pilot project undertaken in Romania (the Iasi project). Instead, these countries resort to the services of judges who specifically deal with juvenile cases. These judges have rarely received any relevant training and are often under pressure to deal with adult cases perceived to be more important, complex and urgent, leading to delays in hearing the cases of accused youths. It has been argued that, while specialized courts for juveniles may be useful, they are not necessary. Compliance with the Convention on the Rights of the Child can be ensured if ordinary courts are child friendly and apply internationally recognized principles governing the treatment of juvenile offenders, and if effective prevention policies are in place.

3.12 Prevention and reintegration: The role of institutions?

The crucial aim of prevention and rehabilitation is as much to secure children's overall rights as it is to curb juvenile offending, either through the reduction of recidivism or by preventing children from coming into conflict with the law in the first place. There are several levels of prevention, usually discussed in terms of three levels: primary, secondary and tertiary.

In CEE/CIS, public initiatives in relation to prevention or reintegration are at the initial stages, but awareness is growing of the need for further action. Most governments have attempted to develop prevention measures that are at the primary or secondary level, but less so at the tertiary level (as explained further below). In recent years, a number of local non-governmental organizations have become increasingly involved with prevention and rehabilitation issues, for example by offering support and shelters for released offenders and children living or working on the streets.

Primary prevention strategies aim to tackle the root causes of juvenile offending – that is poverty, vagrancy, unemployment and out-of-school youth, as well as inability of parents to care for children (especially in 'dysfunctional' and unsupported families). The aim of primary prevention is to create a protective environment for all children, which implies a systemic, multilevel approach that includes securing government commitment, building capacities, reforming laws, monitoring and reporting rights violations, changing peoples' attitudes, building children's own skills, and providing reintegration services. A crucial element is building children's protective environment through support to families. It goes without saying that primary prevention is vital, but it involves policies and actors in a wide range of spheres, including education and social security, which generally fall outside the scope of this report.

Secondary prevention strategies aim to target individuals at high risk in order to keep these individuals from engaging in illegal or socially unacceptable activity. A common approach is the registration of 'at risk' children with the police (e.g., children from 'difficult' families or children whose school absenteeism is a problem). The aim is to monitor the behaviour of these children and prevent them from committing offences in the future. In practice, however, this supervision is formal and superficial, and the police have to juggle these responsibilities with their regular work, meaning that less time and effort is devoted to these monitoring activities than is needed for this approach to be effective (Cantwell, 2004).

Tertiary prevention strategies aim to respond to each juvenile offender in a manner that both ensures he or she takes responsibility for the act committed and its consequences, and is most likely to assist him or her to subsequently avoid resorting to criminal activity. It is generally agreed that this is best achieved through programmes that prepare young people for their release and provide long-term support to help them adjust to life in the community (reintegration). Countries in CEE/CIS have, however, preferred to rely on a range of residential institutions to provide reintegration services. Many of these institutions are labelled 'educational' or 'rehabilitative' (see Section 3.8). Children with behavioural problems may be placed in educational institutions; children living or working on the streets or children escaping from violent homes may be placed in temporary shelters; and children charged with an offence may be placed in rehabilitation centres.

It is of concern that in CEE/CIS the institutionalization of children has been reported to be a key prevention strategy. In the Russian Federation for example, the placement of children in 'temporary locked centres' is viewed as playing an important role in preventing juvenile offending (Country Report, Russian Federation, 2006). In 2004, 92 such centres were operational, housing 24,200 juveniles (this number is up from 20,100 in 2003) for unknown durations. The majority of these children had committed administrative offences or

'socially dangerous acts' before attaining the age of criminal responsibility. The so-called positive role of educational institutions in preventing reoffending is explained further:

"...a network of educational institutions for juveniles of different sex and age is being developed. There are now broader opportunities for rehabilitating girls who have committed offences before reaching the age of criminal responsibility. Correctional schools of vocational training for girls have expanded their capacity to admit girls at the age of 11 instead of 14 as before, and this practice allows these institutions to start the process of reformation and rehabilitation of young female offenders at an earlier stage."

(Country Report, Russian Federation, 2006)

Given the heavy reliance on institutionalization in CEE/CIS, one must pose the question: Are residential institutions really in a good position to 'reinsert' children back into society, in preference to services that support children and their families while the children are still living at home? Institutions housing children are often isolated from the community and closed to public scrutiny. They invariably lack effective complaint mechanisms, monitoring and oversight. Perpetrators of violence are rarely held accountable, allowing high rates of violence to continue unchecked and perpetuating a culture of tolerance towards violence against children. Furthermore, the impact of institutionalization – be it in the name of 'protection', 'rehabilitation' or 'punishment' – goes beyond the immediate exposure of children to violence in the institution. The long-term effects of institutionalization place children at risk of becoming victims of violence in the future – they have a higher risk of committing suicide, being trafficked and getting involved in criminal activity (Pinheiro, 2006). Thus, once children have come into conflict with the law, the response of the justice system may – inadvertently – increase the likelihood that he or she commits another offence in the future. While little information is available about centres for 'rehabilitation' or 'reintegration' of children, there is deep concern that the duration and conditions, as well as the resources available, render reintegration impossible from the outset, regardless of its desirability.



CONCLUSIONS

4. CONCLUSIONS

1. **A grave lack of data means there is much we simply do not know.** The absence of data is due to poor data collection systems and the lack of transparency and coordination that prevent data from being shared. The data available for this report are of unknown quality and are sometimes not representative of the country in question or internationally comparable. Due to the lack of reliable data we know very little about the conditions children face in detention, the number of children arrested and held in pre-trial detention, the number of children taken into custody (including children who have not been accused of an offence) and the number of children in ‘educational’ institutions. We know little about the extent of discrimination within the justice system against certain marginalized groups, such as the Roma. Finally, there is a lack of consensus on definitions and terminology, even the most basic ones used (e.g., ‘educational’, ‘rehabilitation’ and ‘arrest’), and we do not have standardized and comparable rates of recidivism, which is a core indicator of a justice system’s success in preventing reoffending.
2. **Rates of juvenile offending are not increasing in most countries, with the exception of Belarus and the Russian Federation.** In most countries in the region, rates of offending between year 2000 and 2005 were either stable or fluctuating/decreasing, and there is no evidence of an over-representation of 14- to 17-year-olds among perpetrators of offences. On average, regional juvenile crime rates were as low in 2005 as they were prior to the ‘early 1990s crime wave’. In Belarus and the Russian Federation there is, however, evidence of an increasing rate of juvenile crime from 2002 to 2005, though the rates are still lower than the peak in the mid-1990s. In these two countries, the increase in juvenile crime has been significantly lower than the increase in general crime among the total population.
3. **The minimum age of criminal responsibility (MACR) is set suitably high** (at 14–16 years) but this is no guarantee that children aged below or above it will be treated appropriately, and according to international standards, within the justice system.
4. **The extent to which Local Commissions for Minors are truly diversionary is questionable.** There is particular concern about children who are too young to be prosecuted. In CEE/CIS, this category of children, along with those accused of ‘non-serious’ offences, administrative offences or status offences, is often referred to the Local Commission for Minors. It has been argued that local commissions serve a useful diversionary role as they direct children away from judicial proceedings, thereby helping them to avoid the unnecessary and potentially counterproductive stigmatization associated with the judicial process. However, the composition and mandates of some of these commissions, especially their powers to authorize a custodial response, are not in line with international standards. It should also be noted that the potential of commissions to be ‘diversionary’ only applies to children who are old enough to be prosecuted. Many children brought before commissions are under the age of criminal responsibility.
5. **The period from custody to trial is a ‘twilight zone’** due to the lack of information on children under arrest, in police custody and in pre-trial detention – in terms of numbers, duration of stay or conditions – which is a major concern. The Committee on the Rights of the Child has voiced its concerns about the ill-treatment of children and unlawful investigative methods used on arrest, as well as the duration and conditions of pre-trial detention.
6. **‘Deprivation of liberty’ is still the norm.** Sentencing children to deprivation of liberty is still a common response to juvenile offending, often in the name of ‘rehabilitation’ or ‘education’, rather than a purely ‘punitive’ measure. Although the ‘educational’ approach sounds progressive on the surface, there is cause for misgiving. Many countries do not have the adequately trained social workers, psychologists and special teachers to truly rehabilitate these children. While it is encouraging to observe a decline in the number of children deprived of their liberty, the numbers are likely to be an underestimate due to the lack of comprehensive data on children in ‘educational’ institutions and in pre-trial detention.
7. **The use of alternative community-based sentences is being increasingly reported,** and there are some examples of countries where legislative change has led to changes in the responses. However, a lack of comparable data across the region hampers ability to monitor progress.
8. **The placement of children in ‘protective custody’ is a sign of a failing care system.** Reports from countries suggest that many children are taken into custody and placed in institutional care for their own ‘protection’. These children are treated as if they were in conflict with the law, when in fact they have not been accused of committing an offence beyond that of being at risk of harming themselves or others. This phenomenon is evidence of law enforcement and the wider justice system ‘stepping into the vacuum’ created by the lack of effective social services for children and their families. The functions and mandates of the institutions into which children are placed are rarely articulated, and they tend to

be poorly regulated, with no inspections or quality assurance. Children may end up staying at these shelters and institutions, in basic conditions, for protracted periods of time while waiting for alternatives to emerge.

9. Despite growing awareness of the need for prevention and rehabilitation, action is limited.

Prevention and rehabilitation efforts constitute the weakest link in the chain of actions intended to promote juvenile justice. While some efforts are being made in primary prevention (creating safer environments), little has been achieved on a tertiary level (reintegration of offenders). It is of great concern that some countries are showing increasing reliance upon the institutionalization of children as a preventative measure. This has proven to have harmful effects on child development and to increase their vulnerability and propensity to reoffend in the future. Data on recidivism are currently lacking, but would be crucial in assessing the success of prevention and rehabilitation strategies in reducing reoffending.

10. The common approach of giving children the same type of adult sentences but shorter – often deemed to be showing ‘leniency’ – is not necessarily in the best interest of the child, nor is it in the best interest of the victim or the community as a whole.

The common approach of giving juveniles custodial sentences of half the adult duration means that juveniles may potentially be sentenced to 10 to 15 years if found guilty of a serious crime – a duration that the Committee on the Rights of the Child has heavily criticized. It is argued that this ‘lenient’ approach represents a fundamental misunderstanding of the international standards for juvenile justice. There is particular concern for young children – children too young to be prosecuted – as the report has revealed an obvious lack of regulation of specific measures that can be imposed on this category of children and an absence of services to prevent them from coming into contact with the justice system in the first place and to reintegrate them thereafter. Overall, this study reaffirms the need to challenge mindsets and attitudes towards children and their rights, and to tailor justice responses to their individual needs and circumstances.

11. The window of opportunity for reform is open. The issue of children in conflict with the law and children at risk is rarely high on the political agenda, and so efforts to create a commitment to reform on the part of the government are often met by considerable resistance. Despite these challenges, however, there are several factors strongly favouring immediate investment in juvenile justice reform:

- This report has found more indications of progress than of regression, which coupled with visible examples of good practice – particularly from UNICEF’s recent four-country evaluation (Box 2) – suggests that potential for improvement is currently great.
- Many countries in the region are experiencing a decline in juvenile offending and a rise in economic growth. At the same time, child populations are shrinking due to declining birth rates, further strengthening the argument for investing in ‘human capital’ through the development of systems, which provide young offenders with a ‘second chance’ that only a justice system relying on restorative justice could guarantee. Successfully reintegrating young offenders would enable them to become active citizens contributing to society and thereby sustaining economic growth.
- There is also a growing pool of technical expertise on juvenile justice issues in CEE/CIS, which builds upon experience both within and outside the region.
- Finally, recent sweeping political changes have improved receptivity of governments to reform in all areas of human rights, which is further supported by the existence of an increasingly vibrant civil society.

For all of the above reasons, now is a great time to invest in juvenile justice reform!

RECOMMENDATIONS

5. RECOMMENDATIONS

The recommendations presented here are addressed primarily to governments and international organizations working in juvenile justice reform in CEE/CIS.

1. There is a need to articulate the basic aims of juvenile justice and outline a clear ‘vision’ to guide juvenile justice reform towards these aims.

There is an urgent need to ensure that responses to children in conflict with the law aim for rehabilitation rather than punishment in order to cut recidivism rates and to uphold children’s rights. These aims must be grounded in the principles of restorative justice and a non-punitive approach, and should be articulated within a broader ‘vision’ of reform (an example is given in Box 5.1). Inspired by international standards, such a vision would constitute a clear expression of commitment to a certain direction of reform.

Box 8 An example of ‘vision’ for juvenile justice reform (Cantwell, 2004)

- **The aim:** responding to each juvenile offender in a manner that ensures that he or she takes responsibility for the act committed and its consequences, and at the same time is most likely to assist him or her to subsequently avoid resorting again to criminal activity (this sets the scene for emphasis on a non-punitive and individualized approach founded on restorative justice and reinsertion).
- **The means:** developing a special system that combines a competent and recognized procedure of ‘diversion’ from the judicial process, wherever possible and appropriate, alongside courts whose personnel and disposition options are specifically tailored to juvenile cases (this implies that those in charge of diversion, at all stages, as well as in the judicial process, have special training, and it can be recalled that diversion should not include the possibility of deprivation of liberty).
- **The measures:** priority to non-custodial community-based measures including probation, community service, life skills, vocational skills, and support to the offender and, where applicable, to his or her family; where deemed necessary, ‘exceptional’ recourse to measures involving deprivation of liberty under conditions that are constructive rather than repressive, including preparation for release and post-release support.
- **The safeguards:** ensuring protection from all forms of intimidation and maltreatment, from arrest until acquittal or completion of the measure; access to legal assistance and due process; frequent contact with parents and the outside world; a known, accessible, effective and impartial complaints procedure; the juvenile’s understanding of rights and responsibilities.
- **Accountability:** clear and systematic procedures for reporting and inspection; criteria and standards for accreditation of civil society initiatives.

2. All forms of ‘deprivation of liberty’ need to be acknowledged, and their purpose and functions reassessed in relation to international standards.

The Convention on the Rights of the Child states that deprivation of liberty should only be used as a measure of ‘last resort’. In addition to punitive institutions, ‘educational’ or ‘rehabilitation’ centres fall within the scope of deprivation of liberty and, therefore, it follows that they must also be viewed as a measure of ‘last resort’. Furthermore, it needs to be determined whether measures dispensed within these institutions are more effective than services that would allow the child to remain at home. In accordance with international standards, institutional placements have to be justified as the most positive and potentially most effective option among a range of other available measures, not the ‘last resort’ simply because they are, or seem to be, the only available solution. Such an assessment should be guided by evidence of the damaging short- and long-term impacts of institutionalization and by the importance of the family unit in providing and caring for the child and in facilitating reintegration of young offenders.

3. Criminalization of children needs to be limited through the establishment of effective diversionary schemes that correspond to international standards; in this light, the mandates of Local Commissions for Minors need to be assessed.

A reduction in the number of children deemed criminally liable would require the expansion of diversionary schemes and the elimination of status offences as a form of crime for which children, and not adults, are punishable. Although there is still a need to assess responses to the small but high-profile group of serious offenders, the vast majority of children in conflict with the law can be dealt with outside formal court proceedings. Diversionary schemes would enable young offenders to be dealt with on a case-by-case basis, with responses tailored to their individual needs and circumstances. If diversion becomes the norm, with diversionary schemes being authorized only to result in non-custodial responses, then deprivation of liberty can become the exceptional measure that it is supposed to be under international standards.

Although Local Commissions for Minors have been viewed as diversionary in their approach of dealing with children outside the formal justice system, serious concerns remain regarding their function. Their power to authorize deprivation of liberty in educational/correctional facilities is a particular concern, as such decisions should be made through due processes of law found only within a formal court system. As many children brought before the commissions are under the age of criminal responsibility, the potential of these commissions to be 'diversionary' does not apply.

The controversy surrounding the role of these commissions serves as a stark reminder that the basis of juvenile justice must, according to international standards, be founded upon formal judicial procedures, as this alone can guarantee due process. Within the formal framework of judicial procedures, legislative change authorizing the use of diversion and non-custodial sentences and measures must be complemented by changes to the judiciary infrastructure and decision-making processes, along with improved institutional and professional capacities, in order for the changes to be put into practice.

4. A range of services for children and their families must be established, both preventative and rehabilitative.

Fundamentally, a justice system cannot function in the absence of very well organized social services. These services – including broader antipoverty measures as well as family support services – serve to prevent children from getting into conflict with the law. Specialized services are also needed to provide guidance and counselling to children who are (actually or perceived to be) in conflict with the law, potentially including their families as well. National policy on the reintegration of young offenders must be underpinned by comprehensive, evidence-based plans, coupled with efforts that challenge attitudes favouring institutionalization. Strengthening the social welfare system is essential for it to successfully complement the justice system in responding to children in conflict with the law – be it in prevention or reintegration – and their roles and mandates must be distinguished and clearly articulated, so as to increase efficiency and avoid unnecessary criminalization of children.

5. Systematic data collection systems must be established or developed, building upon a regional consensus on indicators and targets for reform.

One of the key findings of this report, and a clear obstacle to the analysis, was the lack of data and the variation in definitions of indicators and terminology used by the different countries. There is an urgent need to build consensus on indicators of both offending and the functioning of the justice system, and to ensure that their measurement and meaning are standardized. There is also an urgent need to improve transparency and coordination in order to make data available, especially indicators of system functioning (such as children arrested, held in pre-trial detention, for how long etc.). Such data would inform and evaluate policy and programmes and track progress towards stated targets for reform, and can be further complemented by specific projects on specific issues, such as the situation of Roma children in conflict with the law.

6. Good practices and lessons learned must be synthesized and shared.

Many lessons can be learned from good practices worldwide (e.g., Save the Children UK, 2004) and within CEE/CIS (e.g., UNCEF, 2007). Throughout the region there is ample experience and insight into 'what works and what doesn't work', which now needs to be systematically documented, synthesized, analysed and meaningfully shared between all countries.

REFERENCES

Note that the main sources of information for this report are the country reports on juvenile justice received in 2006 from National Statistical Offices.²⁰ General consultation has also been made to the many 'Concluding Observations' by the Committee on the Rights of the Child.

Baker, Irene M., 'Wilson v. Spain: Will pretrial detainees escape the constitutional 'twilight zone'?' in *St. John's Law Review*, Summer 2001.

Boev, Boyko, Alternative Dispute Resolutions in the Juvenile Justice System in Bulgaria and their Role around the World, Bulgarian Helsinki Committee, December 2001–March 2002, Sofia.

Cantwell, Nigel, Contributing to Juvenile Justice Reform in Kyrgyzstan, an assessment commissioned by UNICEF Bishkek, 2004.

Committee on the Rights of the Child, General Comment No. 10, Children's rights in juvenile justice, CRC/C/GC/10, 9 February 2007.

Defence for Children International, *Kids Behind Bars – A study on children in conflict with the law: Towards investing in prevention, stopping incarceration and meeting international standards*, Amsterdam, 2003.

Pinheiro, Paulo Sérgio, *World Report on Violence against Children*, United Nations Secretary-General's Study on Violence against Children, Geneva, 2006.

Save the Children UK, *Juvenile Justice. Modern Concepts of Working with Children in Conflict with the Law*, 2004.

United Nations Children's Fund, 'Young People in Conflict with the Law' in *Young People in Changing Societies, Regional Monitoring Report No. 7*, the MONEE Project CEE/CIS/Baltics, UNICEF Innocenti Research Centre, Florence, 2000.

United Nations Children's Fund, *The General Measures of the Convention on the Rights of the Child. The Process in Europe and Central Asia*, UNICEF Innocenti Research Centre, Florence, 2006.

United Nations Children's Fund and Development Researchers' Network, *Thematic Evaluation of UNICEF's Contribution to Juvenile Justice System Reform in Montenegro, Romania, Serbia and Tajikistan*, Occasional Paper, Child Protection Series, UNICEF Regional Office for CEE/CIS in collaboration with the Development Researchers' Network (DRN), 2007.

United Nations Office on Drugs and Crime and United Nations Children's Fund, *Manual for the Measurement of Juvenile Justice Indicators*, United Nations, Office of Legal Affairs, New York, April 2007.

United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") adopted by General Assembly resolution 40/33 of 29 November 1985.

Key websites

- Interagency Panel on Juvenile Justice: <http://www.juvenilejusticepanel.org/>
- UNICEF's child protection resource package: http://ceecis.org/child_protection/
- Global Initiative to End All Corporal Punishment of Children: <http://www.endcorporalpunishment.org/>

²⁰ Country reports were received from Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Kyrgyzstan, Moldova, Romania, Russian Federation, Tajikistan, The former Yugoslav Republic of Macedonia and Ukraine.

APPENDIX 1

GLOSSARY OF TERMS

APPENDIX 1 Glossary of terms²¹

Administrative offence: Lowest level of offence, such as vagrancy, truancy, use of alcoholic beverages and, in some cases, vandalism.
Antisocial act/deed/behaviour: Label used to differentiate the behaviour that is damaging to the community from the crime that is defined by the law of the government. Definitions vary from country to country and over time, but commonly imply the use of constructive sentences.
Arrest: When someone is placed under the custody of the police, military, intelligence or other security forces because of actual, perceived or alleged conflict with the law.
CEE/CIS: Central and Eastern Europe and the Commonwealth of Independent States
Charged: When the police, a law enforcement authority, the public prosecutor, or a competent authority formally accuses someone of having committed a specific offence.
Child: In line with the Convention on the Rights of the Child, “a child is every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier”.
Competent authority: The part of the juvenile justice or adult criminal justice system that is responsible for making procedural or disposition decisions regarding a child’s case.
Convicted: When someone is found guilty of having committed an offence by the decision of a competent authority.
Correctional facility: A facility for the confinement of individuals accused or convicted of criminal or delinquent activity (also known as prisons or penitentiary facilities). The word ‘correctional’ is used to demonstrate the ‘rehabilitative’ nature of deprivation of liberty.
CRC: Convention on the Rights of the Child
Crime: see offence
Custodial sentence: a sentence involving deprivation of liberty.
Deprivation of liberty: Any form of detention or imprisonment or the placement of a child in a public or private custodial setting, from which the child is not permitted to leave at will, by order of any judicial administrative or other public authority. This includes any form of residential placement including police lock-ups, training schools, treatment centres, reform schools, education and re-education centres, remand homes, training centres, specific juvenile facilities, or adult correction facilities, including high-security institutions.
Diversion schemes: A child is diverted when he/she is in conflict with the law but has their case resolved through alternatives, without recourse to the usual formal hearing before the relevant competent authority. To benefit from diversion, the child and/or his or her parents or guardian must consent to the diversion of the child’s case. Diversion may involve measures, based on the principles of restorative justice and that are non-custodial and constructive, such as mediation, mentoring and life skills training.
Due process (in full: ‘due process of law’) denotes a set of guarantees for a fair and impartial hearing in court, generally including – but by no means limited to – the defendant’s right to understand the charges being brought, to be considered innocent until proven guilty, to be informed of evidence held against him/her and to contest that evidence, to be represented, and to have access to judicial review of the decision.
Educational measure: Placement in a specialized educational/rehabilitation centre, or making the minor follow a medical course of psychological rehabilitation.
Juvenile: In this report, ‘juvenile’ refers to all children aged 14 to 17 years. Whereas the Convention on the Rights of the Child covers all individuals below the age of 18 years, “unless under the law applicable to the child, majority is attained earlier” (Art. 1), and uses the generic term ‘children’ to describe them, the definition used by the (pre-CRC) Beijing Rules is more open ended and does not set a fixed age but, for the purposes of that instrument, states, “[a] juvenile is a child or young person who, under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult” (Rule 2.2.a).

21 Some of these definitions are based on definitions from <http://www.juvenilejusticepanel.org/>

Justice system: Term used to describe the courts and other bureaucracies that handle criminal legal business. The juvenile justice system consists of laws, policies, guidelines, customary norms, systems, professionals, institutions and treatment specifically dealing with children in conflict with the law.

MACR: minimum age of criminal responsibility

Offending/offence: In this report the term ‘offending’ is used to describe behaviour (an ‘offence’) that contravenes the criminal law of the State in which it occurs (same as ‘crime’).

Positive sentencing: Determining a constructive measure whose components are considered most likely to respond effectively to the individual child’s specific needs and circumstances with a view to avoiding his/her future recourse to behaviour resulting in conflict with the law.

Pre-trial detention: The period when children are deprived of liberty between the moment of being charged and the moment of being sentenced.

Probation: A non-custodial measure involving the monitoring and supervision of a child whilst he/she remains in the community, as well as guidance and assistance. Probation may be employed as a measure on its own, or following a custodial sentence. During probation, the young person must maintain good behaviour, not commit another offence, and meet any other conditions the court may deem appropriate to impose. Precise definitions vary.

Protective custody: The placement of a person by a competent authority with a view to protecting him/her from a dangerous person or situation.

Recidivism: reoffending within a certain period.

Reintegration/rehabilitation: The stated aim of juvenile justice as a whole, including both assisting an offender’s return to the community, as well as addressing ‘at risk’ children to reduce the risk of them committing crimes in the future.

Restorative justice: A balanced approach that addresses the needs of the community, the victim and the offender, which ensures that children participate fully, that compensation is offered to the victim, that the child has the opportunity to acknowledge the harm caused, and that a sense of community is restored.

Retributive justice: A form of justice, which asserts that a legitimate moral response to crime is proportionate punishment, irrespective of whether this will achieve positive social consequences.

Sentence: A sentence is passed when a competent authority – notwithstanding any right of appeal – makes a final decision about a child’s case and rules that the child shall be subject to certain measures.

Status offence: A type of misbehaviour best described as conduct illegal only for children. The three primary types of status offence are runaway, incorrigibility or beyond parental control, and habitual truancy.

APPENDIX 2

STATISTICAL TABLES

APPENDIX 2 Statistical tables: TransMONEE 2007 database

Since 1992, the UNICEF Innocenti Research Centre has been gathering and sharing data on the situation of children and women in countries of Central and Eastern Europe, the Commonwealth of Independent States and the Baltic States. The TransMONEE database, which contains a wealth of statistical information covering the period 1989 to the present on social and economic issues relevant to the welfare of children, young people and women, is published annually. Much TransMONEE data are available electronically at <http://unicef-icdc.org/resources/transmonee.html>

A. Registered total crime rate (per 100,000 population)																	
	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
South-Eastern Europe																	
Bulgaria	672	772	2'062	2'630	2'599	2'639	2'452	2'337	2'896	1'993	1'855	1'828	1'840	1'877	1'844	1'827	1'771
Romania	208	422	606	635	964	1'043	1'309	1'422	1'601	1'773	1'618	1'576	1'519	1'414	1'273	1'068	963
Albania	-	-	-	354	296	230	195	158	192	177	166	161	139	161	187	255	262
Bosnia & Herz.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Croatia	1'185	1'123	971	1'324	1'517	1'178	1'018	1'105	945	1'081	986	1'038	1'189	1'393	1'561	1'699	1'720
FYR Maced.	802	784	848	1'307	1'258	1'204	1'178	1'263	1'101	1'102	1'114	978	842	901	1'112	1'115	1'111
Serbia & Mont.	1'175	1'144	1'174	1'293	1'656	1'512	1'268	1'238	1'203	1'126	881	888	974	1'067	-	-	-
Western CIS																	
Belarus	654	743	798	946	1'009	1'176	1'293	1'252	1'269	1'220	1'301	1'355	1'125	1'339	1'531	1'690	1'969
Moldova	940	986	1'021	901	853	858	885	805	1'002	992	1'079	1'051	1'042	1'002	913	800	768
Russia	1'099	1'243	1'464	1'859	1'886	1'774	1'857	1'772	1'621	1'748	2'039	2'014	2'033	1'739	1'907	2'012	2'484
Ukraine	626	716	784	926	1'039	1'107	1'252	1'214	1'168	1'151	1'125	1'124	1'044	939	1'168	1'100	1'035
Caucasus																	
Armenia	241	342	363	441	350	265	270	331	326	284	265	317	302	376	345	314	276
Azerbaijan	212	215	215	304	242	244	260	226	209	189	180	173	180	190	185	202	215
Georgia	326	362	514	447	429	363	332	314	306	331	318	340	357	382	402	578	-
Central Asia																	
Kazakhstan	833	907	1'060	1'222	1'258	1'250	1'163	1'181	1'060	943	934	1'013	1'024	910	795	956	966
Kyrgyzstan	593	675	718	973	941	912	899	856	793	719	826	790	812	749	711	644	651
Tajikistan	317	318	340	457	441	255	256	233	227	222	238	234	224	198	170	164	176
Turkmenistan	481	497	495	443	373	340	331	324	313	301	266	223	190	169	149	125	104
Uzbekistan	421	432	425	438	412	330	295	285	284	288	310	300	298	305	309	306	305

1. Data for 1999–2002 exclude Kosovo. 2. Data for 1992–2005 exclude Transdniestr. 3. Data for 1989 taken from CIS Statistics (1998).

		<i>B. Crimes committed by or with the participation of juveniles (absolute numbers)</i>																
		1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
South-Eastern Europe																		
	1	6'022	6'873	11'662	15'064	15'078	15'303	15'348	14'534	18'019	18'943	17'231	18'771	17'302	18'017	11'846	12'005	10'998
		-	9'245	17'380	14'996	22'219	24'254	26'511	28'835	33'159	43'839	25'911	25'470	23'511	21'450	19'167	18'826	18'578
		-	-	-	-	-	-	-	-	-	-	-	559	485	470	578	544	701
		722	747	-	-	-	-	-	-	-	-	-	458	554	632	640	528	633
	2	2'578	2'689	2'124	2'509	3'267	2'961	2'174	2'274	2'102	1'896	2'267	2'375	2'846	2'822	2'909	2'731	2'630
		3'753	3'588	3'734	5'242	5'035	5'411	4'918	-	3'628	4'000	4'088	3'120	2'255	2'116	2'393	2'624	2'399
	2,3	5'828	5'368	4'947	5'798	7'426	5'781	5'317	5'419	5'968	4'926	3'147	3'722	3'988	3'408	-	-	-
Western CIS																		
		6'574	7'484	7'629	8'412	9'467	10'036	10'706	9'892	9'990	9'889	9'344	9'028	7'349	7'516	8'635	9'047	9'096
	4	2'957	3'071	3'042	2'204	1'972	2'200	2'093	1'970	2'325	2'261	2'622	2'928	2'684	2'976	2'508	2'780	2'538
		159'944	164'723	173'753	200'608	223'651	221'649	209'777	202'935	182'798	189'293	208'313	195'426	185'379	139'681	145'368	154'414	154'734
		26'606	28'819	28'754	34'872	37'928	40'661	41'648	41'811	40'051	39'076	37'027	37'239	36'218	32'335	33'493	30'950	26'470
Caucasus																		
		243	256	374	-	419	339	384	448	655	526	588	610	611	587	553	557	511
		503	516	565	1'069	948	907	925	771	766	692	593	625	446	420	395	445	525
		-	757	890	842	594	515	688	668	614	689	627	620	662	674	617	557	755
Central Asia																		
		9'272	10'806	12'378	12'980	12'819	11'199	9'730	8'811	7'435	7'197	7'159	7'359	8'184	8'237	7'001	7'948	8'608
		1'137	1'326	1'573	1'719	1'245	1'192	1'163	1'438	1'497	1'263	1'386	1'233	1'008	1'954	1'460	1'035	878
	2	-	1'239	1'528	1'331	1'113	1'131	952	912	594	509	487	482	409	502	510	488	437
		1'079	1'187	1'242	1'124	882	846	823	832	658	554	408	263	207	216	162	147	114
		4'732	5'588	5'728	6'146	5'302	4'432	3'583	3'243	3'189	3'016	3'173	2'991	2'883	2'906	2'856	2'586	2'551

1. Data for 2003–2005 exclude crimes committed with the participation of juvenile offenders. 2. Data refer to number of offenders. 3. Data for 1999–2002 exclude Kosovo.

4. Data for 1992–2005 exclude Transnistria.

C. Registered juvenile crime rate (per 100,000 population aged 14–17)		1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	
South-Eastern Europe																			
	1	1'148	1'309	2'209	2'907	2'981	3'084	3'173	3'081	3'918	4'202	3'883	4'286	4'033	4'285	2'841	2'930	2'772	
	Romania	–	604	1'102	934	1'403	1'553	1'734	1'955	2'366	3'288	1'999	1'958	1'748	1'550	1'373	1'379	1'446	
	Albania	–	–	–	–	–	–	–	–	–	–	–	221	194	185	228	214	273	
	Bosnia & Herz.	244	254	–	–	–	–	–	–	–	–	–	199	236	267	266	216	255	
	Croatia	994	1'025	816	1'026	1'286	1'163	851	925	840	770	909	992	1'224	1'234	1'298	1'245	1'217	
	FYR Maced.	2'974	2'805	2'886	4'023	3'845	4'112	3'711	–	2'699	2'979	3'053	2'346	1'706	1'599	1'816	2'012	1'856	
	Serbia & Mont.	903	817	755	894	1'148	895	827	848	937	776	496	589	633	–	–	–	–	
Western CIS																			
	Belarus	1'123	1'279	1'309	1'439	1'603	1'681	1'772	1'614	1'590	1'528	1'416	1'344	1'090	1'128	1'314	1'424	1'508	
	Moldova	1'025	1'036	1'023	746	671	746	702	651	807	822	928	1'007	912	1'014	864	991	948	
	Russia	1'953	1'985	2'067	2'353	2'591	2'537	2'367	2'245	1'957	1'960	2'108	1'943	1'827	1'384	1'469	1'624	1'740	
	Ukraine	902	974	977	1'189	1'293	1'391	1'428	1'432	1'353	1'296	1'211	1'201	1'166	1'054	1'124	1'083	975	
Caucasus																			
	Armenia	104	106	151	–	162	128	142	161	230	180	196	199	197	227	216	218	200	
	Azerbaijan	95	96	105	196	171	161	161	132	129	112	91	92	63	58	54	60	70	
	Georgia	–	298	346	328	241	219	299	296	275	310	282	279	299	305	288	275	269	
Central Asia																			
	Kazakhstan	776	905	1'031	1'075	1'061	937	829	758	643	623	608	607	657	649	548	626	691	
	Kyrgyzstan	326	372	435	469	329	307	297	362	371	308	330	284	224	424	312	219	186	
	Tajikistan	–	277	336	289	240	241	199	184	115	95	86	81	65	76	75	70	62	
	Turkmenistan	353	371	374	328	248	230	219	216	166	136	97	60	45	45	33	30	23	
	Uzbekistan	280	324	327	346	291	239	188	164	157	143	144	129	119	117	113	68	100	

1. Data for 1989–2002 include crimes committed with the participation of juvenile offenders. 2. Data refer to number of offenders. 3. Data for 1999–2001 exclude Kosovo.

4. Data for 1992–2005 exclude Transdniestr.

		<i>D. Homicides committed by or with the participation of juveniles (absolute number)</i>																
		1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
South-Eastern Europe																		
	1	-	-	23	27	38	30	46	29	38	24	34	45	41	39	18	22	17
	Romania	-	36	45	44	41	35	31	32	36	30	24	29	28	33	36	36	32
	Albania	-	-	-	-	-	-	-	-	-	-	-	25	16	6	15	6	7
	Bosnia & Herz.	35	33	-	-	-	-	-	-	-	-	-	2	-	5	4	3	2
	Croatia	7	9	16	14	9	6	4	9	6	5	9	7	8	6	14	9	7
	FYR Maced.	3	4	6	9	6	5	4	-	3	8	9	11	5	8	17	4	4
	Serbia & Mont.	20	17	29	38	41	34	41	37	28	40	23	22	13	18	-	-	-
Western CIS																		
	Belarus	17	19	22	31	32	33	38	57	57	70	66	58	73	51	70	54	42
	Moldova	16	17	11	16	9	11	11	11	7	7	15	18	14	14	17	12	17
	Russia	416	472	504	603	1'009	1'311	1'458	1'337	1'350	1'302	1'456	1'694	2'126	2'118	2'057	2'021	1'820
	Ukraine	105	124	134	143	159	178	191	232	232	251	240	259	263	213	195	209	182
Caucasus																		
	Armenia	-	-	5	-	6	6	4	3	8	7	5	3	3	-	4	3	1
	Azerbaijan	7	7	14	18	19	24	20	22	27	17	19	15	15	11	8	10	7
	Georgia	-	14	15	12	5	7	11	8	4	11	6	5	8	5	5	7	5
Central Asia																		
	Kazakhstan	55	86	95	62	113	93	144	110	146	145	124	128	115	147	128	142	122
	Kyrgyzstan	-	-	-	-	-	-	-	-	-	-	-	-	16	13	18	16	10
	Tajikistan	7	4	7	5	7	10	10	9	4	6	9	13	3	3	6	8	7
	Turkmenistan	15	13	8	14	12	15	10	9	22	17	8	8	9	7	7	12	-
	Uzbekistan	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

1. Data for 2003–2005 exclude crimes committed with the participation of juvenile offenders. 2. Includes homicide attempts. 3. Data for 1999–2002 exclude Kosovo.

4. Data for 1992–2005 exclude Transdniestr.

		<i>E. Number of juveniles placed in closed correctional/punitive institutions and prisons, at the end of the year</i>																
		1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
South-Eastern Europe																		
	1	1'807	1'174	1'078	976	1'152	942	1'020	1'035	902	881	768	639	508	530	498	509	414
		1'233	1'295	2'881	3'531	2'552	1'542	1'158	1'017	1'227	1'373	1'086	937	735	743	655	570	593
		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	2	159	151	129	126	115	121	110	120	90	88	85	120	120	101	94	111	95
		17	9	7	23	34	16	30	31	17	32	40	20	26	34	-	-	-
Western CIS																		
		948	890	918	1'128	1'296	1'438	1'569	1'068	1'304	1'624	1'680	1'357	1'551	1'265	1'119	941	733
	3	-	-	-	-	-	-	119	113	72	75	51	36	58	79	109	35	70
	4	-	-	-	-	-	-	40'500	38'100	33'700	37'923	39'195	32'260	30'237	23'402	29'984	26'405	27'559
		-	-	2'218	1'677	2'027	2'391	3'109	3'081	3'065	2'610	2'440	2'459	2'123	2'386	2'403	2'519	2'121
Caucasus																		
		-	-	-	-	-	-	-	-	-	-	100	63	58	53	32	42	41
	5	45	58	39	55	121	130	177	79	117	-	-	-	-	-	-	-	-
		-	-	-	-	-	-	118	115	94	150	145	90	64	77	77	117	161
Central Asia																		
		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	6	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
		92	115	148	325	601	498	180	264	318	204	213	144	98	112	244	244	255
		-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

1. Data include children in correctional boarding schools (7–17 years old) and juveniles in prisons. 2. Since 1998, new Croatian legislation entered into force and numerous regulations were changed.

3. Data refer to prisons only. 4. Children in institutions of the penal system of Russia's Ministry of Justice and educative-correctional institutions. 5. Since 1998, data are restricted.

6. Number of children in three locked residential schools/correctional institutions.

Notes

A series of horizontal dotted lines for taking notes.

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