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Juvenile Justice
Situation in the Transnistrian Region of Moldova vs. International Standards

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Foreword

The present report focuses on the juvenile justice situation in the Transnistrian region of Moldova. The views and/or conclusive remarks in the report involve no political position.

Transnistria is not recognized as an independent state by the international community. It is *de jure* part of the Republic of Moldova. The report will refer to the decision makers in the Transnistrian region as *de facto* authorities or regional authorities. Similarly, the terms 'constitution', 'legislation', 'presidential decree', 'law' will be referred to as *de facto* normative acts of the Region. The report does not entail their *de jure* recognition.

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The views expressed in this report are solely those of the author and do not necessarily reflect the official positions of Promo-LEX Association or Open Society Foundations (OSF).

The authentic and authoritative version of the report is English. The report is also available in Romanian language.

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Introduction

The purpose of this report is to show the findings of the research study on the juvenile justice situation in the Transnistrian region of the Republic of Moldova. The study aimed to compare the law, policy and practice of juvenile justice in the Transnistrian region with relevant international standards and reveal if there were any shortcomings or gaps. More specifically, the research studied if there were any strategies on the prevention of juvenile delinquency, if there are any rehabilitative programs in place, which procedural safeguards of criminal prosecution and trial are in the *de facto* law and in practice, are the alternative measures to detention included in the *de facto* legislation and if they are used in practice, are there vocational/educational trainings provided for the juvenile detainees, etc.

The report briefly assesses the role and implication of the Moldovan constitutional authorities in the implementation of juvenile justice in the Transnistrian region. Nonetheless, though developments in the Transnistrian Region are linked to and in many aspects depend on the developments in the rest of Moldova the report does not provide comparative analyses of situations between the two. It is solely focused on the situation in the Region and the observance of international human rights standards in the administration of juvenile justice.

The report also includes recommendations on addressing the problematic areas revealed through the research.

This is one of the first research studies dedicated to the juvenile justice situation in the region. The only other study of the situation 'Juvenile Justice: Analysis of Legislation and Administration of Juvenile Justice in Respect of the Crimes and Offences Committed by Juveniles' was carried out in 2011 by NGO Interaction and a representative from the *de facto* Ministry of Justice, with the support of UNICEF.[1] Also, a report on 'Human Rights in the Transnistrian Region of the Republic of Moldova' by Thomas Hammarberg was recently published in February 2013. The report covered different areas of human rights issues. The author dedicated one brief paragraph of the report to the juvenile justice issue in the Region and stressed that 'an evaluation ought to be undertaken on the present situation with regard to minors in detention', which could serve 'as a background to a review of the whole approach to juvenile crime'.[2]

Terminology

There are synonymous terms used, in the field of juvenile justice, for words with similar meanings. For the purposes of this paper it is important to provide some definitions. Child and juvenile are often used as synonyms. The Convention for the Rights of the Child (CRC) provides definition for child as being 'every human being below the age of eighteen years unless under the law applicable to the child,

[1] According to the authors, it was hard to get information from the prosecutor's office and the police during the research study, despite the fact that the *de facto* president and the *de facto* Ministry of Justice were supporting the project. The head of the University involved in the research project helped a lot in conducting a conference." Pursuant to the request (№ 761/01-25) of the *de facto* President from 19 August 2010, the *de facto* Ministry of Justice participated in the implementation of the research, aiming to support juveniles in conflict with the law (supported by UNICEF).

[2] Thomas Hammarberg, UN Senior Expert, *Report on Human Rights in the Transnistrian Region of the Republic of Moldova*, 14 February 2013, p.21

majority is attained earlier'[3] and juvenile is defined as 'every person under the age of 18'.[4] Juvenile delinquents and children in conflict with the law are synonymous terms and are defined as 'persons under the age of 18 in violation of the penal law'[5] or 'children alleged as, accused of, or recognized as having infringed the penal law',[6] accordingly. The Committee prefers the term 'children in conflict with the law' and 'child' over 'juvenile'.[7] The present report will use both terms similarly. The term 'minor' will also be used along with terms 'juvenile' and 'child'. Deprivation of liberty means 'any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority'.[8] Detention is a condition of a person deprived of liberty except as a result of conviction for an offence.[9] Imprisonment is a condition of a person deprived of liberty as a result of conviction for an offence.[10]

Research Methodology

The research was carried out by the author under the supervision of Promo-LEX Association. The research combined desk- and field-based research methodologies.

Desk-based research entailed making a list of the leading principles and the core elements of a comprehensive juvenile justice policy and practice based on relevant international and regional treaties, rules and guidelines, and other documents setting standards and norms. Such international documents include: Convention on the Rights of the Child (CRC), UN Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines), UN Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules), UN Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules), Convention against Torture (CAT), General Comment No.10: Children's Rights in Juvenile Justice by the Committee on the Rights of the Child, etc.

The desk review was conducted to assess if the above mentioned leading principles and core elements of the comprehensive juvenile justice policy are in place in the *de facto* legislation of the Transnistrian region.

Additionally, the research aimed to briefly assess the role and implication of the Moldovan constitutional authorities in the implementation of juvenile justice in the Transnistrian region.

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[3] UN General Assembly, *Convention on the Rights of the Child (CRC)*, UN General Assembly Resolution 44/25, 20 November 1989, Art.1
[4] United Nations General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules)*, adopted by resolution 45/113, 14 December 1990, Rule 11(a)
[5] Robert Agnew, *Juvenile Delinquency: Causes and Control*, Third Edition, Oxford University Press, 2009, p.4
[6] Committee on the Rights of the Child, *CRC General Comment No.10: Children's Rights in Juvenile Justice,* 25 April 2007, Introduction
[7] Carolyn Hamilton, *Guidance for Legislative Reform on Juvenile Justice*, Children's Legal Centre and United Nations Children's Fund (UNICEF), Child Protection Section, New York, May 2011, p.3
[8] The Havana Rules, supra at 4, Rule 11(b)
[9] UN General Assembly, *Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment,* GA Res 43/173,9 December 1988, annex - use of terms
[10] Ibid.

More emphasis and focus of the research, however, was made on identifying the extent to which these core elements, principles and measures are being implemented in practice.

The field-based research involved gathering information, through interviews based on pre-compiled questionnaires, from National Human Rights Institution of Moldova (The Center for Human Rights of Moldova), international and intergovernmental organisations, NGOs and, generally, the civil society, working in the field, who would own certain statistical and/or theoretical data and awareness in connection to specific issues in terms of juvenile justice situation in the region. Visits have been carried out to the Transnistrian region to conduct meetings/interviews with all relevant NGOs and local Human Rights Institution (Ombudsman for Human Rights). Initially, it was also planned to meet with relevant *de facto* authorities, but it was not possible to organise these meetings.

A visit to the juvenile educational colony in Camenca district of the Transnistrian region was also planned, but access was not granted by relevant *de facto* organs.

Collecting statistical data included requesting official data about the number of juvenile detainees from the Department of Penitentiary Institutions of the Ministry of Justice of the Republic of Moldova. The provided information by the Department did not include the data on Transnistrian region, which suggests that the Department does not have access to information regarding the statistics in the juvenile educational colony of Camenca district of the Transnistrian region.

Request for statistics was also sent to *de facto* Penitentiary Service of Transnistria. The requested information included the number and ages of children detained; number of children convicted; types of offences they are detained/convicted for; as well as information about the complaints mechanism and if there are cases of official complaints about the conditions or treatment of juvenile detainees. No reply was returned.

The author also planned to meet with former detainees and/or their family members and family members of current detainees, but due to the limited access to information it was impossible to get hold on contact details of former juvenile detainees or family members of current detainees.

Obstacles

The obstacles that the author encountered during the research can be divided into two main parts: limited access to information; lack of information from the accessible sources;

Information provided by the *de facto* authorities was limited to the *de facto* legal framework regulating the legal responsibility of juvenile offenders. The *de facto* authorities were reluctant to provide information regarding the practice of juvenile justice system in Transnistria, pointing out that 'further research on the use of juvenile justice principles in Transnistria is not of practical interest.'[11]

The only official from the *de facto* government that agreed to meet and discuss the issues of the juvenile justice was the Deputy Chairman of the City Commission for the Protection of Minors. The meeting was

[11] In an e-mail reply to the request for a meeting and information, 2 April 2013 - 'проведение дополнительных исследований в области использования принципов ювенальной юстиции в Приднестровье в настоящее время не представляет практического интереса'

brief and Ms Sidorova requested the author to send a detailed questionnaire to her e-mail. Despite numerous reminders the author never received a reply.

Request for visiting the juvenile educational colony in Camenca was also submitted to relevant authorities, however, no reply was returned. Reply was not provided to the request for statistics about the number and ages of juveniles detained in the region, etc.

Where access to information was not limited the problem was the lack of information. Lack of information was encountered with the NGOs on both banks of Nistru River. NGOs from the right bank working on the issues of children in conflict with the law are only aware about the situation in the rest of Moldova, save the Transnistrian Region. NGOs operating in the Transnistrian region do not focus solely on the issues of children's rights or rights of children in conflict with the law. There are, however, number of NGOs that have had projects regarding the juvenile convicts, but regardless have limited information about the overall situation.

Lack of information was also encountered with the Center for Human Rights of Moldova (the Ombudsman's Office). Despite the fact that as of October 2008 the Center has specifically appointed Child Defender for the protection of children's rights on the national level, there was no substantial information at the hands of the Child Defender regarding the juvenile justice situation in the Region. Though the Center has coordination and cooperation with the regional counterpart in Transnistria on some of the human rights issues, the rights of children in conflict with the law is not one of them.

Historical Background

In order to better understand the developments in terms of justice system in the Region, it is important to understand the story about the conflict development and the current status of the Transnistrian Region.

On 23 June 1990 Moldova declared its sovereignty[12] and on 23 May 1991 changed the name to the Republic of Moldova. Moldovan Parliament adopted the Declaration of Independence on 27 August 1991 in Chisinau.[13] The territory of newly formed independent Republic of Moldova included the Transnistrian region. Formal recognition of Moldova by international community was held on 2 March 1992, when Moldova joined the United Nations.

The Transnistrian conflict, with a current status of a 'frozen conflict',[14] started in 1989 with a resistance movement to Moldovan Independence.[15] Transnistrian separatists announced independence as the

[12] The text of the Declaration of Sovereignty is available in Romanian language at: http://www.istoria.md/articol/508/Declara%C5%A3ia_de_suveranitate_a_Republicii_Sovietice_Socialiste_Moldova__RSSM_ [accessed on 26 June 2013]
[13] The text of the Declaration of Independence is available at: http://old.parlament.md/img/pdf/DECLARATION.pdf [accessed on 26 June 2013]
[14] European Parliament, Directorate-General for External Policies, Policy Department, *The Transnistrian Issue: Moving beyond the Status Quo*, October 2012, p.6, available at: http://www.europarl.europa.eu/committees/en/studiesdownload.html?languageDocument=EN&file=78635 [accessed on 26 June 2013]
[15] *Catan and others v. Moldova and Russia* [GC], nos.43370/04, 8252/05 and 18454/06, 19 October 2012, para.13

'Moldavian Republic of Transnistria' (MRT) on 2 September 1990 and adopted the 'declaration of independence'[16] on 25 August 1991.

The 14th Army military units (of the former USSR) joined the Transnistrian separatists in 1991-1992. On 6 December 1991 the Moldovan Government appealed before the international community and the UN Security Council protesting against the occupation of its territory. Moldova claimed that soldiers of the 14th Army supplied Transnistrian separatists with military equipment and supported separatists to terrorize the civilian population.[17] In the case of *Ilascu and others* the ECtHR found that Transnistrian separatists were able, with the assistance of 14th Army personnel, to arm themselves with weapons taken from the stores of the 14th Army stationed in Transnistria.[18] In addition, large number of Russian nationals from outside the Transnistrian region, mainly Cossacks, went to Transnistria 'to fight alongside of the separatists'.[19]

The armed conflict between the Transnistrian separatist forces and the Moldovan security and police forces started in March of 1992 lasting 5 months and causing death of several hundred individuals. The armed conflict ended after the ceasefire agreement of 21 July 1992[20] signed by the President of the Republic of Moldova, Mircea Snegur and the President of the Russian Federation, Boris Yeltsin.

Within the scope of the Agreement the conflicting parties were to withdraw their armed forces in order to enable the creation of a security zone.[21] The document also set up a Joint Control Commission (JCC) which would consist of representatives of the three parties (Russia, Moldova and Transnistria) and 'ensure control over implementation of measures and of a security regime in the [security] zone'.[22]

The Republic of Moldova adopted a new Constitution on 29 July 1994. The Constitution established that Moldova is a neutral country and prohibits the dislocation of troops, belonging to other States, on its territory.[23] The Constitution also includes a provision that a special forms of autonomy may be granted to certain places, some of which are located on the left bank of the Nistru River.[24]

On 8 May 1997 a memorandum, known as 'The 1997 Moscow Memorandum', was signed in Moscow by the President of the Republic of Moldova and the *de facto* President of the MRT. The Memorandum aimed at normalising relations between Transnistrian region and Moldova and set that any decisions made by Moldovan authorities concerning Transnistria had to be agreed between both sides, powers had to be equally shared and guarantees secured.[25] The Memorandum was also signed by guarantor States, in particular Russia and Ukraine, and the Organization for Security and Cooperation in Europe (OSCE).

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[16] The text of the document is available in Russian language at: http://mfa-pmr.org/index.php?newsid=230 [accessed on 26 June 2013]
[17] *Ilascu and Others v Moldova and Russia*, no.48787/99, 8 July 2004, para.53
[18]Ibid., para.57
[19] Ibid., para.60
[20] An unofficial translation by the OSCE Mission to Moldova of the 'Ceasefire Agreement' from Russian into English is available at: http://www.stefanwolff.com/files/Russian-Moldovan-Ceasefire-Agreement.pdf [accessed on 26 June 2013]
[21] Ibid., art.1
[22] Ibid., art.2
[23] The Constitution of the Republic of Moldova, adopted on 29 July 1994 and published in Monitorul Oficial al R. Moldova No 1 of 18.08.1994, art.11
[24] Ibid., art.111
[25] Text of the Memorandum is available in Russian language at: http://mfa-pmr.org/index.php?newsid=220 [accessed on 26 June 2013];

Despite Russia's numerous commitments to withdraw its troops from Moldovan territory,[26] it has not complied with these commitments and has not fully withdrawn its troops. According to the evidence provided to the ECtHR in the case of *Ilascu and others* there were at least 200 000 tonnes of Russian weapons and ammunition still remaining in Transnistria by the end of 2004.[27] During the review of the case of *Catan and others* in 2012 the Court was not provided with any verifications of withdrawal of Russian arms and ammunition from Transnistria since 2004.[28]

In November 2003, the Russian Federation proposed the 'Memorandum on the Basic Principles of the State Structure of the United State', so called 'Kozak Memorandum'.[29] The Memorandum was proposing a federal structure for Moldova, which would provide autonomy to the MRT and guarantee representation in the newly created federal legislature. In addition, until 2015, the representation of MRT had to be three-quarters of the second chamber and thus provide the MRT with the veto power. On 25 November 2003, the President of Moldova at that time, Mr Voronin decided not to sign the Memorandum, despite his open acceptance of the proposal earlier.[30]

In May 2005 the Ukrainian Government introduced a new proposal for the settlement of the Transnistrian conflict 'Towards a Settlement through Democratization'.[31] In July 2005, following the proposal, Moldovan parliament adopted a law 'On the Basic Principles of a Special Legal Status of Transnistria'.[32] As a result formal negotiations resumed in October 2005. In February 2011, in the new '5+2' format of the negotiations the European Union and the United States of America became involved as observers.[33] The Ombudsman of the Republic of Moldova, Mr Anatolie Munteanu evaluated this process as positive and stated that 'the established cooperation relations with international organizations involved in solving the Transdniestrian conflict, including with the participants in the "5+2" format [...] are some right solutions of the state to ensure human rights and fundamental freedoms on the territory of Transdniestria'.[34]

Up to date, the international community has not recognized Transnistria as a State. Transnistria is internationally recognized as the integral part of the territory of the Republic of Moldova.

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[26] November 1999 the OSCE held its sixth summit in Istanbul, during which the Agreement on the Adaptation of the Treaty on Conventional Armed Forces in Europe was signed. Among other principles, the Treaty, which was also signed by Moldova and Russia, set out that no foreign troops should be stationed on Moldovan territory without its consent. Russia committed to withdraw its troops. It was granted with extension for full withdrawal of troops until December 2003. At the Eleventh Meeting of the OSCE Ministerial Council of December 2003 most Ministers were 'deeply concerned that the withdrawal of the Russian forces [would not] be completed by 31 December 2003'

[27] Catan and Ors, supra at 15, para.35 and Ilascu and Ors, supra at 17, para.131

[28] Catan and Ors, supra at 15, para.36

[29] Text of 'Kozak Memorandum' is available in English at: http://www.stefanwolff.com/files/Kozak-Memorandum.pdf [accessed on 26 June 2013]

[30] http://www.e-democracy.md/en/monitoring/politics/comments/200312031/ [accessed on 26 June 2013]

[31] Text of the Proposal is available in Russian at: http://constitutions.ru/archives/8043

[32] Parliament of the Republic of Moldova, *Law 'On the Basic Principles of a Special Legal Status of Transnistria'*, Nr.173, 22 July 2005, available in Romanian and Russian at: http://lex.justice.md/viewdoc.php?action=view&view=doc&id=313004&lang=1 and http://lex.justice.md/viewdoc.php?action=view&view=doc&id=313004&lang=2 [accessed on 26 June 2013]

[33] http://www.osw.waw.pl/en/publikacje/eastweek/2011-03-02/transnistria-presents-conditions-renewing-negotiations-chisinau [accessed on 27 June 2013]

[34] Centre for Human Rights of the Republic of Moldova, *Report on the Observance of Human Rights in the Republic of Moldova in 2011*, Chisinau, 2012, p.6

Human Rights Obligations

In the complicated situation where a territory, which has unilaterally declared independence, is not internationally recognized as a state and when therefore the territory cannot become party to international treaties, including human rights treaties, and when the state which has the jurisdiction over this territory has no effective control over it, it needs to be identified who bears obligation to protect and responsibility for the violations of rights and norms envisaged in internationally recognized human rights documents and generally recognized principles of customary international law on this territory, and to what extent.

As already pointed out above, Transnistrian territory is internationally recognised as an integral part of the Republic of Moldova.

The Republic of Moldova is party to most of the international or regional human rights treaties and their optional protocols. As of June 2013 Moldova was party to seven out of nine core international human rights treaties[35] and their optional protocols,[36] as well as party to the European Convention of Human Rights.[37]

However, Moldova has entered territorial reservations or made declarations towards some of the treaties, including two Optional Protocols to the International Covenant on Civil and Political Rights (ICCPR), and the Optional Protocol to the Convention on the Rights of the Child (on the Sale of Children), stating that 'Until the full re-establishment of the territorial integrity of the Republic of Moldova, the provisions of the convention shall be applied only on the territory controlled effectively by the authorities of the Republic of Moldova',[38] and the European Convention of Human Rights (ECHR), declaring that Moldova 'will be unable to guarantee compliance with the provisions of the Convention in respect of omissions and acts committed by the organs of the self-proclaimed Trans-Dniester republic within the territory actually controlled by such organs, until the conflict in the region is finally settled'.[39]

The international human rights treaty bodies, as well as the Council of Europe have called upon Moldova to withdraw the reservations and declarations which are aimed at negating from human rights obligations of Moldova over the territory considered as its integral part. This was made clear through the judgment of the ECtHR in the cases of *Ilascu and others*[40] and *Catan and others*.[41]

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[35] Moldova has not yet signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), 18 December 1990, and signed but has not yet ratified the International Convention for the Protection of All Persons from Enforced Disappearance (CPED), 20 December 2006.

[36] Moldova is not yet party to the Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD) and has not yet accepted the complaints procedures under the UN Convention Against Torture (CAT) and under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)

[37] Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)*, Rome, 4 November 1950

[38] http://www.bayefsky.com/pdf/moldova_t2_crc_opt2.pdf / http://www.bayefsky.com/pdf/moldova_t2_ccpr_opt2.pdf [accessed on 25 June 2013]

[39] http://conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?CL=ENG&NT=005&VL=1 [accessed on 25 June 2013]

[40] Supra at 17

[41] Supra at 15

In these and some other similar cases the ECtHR had to deal with the issue of jurisdiction of Moldova and Russia and the attribution of responsibility, regarding applicants whose rights were violated on the Transnistrian territory.

While discussing the issue of jurisdiction and attribution of conduct the Court took into consideration the regulations of relevant international law and the findings of different judgments, in addition to the historical background and status-quo of the territory, submissions by applicants as well as submissions by Moldova and Russia. The Court also referred to the Draft Articles on Responsibility of States for Internationally Wrongful Acts (ARSIWA),[42] which provides provisions regarding attribution of conduct to a State.

In the case of *Ilascu and others* the Court held that the Moldovan government, which is the only legitimate government of the Republic of Moldova under international law, did not exercise effective control over Transnistrian region, which was under the effective control of Transnistrian *de facto* authorities.[43] However, it was held that despite the absence of effective control over the Transnistrian region, the applicants were still within the jurisdiction of Moldova, and thus Moldova had positive obligation under Article 1 of the Convention to take the diplomatic, economic, judicial or other measures to secure 'everyone within [its] jurisdiction [with] the rights and freedoms' guaranteed by the Convention.[44]

In regards to Russia the Court was satisfied that the Transnistrian region was under the effective authority, or at the very least under the decisive influence, of Russia, and in any event it survived 'by virtue of the military, financial and political support that Russia gave it'.[45] The Court held that due to the 'continuous and uninterrupted link of responsibility' on the part of Russia, as its policy of support for the regime and collaboration with it had continued during the whole period and as to the lack of attempt to put an end to the applicants' situation or lack of action to prevent the human rights violations allegedly committed, the applicants therefore came within the 'jurisdiction' of Russia for the purposes of Article 1 of the ECHR and Russia's responsibility was engaged with regards to the infringement of rights complained of.[46]

The applicants in the case of *Catan and others* submitted that Moldova's positive obligation was relevant in their situation, as despite the lack of overall control of Moldova on Transnistria, it had 'considerable means available to it in the political and economic sphere' that could have impact on the *de facto* authorities.[47] The applicants also submitted that the Court's findings of fact in the case of *Ilascu* concluding that Russia exercised decisive influence over the Transnistrian territory, was equally relevant in this situation.[48]

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[42] International Law Commission, *Articles on Responsibility of States for Internationally Wrongful Acts*, November 2001, Supplement No.10 (A/56/10), available at http://untreaty.un.org/ilc/texts/instruments/english/draft%20articles/9_6_2001.pdf [accessed 25 June 2013]
[43] Ilascu and Ors, supra at17, para.330
[44] Ibid., para.331
[45] Ibid., para.392
[46] Ibid., para.393-394
[47] Catan and Others, supra at 15, para.84
[48] Ibid., para.85

The Grand Chamber of the ECtHR again held that the jurisdiction was an important issue, especially bearing the historical background of the region. Since Russia still had, through military as well as political and economic means, assisted Transnistrian separatist government the ECtHR found that Russia exercised effective control over the Transnistrian territory and thus had 'jurisdiction' over it within the meaning of Article 1 of the Convention[49] and was responsible for the violation of the rights of the applicants.[50] As to Moldova the ECtHR again held that the applicants fell within Moldova's jurisdiction regardless the fact that it did not exercise effective control over the Transnistrian territory. The Court held that Moldova's obligation under Article 1 of the Convention was narrowed down to positive obligation.[51] The Court held that Moldova has fulfilled this positive obligation in this particular case.[52]

Hence, though the *de facto* separatist government of the Transnistrian region bears apparent responsibility for the human rights situation on the territory, such responsibility cannot be attributed to it under international law as Transnistria is not internationally recognised as a State. On the other hand, though Moldova does not have effective control over the territory this does not exclude its positive obligation. Responsibility over the violations is also attributable to the Russian Federation as it has the decisive influence over the *de facto* authorities of the Transnistrian region.

In addition, Moldova also undertook commitment to work on the promotion of human rights in its region of Transnistria upon accession to the Human Rights Council.[53] In this regard Moldova has developed a National Human Rights Action Plan for the years of 2011-2014 (NHRAP), which covers the whole territory of Moldova, including the Transnistrian region. In the NHRAP, Moldovan constitutional authorities dedicated separate section to the promotion and observance of human rights in the Transnistrian region. The main objectives of the plan are, however, somewhat limited and include: the creation of a national monitoring mechanism for the observance of human rights in Transnistrian region, development of the study and recommendations, conducting information campaigns, providing access to justice to the inhabitants of the Transnistrian region, including establishing a joint mechanism (with international organisations) for regular monitoring of conditions in the detention institutions in Transnistrian region and introducing the rehabilitation mechanism for the persons who were arbitrarily deprived their liberty, creating information centres, sensitising international organisations, ensuring the social rights of inhabitants of the Transnistrian region, opening representative offices of the Centre for Human Rights. Activities envisaged to reach these objectives are mostly planned in the years of 2013-2014. Except for opening one representative office of the Centre for Human Rights in Varnița,[54] no other substantive actions have been taken to ensure the observance of human rights in the region as yet.[55] At the same time, there is no indication that Moldova will withdraw reservations and declarations that it has entered in regards to some of the international and regional human rights treaties.

[49] ECHR, supra at 37, art.1
[50] Catan and Others, supra at 15, paras.111-123
[51] Ibid., paras.109-110
[52] Ibid., para.148
[53] Report of the Working Group on the Universal Periodic Review, Republic of Moldova, Human Rights Council, Nineteenth Session, Agenda item 6, UPR, 14 December 2011, para.75.41; http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/173/94/PDF/G1117394.pdf?OpenElement [accessed on 24 May, 2013]
[54] Varnița is a village, near the city of Bendery, which remains under the effective control of the government of the Republic of Moldova, while Bendery is controlled by the Transnistrian *de facto* authorities
[55] Interview with Ion Manole, Executive Director of the Promo-LEX Association, 24 June 2013

Juvenile Justice in Moldova

Moldova declared impendence on 27 August 1991, by Moldovan Parliament adopting the Declaration of Independence.[56] Formal recognition of Moldova by international community was held on 2 March 1992, when Moldova joined the United Nations.

The supreme law of Moldova is the Constitution adopted on 29 July 1994. Article 1 of the Constitution establishes that Moldova is a sovereign, independent and democratic state, governed by the rule of law in which the dignity of people, their rights and freedoms, the open development of human personality, justice and political pluralism are supreme values and shall be guaranteed.[57] It sets that Constitutional provisions for human rights and freedoms are understood and implemented in line with Universal Declaration of Human Rights and other international treaties that Moldova is party to.[58] When the Constitution or national legal provisions contradict with the international law, the latter prevails.[59]

The Republic of Moldova is party to most of the international or regional human rights treaties and their optional protocols. As of June 2013 Moldova was party to seven out of nine core international human rights treaties[60] and their optional protocols.[61] Moldova has also upheld to observe number of international documents connected to juvenile justice, including the Convention for the Rights of the Child (CRC), the European Convention of Human Rights (ECHR),[62] the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), UN Standards Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), UN Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules).

Section II of the Constitution provides an extensive list of civil, political, social, economic and cultural rights and freedoms of persons. Article 20 provides for every citizen's right to free access to justice, which shall not be restricted by any law. Principles regarding criminal justice, including juvenile justice, that the Constitution enlists and describes include that every person charged with an offence shall be presumed innocent until found guilty based on due process of law though a public trial (presumption of innocence, Article 21), no one shall be sentenced for actions or omissions which did not constitute an offence at the time they were committed (non-retroactivity of the Law, Article 22), every person has the right to be acknowledged as a person before the law and the State shall ensure the right of everybody to know his/her rights and duties (right to know one's rights and duties, Article 23), the right to life and to physical and mental integrity is guaranteed by the State; no one may be subjected to torture or to cruel, inhuman or degrading punishment of treatment (right to life and physical and mental integrity, Article

[56] The text of the Declaration of Independence is available at: http://old.parlament.md/img/pdf/DECLARATION.pdf [accessed on 26 June 2013]
[57] Constitution of Moldova, supra at 23, art.1
[58] Ibid., art.4
[59] Ibid., art.8
[60] Moldova has not yet signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW), 18 December 1990, and signed but has not yet ratified the International Convention for the Protection of All Persons from Enforced Disappearance (CPED), 20 December 2006.
[61] Moldova is not yet party to the Optional Protocol to the Convention on the Rights of Persons with Disabilities (CRPD) and has not yet accepted the complaints procedures under the UN Convention Against Torture (CAT) and under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
[62] ECHR, supra at 37

24), searching, detaining in custody or arresting a person shall be undertaken only under the law, period of detention may not exceed 24 hours, a detainee shall have the right to examination of lawfulness of detention or arrest before the court, the detained person shall be informed about the reasons for his detention or arrest as well as charges against him/her without delay, if the reasons for detention in custody ceased to exist the person concerned shall be released without delay (individual freedom and personal security, Article 25), the right of defence shall be guaranteed (Article 26).

Following the independence Moldova modified all of its laws and adopted some of the new ones. The Criminal Code, the Criminal Procedure Code, the Execution Code, and the Code on Administrative Offences were some of those laws connected to criminal justice, including juvenile justice, which were either amended or re-adopted. The Criminal Code as well as the Criminal Procedure Code has since undergone several amendments, including significant improvements in provisions related to children in conflict with the law. There is no separate juvenile justice system or law on juvenile justice in Moldova.

The Criminal Code of Moldova sets the minimum age of criminal responsibility at the age of 16. Juveniles aged 14-16 may be criminally responsible for the commission of serious offenses.[63]

Moldova has the Law on Child Rights,[64] which establishes the legal status of children and provides for their rights and freedoms. Article 28 of the Law provides that arrest or detention of the child shall be applied only in exceptional cases and in compliance with the law, arrested or detained children shall be kept separately from adults and convicted children, neither capital punishment nor life imprisonment shall be imposed on offences committed by persons under the age of 18, in judicial proceedings involving children the participation of the defence counsel is mandatory;

Moldova introduced mediation programming in 2004. The law on mediation was adopted in 2007 and entered in force on 1 July 2008.[65] The Law provides that the mediation is an alternative way to resolve the conflict amicably between the parties by a third party. Mediation can be used by parties of the dispute voluntarily, at any stage of the proceedings.[66] It may be requested by either party, or proposed by the court or criminal prosecution body.[67] If the parties accept all the conditions stated, they sign a reconciliation agreement, countersigned by the mediator.[68] Article 32(4) of the Law states that if mediation is used in criminal cases involving juveniles (as victim of the offence or as offender) participation of a teacher or a psychologist is mandatory.

The Law on Probation was also adopted in 2008.[69] The Law provides for the main principles, areas of activity, objectives, functions, duties and responsibilities as well as the structuring of the probation service. Article 13 of the Law specifically establishes provisions for juveniles. It provides that probation for juveniles shall be conducted taking into account the best interests of the child and aiming at his or her re-socialisation and reintegration with the biological or adoptive family. The probation of the

[63] The Criminal Code of the Republic of Moldova, Law No.985-XV, 18 April 2002, art.21
[64] Parliament of the Republic of Moldova, *Law on Child Rights*, No.338, 15 December 1994
[65] Parliament of the Republic of Moldova, *Law on Mediation*, No.134, 14 June 2007, available in Romanian language at http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=326080 [accessed on 11 July 2013]
[66] Ibid., art.2
[67] Ibid., art.25(2)
[68] Ibid., art.29(1)
[69] Parliament of the Republic of Moldova, *Law on Probation*, No.8, 14 February 2008

juvenile focuses on, *inter alia*, individual approach to each case, monitoring pre- and post-integration of the child in the family, providing pedagogical rehabilitation process.[70]

Moldova started implementing the diversion programming in 2010. However, the relevant changes in the law, in particular the Criminal Code and the Criminal Procedure Code were made earlier in 2008.[71] According to the Criminal Procedure Code the prosecutor has the discretion to terminate criminal proceedings involving a juvenile who committed a first-time offence of a minor or moderate nature.[72] The confirmation of the investigation judge and the consent of the juvenile concerned are required. The juvenile is then subjected to mandatory educational measure or referred to a medical institution. The Criminal Code also provides provisions in relation to diversion measures, stating that a person may be exempted from criminal prosecution based on the decision of the prosecutor or court, if a person has committed a first-time offence of a minor or moderate nature and his/her rehabilitation is possible without imposing criminal liability.[73]

The National Council for the Protection of the Rights of the Child was established in Moldova in 1998; it ceased to operate in 2007 and was reactivated in 2010. Members of a Working Group on Juvenile Justice, which was created in 2001 and reactivated in 2010, include the representatives of the Ministry of Justice, the Ministry of Internal Affairs, the Ministry of Education and Youth, the Ministry of Social Protection, Family and Child, the Supreme Court and the General Prosecutor's Office, as well as civil society representatives, namely UNICEF and NGOs.[74] Along with children in conflict with the law the spheres of activity of the working group also includes child victims and witnesses. The Working Group meets regularly once a month, or once every two months.[75]

The Moldovan national institute for human rights is the Center for Human Rights of Moldova, which consists of four parliamentary advocates (Ombudspersons) who are equal in rights. One of the advocates, the Children's Advocate, is specifically dealing with the protection of the rights of the child. The position was introduced through amendments to the Law on Parliamentary Advocates from 20 March 2008. The duties of the ombudsperson on children's rights include, *inter alia*, monitoring and reporting about the situation in terms of human rights in the administration of juvenile justice. The Center for Human Rights of Moldova has representative offices in all regions of Moldova, with the exception of Transnistria.[76] In October 2012 a new representative office was opened in Varnița, a village, near the city of Bendery, which remains under the effective control of the government of Moldova, while Bendery is controlled by the Transnistrian *de facto* authorities.

There is no separate court for juveniles but there are specialised judges for juveniles. The Supreme Court adopted a decision leading to the appointment of juvenile judges. The General Prosecutor's Office also made a decision leading to appointing juvenile prosecutors. The decisions made it possible to have at least one judge and one prosecutor specialising on cases involving juveniles in each trial court of the

[70] Ibid., art.13(2)
[71] Kirsten Anderson, Coram Children's Legal Centre, in collaboration with Legal Resource Centre in Moldova, *'Reform of the Juvenile Justice System in Moldova' Project: Final Evaluation*, May 2012, p.21
[72] The Criminal Procedure Code of the Republic of Moldova, No.122-XV, 14 March 2003, art.483
[73] Ibid., Articles 53-54
[74] UNICEF, Regional Office for Central and Eastern Europe/Commonwealth of Independent States, *Assessment of Juvenile Justice Reform Achievements in Moldova*, January 2010, p.15
[75] Kirsten Anderson, supra at 71, p.19
[76] The Center for Human Rights, *History*, http://www.ombudsman.md/en/site-page/history [accessed on 12 July 2013]

country.[77] Though the jurisdiction *de jure* extends to the territory of Transnistria, the juvenile judges and prosecutors are not designated there due to the lack of the effective control exercised by Moldova.

The National Human Rights Action Plan (NHRAP) 2011-2014 was elaborated, and adopted by the parliament in 2011. NHRAP includes the section about strengthening the juvenile justice system and the promotion of human rights in the administration of juvenile justice.

As in terms of some of the areas in the administration of juvenile justice in practice:[78] reportedly the number of detained children has decreased from 363 to 75 in four years from 2006, due to the Law on Amnesty, but also to increasing the use of alternative measures to the deprivation of liberty.[79] Most crimes, committed by juveniles, refer to thefts and robberies, and most juvenile delinquents come from vulnerable families. In the opinion of the Human Rights Center of Moldova, this determines a correlation between the social status and the type of committed offenses and hence the principle of providing welfare to youth is relevant for the realities of Moldova.[80]

The Committee on the Rights of the Child welcomed number of achievements made by Moldova in regards to juvenile justice, including improved access to education for detained children.[81] However, it also expressed its concern that the principle of the best interests of the child 'is not sufficiently implemented in practice, in particular in the judicial, legislative and administrative spheres'.[82] Also, it pointed out that alternative procedures to the deprivation of liberty are rarely used, that children suspects are not separated from adults in pre-trial detention facilities, that sanctions are still very high for serious crimes.[83] According to the Center for Human Rights, the causes for the high percentage of preventive detention among juveniles, are, *inter alia*: overloaded courts, lack of human resources, the large number of particularly complex cases, lack of juvenile courts, flaws related to the summons procedure, the large number of juvenile suspects, and law enforcement bodies not intervening in all possible cases with alternative measures of detention.[84]

Reportedly, probation system, aiming to assist children sentenced to non-custodial sentences, has limited capacity. The ombudsman also analysed the implementation of the Law on Probation in the Republic of Moldova and the gaps found include, *inter alia*, the low number of needed trained specialists, very few psychologists working as probation counsellors, the lack of separate offices within Probation Offices,

[77] UNICEF Assessment on JJ Reform, supra at 74, p.25
[78] For more detailed description of the juvenile justice situation in the Republic of Moldova, please refer to the UN Country Team in Moldova Submission to the UPR in 2011(note 79 below), as well as UNICEF papers (supra n.74 and note 86 below) and the CRC Concluding Observations on Moldova (note 81 below), Report of the Ombudsman of 2012 (supra n.34, pages 240-248), etc.
[79] United Nations Country Team in Moldova, *Submission for the Compilation prepared by the Office of the High Commissioner for Human Rights for the First Universal Periodic Review of the Republic of Moldova*, 21 March 2011, para.28, available at http://lib.ohchr.org/HRBodies/UPR/Documents/session12/MD/UNCT-eng.pdf [accessed on 12 July 2013]
[80] Ombudsman of Moldova Report, supra at 34, p.244
[81] Committee on the Rights of the Child, *Consideration of Reports Submitted by States Parties under Article 44 of the Convention: Concluding Observations – Republic of Moldova*, CRC/C/MDA/CO/3, 20 February 2009, para.72
[82]Ibid., para.27
[83] Ibid., para.72
[84] Ombudsman of Moldova Report, supra at 34, p.247

specially designed and equipped to work with underage children, which would facilitate the development of counselling in an appropriate environment.[85]

The above mentioned Working Group on Juvenile Justice is reported to be poorly coordinated by the Ministry of Justice and thus the reforms were not efficiently taken on.[86] The progress report of the UNICEF project of 2008-2011 also showed that the lack of coordination between the relevant government agencies served as an obstacle to its implementation.[87] However, despite these gaps, the Working Group managed to ensure the adoption of some of the essential juvenile justice laws and provisions, among them including the issue of juvenile justice in developed national action plans and strategy documents.[88]

It is also noteworthy that the report of the UN Country Team also pointed out that the overall situation in juvenile justice is worse in every aspect in the Transnistrian region than in the rest of Moldova. More specifically in terms of institutionalisation rate and the rate of detention of children, as the proportion of children in the justice system in the Transnistrian region is higher than in the rest of Moldova.[89]

Transnistrian de facto Legal Framework

As already pointed out above, Moldovan jurisdiction *de jure* covers Transnistrian region, as it is its integral part. However, current *de facto* situation is different. Transnistrian breakaway territory has its own *de facto* legal framework, based on old laws from the time of Moldovan SSR, but with modifications. Transnistrian breakaway region strives to bring Transnistrian *de facto* legislation in harmonisation with the legislation of the Russian Federation.[90] Hence, the *de facto* Criminal Code and the Criminal Procedure Code, as well as some other *de facto* laws of the region are undergoing some changes and amendments, for this and other reasons.[91] At the same time the *de facto* Constitution states that universally recognized principles and rules of international law are part of the legal system of Transnistria.[92]

Constitution

The *de facto* Constitution of Transnistria has the supreme authority in the legal regulations of Transnistria.[93]

It was adopted through the referendum, not recognized by international community, on 24 December 1995 and signed into law by the *de facto* President of Transnistria on 17 January 1996, by asserting human rights and liberties and promoting free development of person, confirming the adherence to

[85] Ibid., p.246
[86] UNICEF, *'Reform of the Juvenile Justice System in Moldova' Project: Final Evaluation*, May 2012, p.32
[87] UNICEF Assessment on JJ Reform, supra at 74, p.15
[88] UNICEF Final Evaluation Report, supra at 86, p.32
[89] UN Country Team in Moldova Report, supra at 79, para.30
[90] http://www.nr2.ru/pmr/423036.html / http://www.newsfort.ru/english_Garmonizacija-pridnestrovskogo-i-rossiiskogo-zakon_file_2465121.html [accessed on 26 June 2013]
[91] http://vspmr.org/?Part=298&ID=39 / http://vspmr.org/News/?ID=6301 [accessed on 26 June 2013]
[92] De facto Constitution of Transnistria, 24 December 1995, art.10
[93] Ibid., art.2

values common to all mankind, striving for life in peace and harmony with all peoples according to generally recognized principles and rules of international law.[94] It was last amended on 30 June 2000[95] and contains wide-range of democratic provisions and broad list of human rights and fundamental freedoms to be protected.

Section II of the *de facto* Constitution provides an extensive list of civil, political, social, economic and cultural rights and freedoms of persons: equality before the law (Article 17), right to life (Article 19), right to freedom and personal inviolability (Article 20), right not to be subject to torture, violence or other severe or humiliating treatment or punishment (Article 21), presumption of innocence (Article 22), right to privacy and family life (Article 24), right to free movement (Article 25), freedom of expression (Article 27), freedom of religion (Article 30), freedom of assembly (Article 32), right to the environment safe for life and health (Article 40), right to education (Article 41), freedom of artistic, scientific and technical creative activity (Article 44), the right to rest and leisure (Article 35), etc.

Article 16 of the de facto Constitution provides that 'person, his rights and liberties shall be of supreme value to the society and the state. The state shall protect rights and liberties of persons and citizens.'

Principles regarding criminal justice include that person shall be arrested or detained only under the law, a detainee shall have the right to examination of lawfulness of detention or arrest in court (article 20), every person charged with a crime shall be considered not guilty until his or her guilt has been proven in conformity with the procedures stipulated by law and established by court verdict, the defendant shall not be obliged to prove his or her innocence (article 22), no person shall be bound to be a witness against himself, in the administration of justice no evidence obtained in violation of the state law shall have legal force (article 23), everybody shall be guaranteed judicial protection of rights and liberties as well as the right to appeal to the court against illegal decisions and actions of state institutions, officials and public associations (article 46).

Article 45 of the de facto Constitution points out that listing of basic rights and liberties should not be considered as negation or derogation from universally recognized human rights and freedoms, thus pointing out that the Constitution and de facto legislation of Transnistria are in accordance with international law.

Article 54 of the Constitution provides certain restrictions to the rights and freedoms in the state of emergency or war. The restrictions apply to the rights such as equal protection of private, state, municipal and other forms of ownership (article 4), freedom from arbitrary detention, right to habeas corpus (article 20), right to privacy and family life, right to secure correspondence (article 24), freedom of thought, speech and convictions (article 27), right of mass media not to be subjected to censorship (article 28), right of citizens to participate in the administration of state affairs, right to elect and to be elected to government under universal, equal, direct suffrage by ballot (article 31), freedom of assembly, not violating the law or order or rights of other citizens (article 32), right to join trade unions, political parties and other associations (article 33), freedom of labor, right to make free use of own abilities, prohibition of forces labor (article 35), right to rest and leisure (article 36), right to private property (article 37).

[94] Ibid., Introduction
[95] Amendment to the Constitutional Law #310, 30 June 2000.

Though the restrictions of these constitutional rights and freedoms are to be imposed with limits and specified periods of validity, the provision is still vague and in partial contradiction with international law as e.g. according to the UN Human Rights Committee the right to fair trial and *habeas corpus*, though not enlisted as non-derogable rights, shall be treated with humanity and with respect for the inherent dignity of the human person and must be respected even during the states of emergency.[96] The Human Rights Committee believes that this right is a norm of general international law not subject to derogation and thus it cannot be subject to lawful derogation.[97]

The incorporation of the provisions of the Constitution in the *de facto* legislation and the observance of the rights and freedoms guaranteed through it in the administration of juvenile justice in practice will be reviewed in other chapters of the present report.

Relation to International Treaties

As already stated above, Transnistria is not internationally recognized as a state; therefore, it cannot be party to any international treaties.

However the *de facto* government of Transnistrian territory has upheld universally recognized principles and rules of international law and has legal obligation to respect standards of protection under customary international law.

The *de facto* Constitution states that universally recognized principles and rules of international law, as well as international treaties of Transnistria shall be the basis of relations with other states and part of the legal system of Transnistria.[98]

The *de facto* Constitution also points out that in case when the international treaty of Transnistria establishes other rules than provided by the legislation of Transnistria, it should be ratified after making amendments to the current legislation in accordance with the provisions of the international treaty,[99] as long as these provisions do not lead to the restriction of rights and freedoms provided by the *de facto* Constitution and they do not imply for Transnistria to refuse its sovereignty.[100]

The *de facto* Constitution of Transnistria enlists extensive list of internationally recognized human rights and fundamental freedoms.

In addition to this the *de facto* authorities of Transnistrian territory have pledged to respect some of the key international human rights documents. The Resolution # 226 of the Supreme Soviet 'On the relation of [Transnistria] to international treaties and other acts of human rights' from 22 September 1992 recognizes the following acts: UN Convention on the Prevention and Punishment of the Crime of Genocide,[101] the Universal Declaration of Human Rights (UDHR),[102] the International Covenant on

[96] UN Human Rights Committee, *General Comment No.29: States of Emergency (Article 4),* 31 August 2001, paras.13,16
[97] Ibid.
[98] De facto Constitution of Transnistria, supra at 92, art.10
[99] Ibid., art.57
[100] Ibid., art.58
[101] UN General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948
[102] UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III)

Civil and Political Rights (ICCPR) and its Protocols,[103] the International Covenant on Economic, Social and Cultural Rights (ICESCR),[104] the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)[105] and its Protocols.

Also, the Resolution No.579 of the Supreme Soviet of May 23, 2002 recognizes the provisions of the UN Convention on the Rights of the Child,[106] as well as the World Declaration on the Survival, Protection and Development of Children.[107]

Juvenile Justice Legislation and International Standards

There are number of international documents, both of binding and non-binding nature, which set international standards for observing the rights of the child in the administration of justice. The Convention on the Rights of the Child includes the provisions, establishing safeguards for the administration of juvenile justice in compliance with observing and protecting children's rights in its articles 37 and 40. The Committee on the Rights of the Child has also issued general comment, specifically dedicated to the issues of juvenile justice.[108] There are non-binding documents that set international standards for the administration of juvenile justice on different levels of the process: the United Nations Guidelines for the Prevention of Juvenile Delinquency (The *Riyadh Guidelines*),[109] the UN Rules for the Protection of Juveniles Deprived of their Liberty (The *Havana Rules*),[110] and the UN Standard Minimum Rules for the Administration of Juvenile Justice (The *Beijing Rules*).[111] Besides these, there are also Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment,[112] the UN Standard Minimum Rules for Non-Custodial Measures (The *Tokyo Rules*),[113] and the International Covenant on Civil and Political Rights (ICCPR).[114]

This chapter will attempt to provide the review on the compliance of Transnistrian *de facto* legislation with international documents, which set the standards for the administration of juvenile justice.

The Committee on the Rights of the Child (hereinafter 'the Committee') emphasizes in its General Comment No.10 that 'Children differ from adults in their physical and psychological development, and their emotional and educational needs. Such differences constitute the basis for the lesser culpability of

[103] UN General Assembly, *International Covenant on Civil and Political Rights (ICCPR)*, 16 December 1966 and its optional protocols - *Optional Protocol to the ICCPR*, 19 December 1966 and *Second Optional Protocol to the ICCPR, Aiming at the Abolition of the Death Penalty*, 15 December 1989, A/RES/44/128
[104] UN General Assembly, *International Covenant on Economic, Social and Cultural Rights (ICESCR)*, 16 December 1966
[105] ECHR, supra at 37
[106] CRC, supra at 3
[107] United Nations, *The World Declaration on the Survival, Protection and Development of Children*, Agreed to at the World Summit for Children on 30 September 1990
[108] CRC General Comment No.10, supra at 6, 25 April 2007
[109] UN General Assembly, *United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines): resolution/adopted by the General Assembly*, 14 December 1990, A/RES/45/112
[110] The Havana Rules, supra at 4
[111] UN General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)*, 29 November 1985, A/RES/40/33
[112] UN Body of Principles, supra at 9
[113] UN General Assembly, United Nations Standard Minimum Rules for Non-Custodial Measures (The Tokyo Rules), 14 December 1990
[114] ICCPR, supra at 103

children in conflict with the law. These and other differences are the reasons for a separate juvenile justice system and require a different treatment for children.'[115] The Committee also states that in order to have a comprehensive juvenile justice system it is required to establish specialized units for juveniles, including special courts, either within existing regional or district courts or as separate units.[116]

The Committee also sets core elements that should be included and dealt with by a comprehensive juvenile justice policy. These elements fall under the issues of prevention of juvenile delinquency, interventions without resorting to judicial proceedings, interventions in the context of judicial proceedings, the minimum age of criminal responsibility, the guarantees for a fair trial, deprivation of liberty, including pre-trial detention and post-trial incarceration, all of which shall be implemented through the leading principles of the juvenile justice, such as the non-discrimination, best interests of the child, the right to life, survival and development, the right to be heard, the treatment consistent with child's dignity and worth.

There is no separate juvenile justice system or policy in the breakaway Transnistrian region. There are no separate judges or special courts working on the issues involving juveniles. Juvenile justice is part of the overall criminal justice system.

There are, nevertheless, some elements of juvenile justice in the existing criminal justice system of the Transnistrian region. Peculiarities of criminal responsibility of juveniles are covered by section 5 of the *de facto* Criminal Code. This section of the Code establishes general principles of sentencing juveniles: penalties and restrictions upon sentencing, the conditions of release from punishment and imposition of compulsory educational measures, including placement in a special closed type educational institution; early conditional release of juveniles serving the sentence, special, half-reduced statute of limitations for exemption from the criminal liability and from serving the sentence; and reduced terms for cancellation of criminal record.

The Transnistrian *de facto* Supreme Soviet has also adopted the Law 'On the Rights of the Child',[117] which, *inter alia*, includes the protection of the rights of the child, such as the right to life, the right to security of person and protection against physical and mental violence, the right to protection of honour and dignity, the right to cognitive development, the right to education, the right to appeal to the competent authorities for the protection of their rights and interests, etc. Separately, the Law provides some of the procedures for the protection of children's rights in the administration of justice. In particular, Article 28 of the Law provides for the protection of the child's right to personal liberty. It states that the arrest or detention of a child shall be used only as a last resort and only in the cases provided by the law; also in case of arrest and detention children shall be separated from adults and convicted children; and that neither capital punishment nor life imprisonment shall be imposed for offences committed by persons below 18 years of age. These are in line with the Rules 13.1, 13.4, 17.2 and 19.1, respectively, of the Beijing Rules

Some of the safeguards for the protection of children's rights in the administration of justice and the procedures of the arrest and detention are established by these and other *de facto* laws of the Transnistrian region, reviewed in more detail below.

[115] CRC GC No.10, supra at 6, para.10
[116] Ibid., paras.92, 93
[117] http://zakon-pmr.com/DetailDoc.aspx?document=36338 [accessed on 1 July 2013]

Criminal Responsibility of Juveniles under the de facto Criminal Code

Minimum Age for Criminal Responsibility

According to the *de facto* Criminal Code minors/juveniles are persons who at the time of the offence reached the age of 14 (fourteen), but were under the age of 18 (eighteen).[118] Juveniles are subject to criminal responsibility if they have reached the age of 16 (sixteen) before the commission of the offence.[119]

According to paragraph 2 of Article 19 of the *de facto* Criminal Code, the persons between the ages of 14 to 16 are prosecuted for committing the following offences: Murder (Article 104); Intentional infliction of grievous bodily harm (Article 110); Intentional infliction of moderate bodily harm (Article 111); Kidnapping (Article 123); Rape (Article 128); Sexual assault (Article 129); Theft (Article 154); Robbery (Article 157); Robbery with Violence (Article 158); Extortion (paragraphs 2-3, Article 159); Misappropriation of another's property without theft (Embezzlement) (Article 162); Intentional destruction of or damage to property (Article 163); Terrorism (Article 203); Hostage (Article 204); Knowingly false information about a terrorist act (Article 205); Hooliganism (paragraphs 2-3 of Article 211); Vandalism (Article 212); Theft or extortion of weapons, ammunition, explosives and explosive devices (Article 224); Theft or extortion of narcotic drugs or psychotropic substances (Article 227); Bringing vehicles or means of communication unfit to use (Article 263).

Thus, the minimum age for criminal responsibility (MACR) is set to 16, but children between 14 and 16 are also held accountable for offences of serious nature.

The age range that Transnistrian *de facto* penal law sets is generally considered as 'commendable high level of age' by the Committee.[120] At the same time the Committee stresses that when the minimum age for criminal responsibility is held, 'children who commit an offence at an age below that minimum cannot be held responsible in a penal law procedure'.[121] The Committee emphasizes that having the system of two minimum ages might be confusing, leaves much to the discretion of the court or the judge and may result in discriminatory practices.[122]

Sentencing

According to the *de facto* Criminal Code, juveniles, who have committed offences, may be subject to punishment or to compulsory educational measures.[123]

The Code enlists the types of sanctions that can be imposed upon juveniles. The list includes: Fines; Deprivation of the right to engage in certain activities; Compulsory labour; Correctional work; Arrest and Detention; Imprisonment for a specified period of time.

[118] De facto Criminal Code of Transnistria, No.139-Z-III, 7 June 2002, last amended on 19 October 2011, art.86, para.1
[119] Ibid., art.19, para.1
[120] CRC GC No.10, supra at 6, para.30
[121] Ibid., para.31
[122] Ibid., para.30
[123] De facto Criminal Code, supra at 118, art.86, para.2

Paragraph 18.1 of the Beijing Rules states that a wide range of alternative measures shall be available for the competent body to allow for flexibility and avoid institutionalisation or imprisonment of a juvenile. The list of sanctions and measures of the Transnistrian *de facto* Criminal Code lacks the variety of measures to allow such flexibility to the judges or other relevant authority.

With regard to convicted juveniles, the law provides for special reduction in terms, after which the person may be conditionally released from serving the sentence, from restrictions and cancellation of criminal records can occur.[124]

This is in correspondence with Rule 28.1 of the Beijing Rules, which provides that 'conditional release from an institution shall be used by the appropriate authority to the greatest possible extent, and shall be granted at the earliest possible time'.[125] But it also stresses that those juveniles released conditionally, shall be provided assistance and supervision. The issue will be further discussed below.

Criminal Proceedings against Juveniles

Criminal proceedings against juveniles are carried out in a general manner established by the *de facto* Criminal Procedure Code of the Transnistrian Region (hereinafter 'the *de facto* CPC'). There are no investigating agencies, or specialized courts involved in the investigation, review and resolution of criminal cases in which juveniles are as suspects, accused (defendants) or victims. But there are some elements subject to provisions also stipulated by the *de facto* CPC.

Investigation of cases against juveniles

Particularities of preliminary investigation and investigation against juveniles

The special rules that apply to pre-trial investigations involving juveniles include the requirement of the preliminary investigation,[126] specificities of arrest and detention and selection of restraint measures,[127] the procedures of summoning and interrogation,[128] compulsory participation of the defence,[129] the possibility of termination of criminal proceedings in connection with the use of compulsory educational measures.[130]

- Period and Requirement of the Preliminary Investigation

In accordance with Article 107 of the *de facto* CPC a preliminary investigation is required in all cases involving offences committed by juveniles. The period of the preliminary investigation on such category of cases should not exceed fifteen days from the date of initiation of criminal proceedings.[131]

[124] Ibid., articles 91-94
[125] The Beijing Rules, supra at 111, rule 28.1
[126] De facto Criminal Procedure Code (CPC) of Transnistria, No.157-Z-III, 17 June 2002, last amended on 25 October 2011, art.107
[127] Ibid., articles 73 and 78
[128] Ibid., articles 128 and 132
[129] Ibid., art.43
[130] Ibid., articles 5 and 6
[131] Ibid., art.103

According to the Beijing Rules, the competent official shall consider the issue of release of the arrested or detained juvenile, without delay.[132] The competent official could be the judge, but also a police authority who has the power to release the arrested person.[133] Without delay means within the reasonable time period and fifteen days cannot be considered as without delay or immediate.

Second paragraph of Article 107 reflects a particular approach to juvenile suspects in criminal proceedings. Namely, the preliminary investigations on criminal cases involving crimes listed in the first part of article 107 and committed by juveniles are investigated by *de facto* organs of internal affairs. Articles listed in the second part of Article 107 are investigated by the Prosecutors office.[134]

The distribution of cases to these two organs is vague as offences do not fall under any specific categorisation. This may cause confusion and hence delays in the investigation process of cases involving juveniles.

- Detention and selection of preventive measures

The period of detention before the judicial decision about the charge cannot exceed 72 hours.[135]

However, the law does not provide specific regulation about the period of detention before the judicial decision specifically for a juvenile.

The *de facto* CPC provides that the notification of legal representatives about the detention of a juvenile shall be carried out within 12 hours from the moment of detention.[136]

This provision is not in line with international standards. The Beijing Rules provides that the parents, guardians and legal representatives shall be 'immediately' notified about the apprehension of a juvenile and if such an immediate notification is not possible then within the 'shortest time thereafter'.[137]

In contradiction to Article 104-2 of the *de facto* CPC, Article 78 provides that legal representatives of detained juveniles shall be informed about the detention without delay.

This provision is in line with international standards, namely paragraph 22 of the Havana Rules and Rule 10.1 of the Beijing Rules, providing that parents, guardians or closest relative of the juvenile concerned, shall be provided information about the detention, place, transfer or release of the juvenile, without delay.

- Selection of Preventive Measures (pre-trial detention)

[132] The Beijing Rules, supra at 111, rule 10.2
[133] Ibid., Commentary on rule 10.2
[134] De facto CPC, supra at 126, art.107
[135] Ibid., part I of art.6
[136] Ibid., art.104-2
[137] The Beijing Rules, supra at 111, rule 10.1

In each case, when deciding on measures of restraint, the possibility of returning the juvenile under the supervision of parents, guardians or officials of the specialized children's institutions, in which young person is located, should be discussed.[138] As preventive measures against juveniles the following can be applied: bail, bail out by administrations of children's institutions, and release under the supervision of parents, guardians, and care organisations. Application of non-custodial preventive measures does not rule out the possibility for juveniles to continue education and employment.

This provision is in line with international standards, namely Rule 13.2 of the Beijing Rules, Paragraph 17 of the Havana Rules, both of which provide for the replacement of pre-trial detention with alternatives, such as close supervision, placement with a family or in an educational setting or home.

A juvenile can only be subjected to preventive detention if suspected or accused of committing a grave or especially grave crime. In exceptional cases, this measure can be used against a juvenile who is suspected or accused of committing an offence of a moderate severity.[139] Detention as a preventive measure is also applied by judicial decision (order) at the request of the investigator (with the consent of the head of the investigative body). Juveniles subjected to detention shall be kept separately from adults and juvenile convicts.[140] However, the period of detention is common, regardless of the age of the accused.

Article 78 of the CPC is partly consistent with Article 37 paragraphs (b) and (c) of the Convention on the Rights of the Child, Rule 13.1 of the Beijing Rules, paragraph 17 of the Havana Rules. e.g. The Beijing Rules provides that detention pending trial shall be used only 'as a measure of last resort' and 'for the shortest possible period of time'. While the *de facto* CPC provides that detention should only be used in case of serious offences, it does not provide that the detention should be for the shortest possible period of time.

Legal representatives are entitled to participate in the court hearing for the selection of the preventive measure for their ward.[141]

This provision is in line with Rule 15.2 of the Beijing Rules, which provides that parents or legal representatives of the juvenile shall have the right to participate in the proceedings in the interest of the juvenile.

- Peculiarities of Detention of Juveniles

The international standards to protect detained juveniles are set by the CRC, the Havana Rules and the Beijing Rules.

In the Transnistrian region the procedures and conditions of detention, human rights safeguards and legitimate interests of the persons who are detained on suspicion of committing a crime, as well as persons suspected or accused of committing a crime for which the preventive detention was used are

[138] De facto CPC, supra at 126, art.73
[139] Ibid., part II of art.78
[140] Ibid., part XIV of art.78
[141] Ibid., art.78

regulated by the *de facto* Law 'On the Detention of Persons Suspected or Accused of Committing a Crime'.[142]

Article 31 of the present Law is dedicated to the peculiarities of juvenile detention.

Juvenile suspects and defendants are provided with improved living conditions and higher nutrition standards than adults.[143] Daily walks of juvenile suspects and defendants are set to at least two (2) hours per day. The juveniles shall have a possibility to sport activities and exercise during their walks. If conditions allow juvenile suspects and defendants shall be provided with movie screenings, establishments shall be furnished with facilities for sports and other leisure activities, as well as outdoor sports fields.

This is in compliance with Rule 47 of the Havana Rules, providing that 'every juvenile should have the right to a suitable amount of time for daily free exercise, in the open air whenever weather permits [...]. Adequate space, installations and equipment should be provided for these activities. Every juvenile should have additional time for daily leisure activities.'

Juvenile suspects and defendants are allowed to purchase textbooks and school supplies, as well as receive them through parcels within the stipulated norms. Juvenile suspects and defendants in pre-trial detention shall be provided with general secondary education and cultural and educational activities.

This provision corresponds to subparagraph "b" of paragraph 18 (juveniles under arrest or awaiting trial) of the Havana Rules, according to which 'juveniles should be provided, where possible, with opportunities to pursue work, with remuneration, and continue education or training, but should not be required to do so'.

- Participation of the Defender / Legal Counsel

The participation of the defender during the interrogation, preliminary investigation and during the trial of a juvenile is required.[144] In criminal proceedings of cases involving juveniles, defender is allowed from the moment of the institution of criminal proceedings. Protocol of interrogation of a juvenile (from 14 to 16 years of age) without the participation of his or her defender is treated as inadmissible evidence. Head of the legal aid or the Bar association shall allocate a lawyer to defend the suspect or the accused within twenty-four hours from the time of receiving the notification.

This is in compliance with paragraph 15 of the Beijing Rules and subparagraph "a" of paragraph 18 of the Havana Rules, providing that juveniles shall have a right to a legal counsel and shall be enabled to apply for free legal aid, where there is provision for such aid in the legislation.

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[142] De facto Law on the Detention of Persons Suspected or Accused of Committing a Crime, No.130-Z-IV, 16 July 2010

[143] Established by the order #669 of the *de facto* President of Transnistria from 17 September 2009 'On Approval of Rules of Provision of Nutrition and Basic Necessities to Persons Detained in the [State] Penitentiary Service of the Ministry of Justice of [Transnistria]', available at: http://justice.idknet.com/Web.nsf/952ef148a704e588c22574d5002acf1b/5f25ea58a648a0eec2257639004f58e6!OpenDocument&ExpandSection=2.1.26#_Section2.1.6 and http://justice.idknet.com/Web.nsf/952ef148a704e588c22574d5002acf1b/5f25ea58a648a0eec2257639004f58e6/$FILE/669.pdf [accessed on 3 July 2013]

[144] De facto CPC, supra at 126, II part of art.43

- Participation of a Pedagogue in the Interrogation

One of the procedural safeguards to protect the rights and legitimate interests of the juvenile is the participation of a pedagogue in the interrogation process.

During the interrogation of the accused, which has not attained the age of sixteen years, the participation of the pedagogue is required. The participation of the pedagogue is allowed during the interrogation of a minor over sixteen (16) years of age if s/he is recognized as mentally retarded (the decision is the discretion of the investigator, depending on the characteristics of the accused). The pedagogue participating in the interrogation may, with the permission of the investigator, ask questions to the accused. At the end of the interrogation the participating pedagogue has the right to examine the protocol/record of interrogation and make written comments about the correctness and completeness of the records. Prior to the interrogation of a juvenile investigator shall explain the rights to the pedagogue, and it shall be included in the protocol/record.

The investigator is obliged to interrogate the accused immediately after s/he is charged. Interrogation of the accused, except in cases of urgency, is not permitted at night.[145]

The *de facto* legislation of Transnistria does not determine the limit to the number or duration of interrogations of juveniles. Besides, while this provision regulates the method of the interrogation stating that two defendants of the same case shall be interrogated separately and the investigator shall take measures to ensure that there is no communication between them, it does not provide that detained persons shall not be subject to violence or inhuman or degrading treatment while being interrogated, which is one of the most basic principles for the protection of the rights of the detained individuals and is regulated through different binding and non-binding international documents, including the UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment.[146] The *de facto* CPC does say, though, that evidence obtained through violent treatment shall be deemed inadmissible.

- The possibility of termination of the criminal case with the use of compulsory educational measures

De facto CPC provides for the termination of the criminal case at the stage of preliminary investigation with the application of compulsory educational measures.[147]

So, if in the course of preliminary investigation of the minor or moderate criminal offence it is determined that it is committed by a juvenile accused for **the first time,** and that the **correction of the juvenile defendant can be achieved through the use of compulsory educational measures**, the investigator is entitled to order the termination of the criminal case and initiate an application before the court for using compulsory educational measures on the juvenile (multiple compulsory educational measures can be assigned simultaneously), which are provided by paragraph 2 of Article 89 of the *de facto* CPC (e.g. warning, transfer of the supervision under parents or persons *in loco parentis*, or a specialized body, an obligation to redress the harm caused by the offence, restriction of leisure time and

[145] Ibid., art.132
[146] UN Body of Principles, supra at 9, principle 21.2
[147] De facto CPC, supra at 126, Articles 5 and 6

establishment of special requirements to the behaviour of the minor), which together with the criminal case is referred to the court.

These provisions of the *de facto* CPC are in compliance with Rule 11 of the Beijing Rules, which provides for the measures without resorting to formal judicial proceedings. The Beijing Rules states that whenever appropriate, consideration should be given to 'dealing with juvenile offenders without resorting to formal trial by the competent authority'.[148] Referral to community or other services shall be carried out only with consent of the juvenile, or her/his parents or guardians and shall be reviewed by a competent authority. Some suggestions for the community programmes and alternatives are also given, such as temporary supervision or guidance, compensation of victims or restitution.[149]

- The Indictment or the Discontinuation of the Criminal Case

After undertaking necessary investigations a decision is being made about the discontinuation of the criminal case or the indictment. Decision of the indictment shall be made by the investigator if there is sufficient evidence to indicate that the juvenile has committed the offence.[150]

The preliminary investigation ends:
- with referring the case to the court with an indictment;
- with referring the case to the court with a decision of applying the compulsory medical measures;
- with the termination of the criminal case.

If during the investigation some facts are determined that require the use of measures of community-based disciplinary or administrative sanctions, the investigator, closes the criminal case, and refers the materials or the dismissed case against the juvenile to the Commission for the Protection of Minors.[151]

Rule 6 of the Beijing Rules provides for the scope of discretion of different organs. In order to consider the special needs of juveniles and the variety of measures the 'appropriate scope for discretion shall be allowed [...] at the different levels of juvenile justice administration, including investigation'.[152] However, it shall be ensured that those exercising discretion are specially trained and qualified to exercise it.[153] The Rules also provides that the competent authority shall have the power to discontinue the proceedings at any time.[154]

Judicial Proceedings for Juveniles

Peculiarities of the Juvenile Court Hearings

Judicial proceedings in cases involving juveniles are carried out in general manner with some procedural peculiarities. These peculiarities include:

[148] The Beijing Rules, supra at 111, rule 11.1
[149] Ibid., rule 11.4
[150] De facto CPC, supra at 126, art.126
[151] Ibid., part VI of art.186
[152] The Beijing Rules, supra at 111, rule 6.1
[153] Ibid., rule 6.3
[154] Ibid., rule 17.4

- A requirement for preliminary session in cases of offences committed by juveniles.[155]

Decision about the prosecution or release of a juvenile defendant shall be made by a judge or the court during the preliminary session within 10 days from the receipt of the case to the court.[156] One of the circumstances, subject to clarification during a preliminary session about bringing the juvenile to prosecution, is to establish the existence of the circumstances leading to termination of the case.[157]

This is in compliance with the Beijing Rules setting that the power to discontinue the proceedings at any time shall be given to competent authorities.[158]

The legal representative of the juvenile defendant participates in court and there is a possibility of his or her exclusion from the proceedings, if it is contrary to the interests of a juvenile, as well as participation of representatives of the organisations in which the juvenile studied or worked, the Commission for the Protection of Minors, parents or guardians of the defendant, and representatives of other organisations.[159]

This is in compliance with the Beijing Rules, which provides that 'the parents or the guardian shall be entitled to participate in the proceedings and may be required [...] to attend them in the interest of the juvenile', but they may also be denied participation if such exclusion is necessary in the interest of the juvenile.[160]

According to Article 216 of the *de facto* CPC, the participation of the juvenile defendant in the court hearing of first instance is required. However, there is also a possibility of removal of the juvenile defendant from the courtroom at the time of examination of circumstances, if the court decides that it may have negative effect on the juvenile.[161]

It is in compliance with one of the guarantees of the fair trial, which requires that the child alleged as or accused of having infringed the penal law is able to participate in the judicial proceedings effectively.[162] Rule 14 of the Beijing Rules also provides that the proceedings shall be contributing to the best interests of the child and 'should be conducted in an atmosphere of understanding to allow the child to participate and to express himself/herself freely'.[163] However, it should be noted that in order for a child to participate effectively in the proceedings it is important that s/he is informed not only about the charges, but also of the juvenile justice process as such as well as possible measures and outcomes of the process.[164]

[155] De facto CPC, supra at 126, art.196
[156] Ibid., art.196
[157] Ibid., art.197, para.3
[158] The Beijing Ruled, supra at 111, rule 17.4
[159] De facto CPC, supra at 126, articles 200 and 237
[160] The Beijing Rules, supra at 111, rule 15.2
[161] De facto CPC, supra at 126, art.216
[162] CRC, supra at 3, art.40(2)(b)(iv) and CRC GC No.10, supra at 6, para.46
[163]The Beijing Rules, supra at 111, rule 14.2
[164] CRC GC No.10, para.44

- The *de facto* law provides for a possibility of diverting the juvenile from punishment with the imposition of compulsory educational measures, including placing the juvenile in a special closed type educational institution.[165] Thus, when the court receives a criminal case with the indictment, it has the right to terminate the case if the offence is of **minor or moderate severity,** and is committed by a juvenile accused for the **first time**, and if the **correction of the juvenile defendant can be achieved through the use of compulsory educational measures**.[166]

This possibility to reduce the negative effects of the administration of justice on juveniles is set out in Rule 11.2 of the Beijing Rules: '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'.[167]

If during the review of the criminal case of a juvenile with offences of moderate or serious severity, excluding the offences referred to in paragraph four of Article 91 of the *de facto* Criminal Code,[168] it is found that placing a juvenile offender in a special closed type educational institution under the management of educational organs or in a special closed type educational institution with a special legal status is sufficient then the court convicts the juvenile, releases him or her from punishment and sends the juvenile to the educational institution for a period prior to the adulthood, but not more than 3 (three) years.[169] Juveniles who have committed offences referred to in paragraph four of Article 91 of the *de facto* Criminal Code, do not qualify for the release from punishment in the order specified in paragraph 2 of Article 91 of the *de facto* Criminal Code.[170]

Rule 17 of the Beijing Rules sets principles which shall be followed by the competent authority when deciding on the case. It provides that the decision shall always be in proportion to the circumstances and the severity of the offence, but also to the circumstances and the needs of the juvenile as well as the needs of the society.[171] The utmost principle and the guiding factor while deciding the case shall always be the well-being of the juvenile.[172] The deprivation of liberty shall be used only 'after careful consideration' and shall be 'limited to the possible minimum', it should only be imposed if the offence was of a serious gravity involving violence, but even in this case only if there are no other appropriate

[165] De facto CPC, articles 5, 6 and 275
[166] De facto CPC, articles 5 and 6 and de facto Criminal Code, supra at118, Articles 89 and 91
[167] The Beijing Rules, rule 11.2
[168] These are the offences committed under Article 104 (murder), parts two, three and four of Article 110 (intentional infliction of grievous bodily harm), the second part of Article 114 (torment), the third part of Article 119 (HIV transmission), Article 123 (kidnapping), Article 123-1 (human trafficking), part three of Article 124 (unlawful deprivation of liberty), parts two and three of Article 128 (rape), parts two and three of Article 129 (sexual assault), part three of Article 154 (theft), parts two and three of Article 157 (robbery), parts two and three of Article 158 (robbery with violence), parts two and three of Article 159 (extortion), Article 203 (terrorism), Article 204 (hostage), Article 206 (organization of an illegal armed formation or participation in it), part two of Article 208 (organization of criminal community (criminal organization), or participate in it), Article 209 (hijacking air or water or railway carriers), parts two and three of Article 221 (unlawful manufacturing of weapons), parts two, three and four of Article 224 (theft or extortion of weapons, ammunition, explosives and explosive devices), Article 226-1 (illegal production, sale or shipment of narcotic drugs or psychotropic substances or their analogues), Article 227 (theft or extortion of narcotic drugs, psychotropic substances or their analogues) of the *de facto* Criminal Code
[169] De facto Criminal Code, supra at 118, art.91, para.2
[170] Ibid., Art.91, para.4
[171] The Beijing Rules, supra at 111, rule 17
[172] Ibid., rule 17d

measures.[173] Therefore above mentioned provisions are only partly in line with international standards as they rule out the possibility for this measure to be applied on juvenile offenders who have infringed certain provisions of the penal law.

Termination of criminal proceedings on these grounds shall not be made if the juvenile defendant or his/her legal representative objects to this. The **consent** of the juvenile or his legal representative to the termination of criminal proceedings is mandatory.

This is in accordance with Rule 11.3 of the Beijing Rules.

In the case of systematic failure of the juvenile to meet the requirements under the mandatory educational measure, the court at the request of the specialized organ revokes the decision and sends the materials of the criminal case to the head of the investigative body to resume the terminated criminal proceedings.[174]

- Special additional principles to be considered while sentencing juveniles

When sentencing juveniles, the living and upbringing conditions, the level of mental development and other personal characteristics of the juvenile, as well as the influence of older persons on him/her is taken into consideration, in addition to the general principles of sentencing. The age of the juvenile as a mitigating circumstance is taken into account in conjunction with the other mitigating and aggravating circumstances.[175] In accordance with Article 53 of the *de facto* CPC in juvenile judicial proceedings the circumstances shall be subject to proof, which cannot be ascertained without proper judicial investigation. If appropriate measures to ascertain all the conditions of the case are not taken, the application of a special order of judicial decision in the criminal case of an offence committed by a juvenile is inadmissible.[176] In order to obtain the background information about the juvenile in accordance with Article 200 of the *de facto* CPC the parents or legal representatives of the juvenile defendant shall be called into the court hearing. If necessary, the court may call at the hearing the representatives of the organisations in which the juvenile has studied or worked, guardians or trustees of the defendant, as well as representatives of other organisations.

This is in compliance with the Rule 16 of the Beijing Rules, which provides that in all cases, with the exception of minor cases, before the competent authority makes a final ruling 'the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated' in order 'to facilitate judicious adjudication of the case'.[177] According to the Beijing Rules social inquiry of juvenile defendant and report about the findings to the judicial investigation are an indispensable aid to the administration of juvenile justice. Relevant background facts about the juvenile could include social and family background, school life, educational experiences, etc. For the purpose of obtaining information special social services, probation officers or personnel attached to the court should be available.[178]

[173] Ibid., rule 17c
[174] De facto CPC, supra at 126, art.5-6
[175] De facto Criminal Code, supra at 118, art.88
[176] Decision #9 of the Supreme Court of the Transnistrian Region on 22 December 2004
[177] The Beijing Rules, supra at 111, rule 16.1
[178] Ibid., rules 16, Commentary

Period for Examination of Criminal Cases in Court

Special terms for examination of criminal cases involving juveniles are not provided by the *de facto* legislation of TN.

In order to prevent violations of procedural safeguards and the right to fair trial provided by Article 46 of the *de facto* Constitution of TN, to avoid the red tape and delays in judicial proceedings, number of measures have been adopted by the Plenum of the Supreme Court of the Transnistrian region through a Resolution,[179] which promotes the review of criminal cases by courts in quality and timely manner, that is aimed to reduce the time for resolving the criminal cases, without undue delay and in strict accordance with the rules of criminal procedure.

According to rule 20.1 of the Beijing Rules 'each case shall from the outset be handled expeditiously, without any unnecessary delay'.

Alternative Methods for Resolving Criminal Cases/Disputes

Recommendations for the use of alternative methods of resolving criminal disputes are reflected in the documents of international character. The Committee of Ministers of the Council of Europe in its Recommendation No.R(87)18[180] not only endorsed the idea of an out of court settlement of 'the criminal disputes', but also suggested its specific model based on the measures that have already appeared at that time in many countries.

On 15 September 1999, the Committee of Ministers of the Council of Europe dedicated a recommendation specifically to the use of mediation in criminal proceedings – one of the newest forms of 'alternative' methods to respond to crime. The Convention on the Rights of the Child and its corresponding Committee provide that to develop a comprehensive juvenile justice policy one of its core elements should be promoting measures to deal with children in conflict with the law without resorting to judicial proceedings.[181] Recommendations regarding dealing with juvenile offenders without resorting to formal trial are also set out in the Beijing Rules.[182]

The concept of the alternative methods of resolving a criminal case is reflected in the *de facto* legislation of the Transnistrian region. The Transnistrian version of the alternatives to prosecution is the exemption from criminal liability due to reconciliation with the victim(s).[183]

In order to reduce the level of recidivism, and protect the children's rights, who due to their age are not always able to adequately assess the committed socially dangerous acts, the Law 'on amendments to the

[179] Resolution #10 adopted on 30 November 2009 by the Plenum of the Supreme Court of the Transnistrian Region
[180] The Council of Europe, Committee of Ministers, *Recommendation No.R(87) 18 of the Committee of Ministers to Member States Concerning the Simplification of Criminal Justice*, 17 September 1987, Available at https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=608011&SecMode=1&DocId=694270&Usage=2 [accessed on 4 July 2013]
[181] CRC, supra at 3, art.40(3) and CRC GC No.10, supra at 6, paras.24-27
[182] The Beijing Rules, supra at 111, rule 11
[183] De facto Criminal Code, supra at 118, art.75; and de facto CPC, supra at 126, art.5-7

[*de facto*] Criminal Code and on amendments and supplements to the [*de facto*] Criminal Procedure Code'[184] was designed and adopted on 14 April 2010. The provisions of this Law allows the possibility for juveniles, who have committed an offence which is not associated with causing death or grievous bodily harm and which carries a sentence of up to seven years in imprisonment, to a procedure of the reconciliation with the victims.

The exempt of a juvenile offender from criminal liability due to reconciliation with the victim is possible under the following conditions:
a) the defendant reconciles with the victim;
b) the defendant makes reparations of the harm to the victim;
c) the defendant reimburses legal costs (expenses of litigation).[185]

It should be noted that the exemption from criminal liability due to reconciliation with the victims is possible if all three conditions are met.

Reconciliation is a voluntary procedure. Termination of criminal proceedings is not allowed if the victim and/or the accused (defendant) oppose it. In such a case, a criminal case is reviewed in a general way.

One of the drawbacks of the Transnistrian alternatives to prosecution under Article 75 of the Criminal Code and Article 5-7 of the *de facto* CPC, is the absence of the law, and hence the practice, of mediation (measures to assist the parties of the legal dispute in reconciliation, reparation, etc.).

- Exemption from criminal liability due to active repentance can also be considered as an alternative method of resolving the dispute.

In accordance with Article 74 of the *de facto* Criminal Code and Article 5-8 of the *de facto* CPC the court or the investigator with the consent of the head of the investigative body, can terminate criminal proceedings against a person who has committed a minor offence for the first time if, after the commission of the offence voluntarily pled guilty, contributed to solving the offence, repaired the damage caused, or otherwise made amends for the harm caused by the offence.

The victim of the criminal case is notified about the termination of the criminal proceedings, which within five days has the right to appeal the court decision or judgment of the investigator, the body of inquiry, respectively, in the higher court, the head of the investigative body and/or the prosecutor.[186]

Termination of criminal proceedings is also not permitted if the person, who has committed an offence, is against that. In this case, the investigation is carried out in the general manner.

Another alternative to criminal sentencing of juveniles is the use of compulsory (mandatory) educational measures, which has already been discussed above.

[184] Law No.48-ZI-IV, the Russian version of the document is available at: http://president.gospmr.ru/ru/news/zakon-pmr-no-48-zi-iv-o-vnesenii-izmeneniya-v-ugolovnyy-kodeks-pridnestrovskoy-moldavskoy [accessed on 4 July 2013]
[185] Regulations for the expenses for litigation is provided in de facto CPC, supra at 126, art.86
[186] De facto CPC, supra at 126, art.5-8

The special role for the exemption from criminal liability in connection with the active repentance and the reconciliation of the parties is emphasized by the Supreme Court of the Transnistrian region. For example, in paragraph 31 of the Resolution #9 of the Plenum of the Supreme Court from 22 December 2004 'on the court verdict,'[187] the attention of the courts is drawn to the need to consider the possibility of the application of the grounds provided for in Articles 74 and 75 (exemption of juveniles from criminal liability in connection with the active repentance and in connection with the reconciliation with the victim, respectively) for the exemption of juveniles from criminal liability.

Prevention

The Committee on the Rights of the Child (CRC) points out that a juvenile justice policy without a set of measures aimed at preventing juvenile delinquency suffers from serious shortcomings.[188] In order to have comprehensive juvenile justice policy, the Committee recommends full integration of the UN Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines).[189]

The Riyadh Guidelines state that the main focus of any preventive programme should be the well-being of young persons from the early childhood.[190]

The Riyadh Guidelines provides guiding principles and procedures for the implementation of prevention programmes on three – primary, secondary and tertiary – levels. Primary prevention programmes are those focused on general population of children and include all sorts of measures and services to prevent children from coming into conflict with the law.[191] Secondary prevention programmes target children at risk of getting involved in delinquent behaviour. These are usually children who live in deprived neighbourhoods, have bad academic performance or attendance, may be subjected to domestic violence, are from families with poor social background, etc.[192] Tertiary prevention of delinquency deals with the juvenile justice system directly, as it is aimed at preventing re-offending by children already in conflict with the law.[193]

According to the Riyadh Guidelines, in order for the prevention programmes to be effective they should take account of the causes of the delinquent behaviour and the needs of the child and address these causes and needs in line with international standards and norms. The Guidelines also suggest that the programmes should be 'periodically monitored, evaluated and adjusted accordingly'.[194]

Many studies show that most successful programmes are primary prevention programmes that prevent children from becoming engaged in delinquent behaviours from the beginning.[195] It is very crucial and makes more sense to develop and implement primary and secondary prevention programmes as part of

[187] The Russian version of the document can be downloaded from here: http://supcourtpmr.org/akti/doc_details/58--9-2004---.html [accessed on 4 July 2013]
[188] CRC GC No.10, supra at 6, para.17
[189] Ibid.,
[190] The Riyadh Guidelines, supra at 109, para.4
[191] Peter Greenwood, *Prevention and Intervention Programs for Juvenile Offenders*, The Future of Children, Vol.18 / No.2 / Fall 2008, p.193
[192] Ibid.
[193] Carolyn Hamilton, supra at 7, p.11
[194] The Riyadh Guidelines, supra at 109, para.48
[195] Peter Greenwood, supra at 191, p.185

public protection and safety,[196] nonetheless it is equally important to address those children who have already come in contact with the juvenile justice system, to make sure that this will not happen again.

Thus it is crucial to have measures designed to consider the needs of children and address the causes of delinquency. Punitive prevention programmes should not be used as they show no efficiency and may even provoke subsequent delinquent behaviour.[197] It is the community-based rehabilitative programmes that have proven to be most effective, as they focus on rehabilitation and reintegration of juveniles into society and are usually carried out with active participation of civil society and the community as a whole.

In Transnistrian region, at present the prevention of juvenile delinquency is regulated by the *de facto* Law 'On Principles of Prevention of Child Neglect and Juvenile Delinquency'.[198]

According to the Law, agencies responsible for the prevention of juvenile delinquency are: The Commission for Protection of Minors; Organs for the social protection of the population; Education authorities; Child Welfare (organs for custody and guardianship); Youth Policy organs; Healthcare authorities; The employment services; Organs for internal affairs.[199]

The main objectives and principles for action for the prevention of child neglect and juvenile delinquency – to prevent neglect, homelessness, crime and anti-social activities of juveniles; to identify and eliminate the causes and conditions leading to it; to protect the rights and legitimate interests of children; the socio-pedagogical rehabilitation of juveniles at risk; to identify and address cases involving juveniles in the commission of offence and anti-social activities – shall be based on the principles of the rule of law, democracy, humane treatment of children, family support and interaction with children in conflict with the law based on individual approach in a confidential manner.

The Law also provides that the *de facto* government of Transnistria shall support local governments and NGOs to prevent child neglect and juvenile delinquency, as well as hold accountable the officials and citizens for violation of the rights and legitimate interests of children.[200]
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The Law also lists the rights and freedoms and procedural safeguards of children, their parents and legal representatives in respect of which individual preventive work is carried out and states that these rights and freedoms are guaranteed by the *de facto* Constitution and international treaties.[201] The list also includes the rights of those held in the institution of prevention of child neglect and juvenile delinquency, such as the right to notify parents or legal representatives of their entrance to the institution, to appeal against the decisions taken by the organs and officials of these institutions to the higher bodies of the system or to the prosecution or the court, the right to humane and non-degrading treatment, right to communication with family members through phone calls and visits, right to receive

[196] Carolyn Hamilton, supra at 7, p.12
[197] Robert Agnew, supra at 5, p.405
[198] The de facto Law on Principles of the Prevention of Child Neglect and Juvenile Delinquency, No.665-Z-III, last amended on 7 August 2006, http://supcourtpmr.org/akti/doc_download/13---q-------q.html [accessed on 1 July 2013]
[199] Ibid., art.4
[200] Ibid., art.2
[201] Ibid., art.8

parcels, packages, sending and receiving unlimited number of letters, right to get free food, clothing, shoes and other items in accordance with the set standards and norms.[202]

While the Law seems to incorporate the most principles provided by the Riyadh Guidelines and to be in line with international standards for the prevention of juvenile delinquency, the attention of the Transnistrian *de facto* authorities is more concentrated on the tertiary prevention of juvenile delinquency. Besides, in practice there are very few preventive programmes and measures developed. Regrettably, the approach of these preventive measures is generally punitive, focusing more on correctional measures than the use of community based measures and alternative measures to detention or imprisonment aiming at re-socialisation and rehabilitation of children in conflict with the law. The practice of preventing juvenile delinquency in the Region will be further reviewed in the relevant chapter below.

Special Closed Type Educational Institution

In accordance with paragraph 4 of Article 16 of the *de facto* Law 'On Principles of Prevention of Child Neglect and Juvenile Delinquency' children between the ages of 11 (eleven) and 18 (eighteen) in need of special educational conditions or training, who require special pedagogical approach can be placed in the special closed type educational institution, if they: a) are not subject to criminal liability in connection with the fact that at the time of committing the offence have not reached the minimum age of criminal responsibility; b) have reached the age of criminal responsibility, and shall not be criminally responsible due to the fact of lack of intellectual development that is not associated with a mental disorder at the time of the commission of an offence are not able to fully realize the nature and social danger of his actions (inaction) or to control them; c) are convicted for an offence of a minor, moderate, or serious severity, and the court has made a decision for the exemption from punishment in accordance with paragraph 2 of Article 91 of the *de facto* CPC (as described earlier);

According to paragraph 27 of the Decree No.677 of the *de facto* President[203] closed institution must have: a complex of residential and educational facilities for the children, the facility for the pedagogical, administrative and maintenance staff, laundry facilities, catering department, club, sports ground, training and experimental area, training workshop and other facilities necessary for the achievement of objectives, sleeping quarters, designed for 12-14 people, with sanitary facilities with separate cabins in accordance with established norms, means of transportation, including the transport of personnel.

The internal rules of the closed type institution regulates the wake-up and bed times, time for meals, group classes, workshops, walks, events, free time.

According to paragraph 41 of the above-mentioned Decree the pupils contained in closed institutions, are entitled to the rights and freedoms guaranteed by the *de facto* Constitution and international treaties, the Law 'On Prevention of Child Neglect and Juvenile Delinquency' and other *de facto* normative legal acts of the Transnistrian region.

[202] Ibid.
[203] Decree No.677 of the *de facto* President 'On approval of the Standard Provisions for Special Closed Type Educational Institutions', 23 November 2006 (SAZ 06-48)

Parents (or persons in loco) of the pupils can visit them without any restrictions provided that the requirements of the Charter of the institution are met.

The order of release of pupils from the institution is regulated by section 8 of the above-mentioned Decree. The administration of the institution shall send the notification/notice to the Commission for the Protection of Minors in accordance with the place of residence or the place of present allocation of the minor, about the release of the minor from the institution no later than one month prior to the release. With the notice the Institution shall also send the characteristics of the minor and recommendations on the need for further individual preventive work and assistance in the employment and living conditions. The Commission for the Protection of Minors in conjunction with *de facto* Ministry of Internal Affairs shall verify the possibility for the minor to stay at the specified address indicated by the Institution, and take actions to arrange household, employment, or education for the minor, and notify the Institution about the results.

Pupils released from closed institutions have the right to continue their education in the educational institution where they studied earlier. They are accepted at the appropriate class based on the documents of their interim certification issued by the special closed type institution, without any additional knowledge test.

Institutional Framework for the Administration of Juvenile Justice

There is no single unified body in Transnistria that would have exclusive competence to deal with all the issues related to children at risk or in conflict with the law. The competence and hence the responsibilities are divided among different organs and their agencies.

De facto Authorities

Ministry of Internal Affairs

According to the *de facto* Constitution of Transnistria, law-enforcement bodies 'shall ensure personal security of individuals, protection of property, public order and crime prevention'.[204] Thus, the leading role in the prevention of juvenile delinquency, as well as crime investigation belongs to the bodies of the *de facto* Ministry of Internal Affairs and its agencies, which operate in the specialized units: District divisions on juvenile cases, municipal departments of internal affairs; Pre-trial detention centres for juvenile offenders (reception centres); Division of Criminal Militia of the Interior Organs.[205]

District Divisions on Juvenile Cases (Inspection for Minors), Municipal Departments of Internal Affairs

Article 22 of the Law 'On Principles of Prevention of Child Neglect and Juvenile Delinquency' regulates the functions of the district divisions and municipal departments of internal affairs. The activities of the inspectorate are regulated with the Instructions 'On the Organisation of the Work of the

[204] De facto Constitution, supra at 92, art.94, para.2
[205] De facto Law on Prevention, supra at 198, art.21

Inspection for Minors of Organs of Internal Affairs' approved through the Decree No.233 of the *de facto* President of Transnistria from 30 June 2002.[206]

The functions of the Inspection for Minors includes carrying out individual preventive work, identifying persons engaging juveniles in crime or antisocial or other illegal activities as well as parents or guardians evading from or improperly performing the responsibilities of upbringing, educating and maintaining their children or wards and in due course making proposals to apply measures provided by the *de facto* legislation, carrying out, within its competence, measures to identify juveniles on the wanted list, as well as juveniles in need of assistance and referring them to relevant organs or facilities for the prevention of child neglect and juvenile delinquency or other institutions, reviewing applications regarding administrative offences or socially dangerous activities of minors who have not yet reached the age of criminal responsibility, participating in the preparation of materials for considering the possibility of placing minors in special reception centres of the organs of internal affairs, participating in the measures for the prevention of child neglect and juvenile delinquency along with other units of the organs of internal affairs.[207]

The work of the enforcement bodies of the Inspection for Minors is based on the zonal principle. The size and boundaries of the territory or the service area served by inspectors and senior inspectors for minors are determined by the head of the organs of internal affairs, based on the operational environment and number of inspectors within the staff of the Inspection for Minors.[208] The preventive measures by the Inspection are carried out based on the plan approved by the head of the organs of internal affairs, which is elaborated based on analysis and objective evaluation of the operational situation.[209]

Pre-trial detention centres for juvenile offenders

Article 23 of the Law 'On Principles of Prevention of Child Neglect and Juvenile Delinquency' regulates the functions of the pre-trial detention centres for juvenile offenders.[210] The pre-trial detention centres should: Provide round the clock reception and temporary detention of juvenile offenders in order to protect their life, health and to prevent the re-offending; Carry out individual preventive activities with arrived juveniles, identify and other relevant authorities and institutions; Refer juveniles to special closed type educational institutions, and also within its competence carry out other measures on arranging the juveniles in these institutions.
persons involved in the commission of crimes and offences, establish the circumstances, causes and conditions conducive to their occurrence, and inform organs of the Interior
The grounds for placing juveniles in temporary detention centres of the Interior are: the judgment or decision/order of a judge; Order of the Head of district or municipal department of the Interior (up to 3 days); Order of the Head of district or municipal department of the Interior agreed with the prosecutor in the area of the detention centre (longer than 3 days).

[206] The Decree and the text of the Instruction is available in Russian language at: http://zakon-pmr.com/DetailDoc.aspx?document=60315 [accessed on 8 July 2013]
[207] Ibid., articles 1-7
[208] Ibid., art.10
[209] Ibid., art.19
[210] De facto Law on Prevention, supra at 198, art.23

Division of Criminal Militia of the Interior Organs

Within its competence the division of criminal militia: Detects, prevents, suppresses and solves the juvenile crime, and identifies those persons who are preparing, committing or have committed a crime; Identifies juvenile offenders, a group of juvenile offenders, as well as juveniles engaged in organized criminal groups or criminal communities, and takes measures to prevent them from committing crimes; Takes measures to counteract the participation of juveniles in illegal trafficking of narcotic drugs, psychotropic substances and their precursors; Identifies those persons who engage juveniles in the commission of crimes and anti-social activities or into a criminal group, and applies measures provided for by the law; Takes part in the search for juveniles, missing persons, juveniles who are hiding from the investigation or trial, juveniles evading punishment or compulsory educational measures, who have escaped from the penitentiary system or voluntarily left families or special closed type educational institutions or temporary detention centres for juvenile offenders.[211]

The Law 'on Militia', which defines the place, role and principles of the Militia, including the Criminal Militia, as well as the functions, responsibilities, rights and procedures for monitoring and oversight of its operations[212] states that: Militia as part of the *de facto* Ministry of Internal Affairs, provides protection of public order and public safety, protects legitimate interests of the residents and takes measures to prevent, investigate and solve the cases of offences, within the limits established by the Law.[213] The actions of the militia should be based on the principles of legality, humanism, social justice, respect for human rights, cooperation with the public, through ensuring transparency and compliance with professional confidence.[214] The Law prohibits the militia to carry out activities involving treatment degrading human dignity.[215] The work of the Militia should be open for public and the media.[216]

Investigation Committee

In connection with the interpretation of Article 6 of the *de facto* Constitution of Transnistria, which provides that 'the state power in [Transnistria] shall be exercised on the basis of its division into legislative, executive and judicial power' and that the bodies of these powers shall be independent,[217] and in order to reorganize the General Prosecutor's Office, the *de facto* President issued a Decree[218] about the creation of the Investigation Committee. The Decree was followed with the Law 'On the Investigation Committee', which establishes the structure, objectives, functions, duties and responsibilities, as well as powers of the Investigation Committee.[219]

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[211] Ibid., art.24
[212] The Law on Militia, CZMR, 18 July 1995, last amended 29 April 2013
[213] Ibid., art.2
[214] Ibid., art.3
[215] Ibid., art.5
[216] Ibid., art.6
[217] De facto Constitution, supra at 92, art.6
[218] Decree of the *de facto* President 'on approval of the provisions for the Investigation Committee', introduction; available in Russian at: (http://www.ulpmr.ru/pravo/show/jdQNwVS4oQLbxsFnAzYlLJ0g8n+xbVPudVZY= ; [accessed on 17 June 2013]
[219] Supreme Soviet (*de facto* Parliament), *Law on Investigation Committee*, No.205-Z-V, 16 October 2012

The Investigation Committee is the **executive body,** exercising its authority independently, which carries out the **preliminary investigation, the public prosecution in the courts** of the Transnistrian region and procedural control of the conduct of the preliminary investigation, inquiry, and operational-search activities.[220] Its activities shall be based, *inter alia*, 'on the principles of the rule of law, the interests of the state, protection of rights and legal interests of residents, transparency and openness to the extent that it does not conflict with the requirements of the legislation on the protection of the rights and legitimate interests of residents or other secrets protected by law'.[221]

The main objectives of the Investigation Committee are, *inter alia*, to carry out comprehensive, complete, objective and prompt investigation of crimes committed on the territory of the Transnistrian region, participate in the review process of all criminal cases by the courts, carry out the procedural arrangements for the control of the investigation and legality of decisions made by investigation bodies, develop proposals for the improvement of legal regulations in the field of law enforcement, cooperate with international counterparts in the field of pre-trial criminal proceedings.[222]

The Law also establishes the powers of the Investigation Committee and its staff, which among many others include the binding nature of the legal requirements of the Investigation Committee on all [*de facto*] authorities, organisations, officials and other members of the community.[223] Failure to comply with legal requirements of the Investigation Committee causes liability in accordance with the law.[224]

The Law as well as the Decree include a provision stating that if a person believes that the action (inaction) of the Investigation Committee infringes his/her rights and legitimate interests, has the right to appeal such actions (inaction) in the established order to the higher officials of the Investigation Committee, to the prosecutor exercising the general supervision, as well as to the court.[225]

The Law on the Prosecutor's Office establishes the structure, objectives, functions, duties and rights of the Office and its subordinate prosecutors.[226] The functions of the Office are to supervise the execution of laws by local and executive authorities, monitor and control all legal entities, public associations, officials and [residents of the Region], supervise the observance of [*de facto*] laws by carrying out operational-investigative activities, preliminary and pre-trial investigation, supervise the observance of the law in places of detention in pre-trial detention, the execution of penalties and other enforcement measures by the courts, supervise the conformity of judicial decisions with the law, investigate the acts with criminal elements, participate in the work of improving and clarifying the [*de* facto] law in the development of measures by [*de* facto] public authorities for the prevention of crimes and other offences, coordinate among law enforcement and regulatory agencies to detect and prevent violations.[227]

Article 7 of this Law establishes that demands of prosecutors within their authority are binding on all bodies, institutions, organisations, officials, individuals and shall be executed immediately or within a

[220] Ibid., art.1, para.1, General Provisions
[221] Ibid., art.5
[222] Ibid., articles 1(4) and 3
[223] Ibid., art.7
[224] Ibid.
[225] Ibid., art.11, and Decree, supra at 218, para.17
[226] De facto Constitutional Law on the Prosecutor's Office, No. 66-KZ-IV, 12 July 2006, last amended on 26 October 2012
[227] Ibid., art.4

reasonable time period, set by the Prosecutor's Office.[228] Demanded evidence, statistical or other types of information or documents shall be provided immediately and without charge.[229] Failure to comply with these regulations, without valid reasons, will entail legal liability.[230]

It is hard to see the clear division of duties and powers between the Investigation Committee and the General Prosecutor, even through analysing relevant *de facto* legislative norms. In fact, the *de facto* Constitution has not been amended in this regard and still provides that the Prosecutor's Office has the main duty and right to 'supervise the precise and uniform compliance of judicial organs, Ministries and Departments, local organs of power, organs of local self-government, enterprises, organisations and institutions, public associations, officials and citizens with the Constitution and laws.'[231] The *de facto* Constitution also establishes that the Prosecutor's Office shall conduct a preliminary investigation, and support the state prosecution in courts.[232]

Thomas Hammarberg refers to the Articles in the *de facto* Constitution regarding the role of the Prosecutor as being 'based on the concept of the powerful *"prokuratura"* in the former Soviet Union', which implies an institution having authority to oversee the functioning of practically all other institutions. As Mr Hammarberg noted in the report, while having so much power, the Prosecutor's Office is not required to 'provide any explanation about the substantive issues taken up or make the files available for inspection.'[233]

Mr Hammarberg also talks about the coinciding roles of another two institutions, the Prosecutor's Office and the Ombudsman's Office, of receiving and dealing with the complaints from the members of the public. As he was told, in order to avoid overlap and contradictions these two institutions coordinate with each other.

Ministry of Justice

The regulations of the work of the *de facto* Ministry of Justice of the Transnistrian territory are set according to the Decree #194 of the *de facto* President on 20 March, 2012.

The *de facto* Ministry of Justice is the executive body, which implements 'state' policy and carries out the 'state' control in the sphere of justice, management, archival of documents, and coordinates legislative activities of the executive bodies of state power and control. The Ministry of Justice is the law enforcement organ, which ensures the work of the penitentiary system and the execution of criminal penalties on the Transnistrian territory.[234]

The organs of the penal system were transferred from the subordination of the *de facto* Ministry of Internal Affairs to the *de facto* Ministry of Justice on 25 August 2000, in connection with the re-

[228] Ibid., art.7
[229] Ibid.
[230] Ibid.
[231] De facto Constitution, supra at 92, art.91
[232] Ibid.
[233] Hammarberg, supra at 2, p.16
[234] Regulations on the de facto Ministry of Justice (Annex #1 to the Order of the *de facto* President on Approval of Provisions, Structure and Staffing of the [*de facto*] Ministry of Justice), No.194, 20 March 2012, para.1

organisation of *de facto* government agencies and in order to improve the execution of criminal penalties.[235]

There are two so called State Unitary Enterprises, SUE 'UIN-2 Metallorukav' and SUE 'Ostrog' specially created under the system of the *de facto* Ministry of Justice for the operation of the penitentiary system and involvement of convicts into labour. A squad of special purpose is a subordinate unit of the Penitentiary Service of the *de facto* Ministry of Justice and reports directly to the *de facto* Minister of Justice.

The structure of the Penitentiary Service consists of the Central Administration of the Penitentiary Service of the *de facto* Ministry of Justice and the Penitentiary Establishments and Subdivisions.[236]

In July 1993, in order to create necessary conditions for juvenile convicts to serve the sentence and conduct educational activities among them, the Decree of the *de facto* President formed the Juvenile Educational Colony in Camenca district near the Aleksandrovka village on the basis of former boarding school of Aleksandrovka.[237]

In December 1994, new establishment of common and strict regime was formed in Tiraspol for convicted women.[238] Female juveniles are also placed in this establishment, as the Camenca educational colony is for male juveniles.

Health service in the penitentiary establishments is also under the subordination of the *de facto* Ministry of Justice. Doctors and nurses working in these establishments are seen as part of the prison staff.[239]

Commission for the Protection of Minors

The Commission for the Protection of Minors is a permanent, inter-agency coordinating body for the prevention of child neglect and juvenile delinquency.

The formation and functioning of the Commission for the Protection of Minors (hereafter the Commission) is defined and regulated through the Order No.457 of the de facto President of Transnistria, in accordance with Article 72 of the de facto Constitution and Act No.665-3-III 'On Principles of Prevention of Juvenile Delinquency'.

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235 http://justice.idknet.com/web.nsf/a79a37f93672cf45c22574d5002acf14/d720fbb53ff85f39c22574d700283441!OpenDocument&ExpandSection=2#_Section2 [accessed on 23 June 2013]

236 http://justice.idknet.com/web.nsf/a79a37f93672cf45c22574d5002acf14/d720fbb53ff85f39c22574d700283441!OpenDocument&ExpandSection=2#_Section2 [accessed on 23 June 2013]

237 http://justice.idknet.com/web.nsf/a79a37f93672cf45c22574d5002acf14/d720fbb53ff85f39c22574d700283441!OpenDocument&ExpandSection=2#_Section2 [accessed on 23 June 2013] [ibid]

238 http://justice.idknet.com/web.nsf/a79a37f93672cf45c22574d5002acf14/d720fbb53ff85f39c22574d700283441!OpenDocument&ExpandSection=2#_Section2 [accessed on 23 June 2013] [ibid]

239 Hammarberg, supra at 2, p. 22

The Commission operates on two levels – the district/city level (I level) and village level (II level). The Commission shall meet as necessary, but according to the regulations not less than twice per month.

The primary goal of the Commission is to protect the rights and legitimate interests of children in Transnistria by providing unified approach to address the problems in protecting their rights and interests, as well as preventing child neglect and juvenile delinquency.

The functions of the Commission are quite comprehensive and include, *inter alia*: Consideration of problems related to the protection of human rights and legitimate interests of children, their neglect and offences; Taking part in the development of programs for the protection of rights and legitimate interests of children, to improve their living conditions, healthcare, education, work and leisure, also to prevent child neglect, delinquency and anti-social activities; Taking part in the development of regulations on the protection of legitimate rights and interests of minors; Consideration of information and suggestions, provided by bodies and agencies for the prevention of child neglect and juvenile delinquency, on violations of the rights of children to education, work, leisure, housing and other rights, as well as shortcomings in the activities of agencies and institutions that impede the prevention of juvenile delinquency; Carrying out analysis of the activities of entities working on the prevention, providing methodological assistance and guidance to them, compiling and disseminating good practice.

Judiciary

The *de facto* Constitution establishes that the state power is exercised on the basis of its division between the legislative, executive and judicial branches. Organs of these branches, within their own competence, are independent of each other.[240]

The regulations of the judicial system are established by the provisions of the *de facto* Constitutional Law 'On the Judicial System' in Transnistria.[241] According to the Law the judicial power is exercised by the courts through constitutional, civil, administrative, criminal and arbitration proceedings.[242]

The court system in Transnistria consists of courts and magistrates.[243] The courts include the Constitutional Court, the Judiciary, which constitutes the system of courts of general jurisdiction: the Supreme Court, city (district) courts and magistrates, which are the judges of general jurisdiction, and the Court of Arbitration.[244]

The Law prohibits the creation of extraordinary courts and courts that are not envisaged by the *de facto* Constitution of Transnistria.[245] There is no separate judicial system, court or judges specializing in cases involving children.

[240] De facto Constitution, supra at 92, art.6
[241] The de facto Law On the Judicial System, No.180RP, 11 March 2002
[242] Ibid., art.1
[243] Ibid. art.5
[244] Ibid.
[245] Ibid. art.5, para.1

The Constitutional, Supreme and Arbitration courts are the highest judicial bodies of state power in Transnistria.[246] The Constitutional Court in Transnistria is a *de facto* judicial body of the constitutional control, which independently exercises judicial power through constitutional proceedings.[247] The Supreme Court is the highest judicial body for civil, criminal, administrative and other cases under the jurisdiction of the courts of general jurisdiction. The Supreme Court examines cases as a court of second instance, as the supervisory to cases with newly discovered facts, as well as the court of first instance in certain cases prescribed by law. The decisions of the Supreme Court are final and cannot be appealed. The Supreme Court is direct higher court against the city (district) courts.[248] The city (district) courts consider all cases, within their jurisdiction, except for the cases referred by law to the competence of other courts. City (district) courts are higher against the magistrates of the jurisdiction of the appropriate judicial district.[249] The Court of Arbitration is the highest judicial body for settling economic disputes and other cases within the competence of the law.[250] The magistrates review civil, administrative and criminal cases as a court of first instance, within its competence.[251]

The full independence of the courts and the judges is provided by the Law. The judges involved in the administration of justice are independent and observe only the provisions of the Constitution. The adoption of laws and other legal acts that revoke or restrict the independence of courts and judges is prohibited.[252] Any interference in the work of judges in the administration of justice is prohibited and punishable by law.[253]

Court decisions, legal orders, requests, etc have binding nature on any and all organs of state power, local self-governments, public officials, individuals and legal entities and are subject of strict execution across the Transnistrian territory.[254]

The Law also provides for the equal access to courts and states that everyone is guaranteed the right to judicial protection of his rights and freedoms, the right to appeal to a court about unlawful decisions and actions of public authorities, officials or public associations. The Law also guarantees the equality of all persons before the law and the courts. The courts shall not give preference to any bodies or individuals on the grounds of their social, sexual, racial, ethnic, linguistic or political affiliation or depending on their origin, property and official status, place of residence, place of birth, religion, convictions, membership of public associations, as well as other, not statutory, grounds.[255] The proceedings of the court are open to public, the closed hearing sessions are permitted only in cases prescribed by law, the court orders are announced publicly, and the court proceedings are based on the principle of the equality of arms.[256]

[246] The de facto Law On the Judicial System, No.180RP, 11 March 2002, art.6
[247] Ibid., art.24
[248] Ibid., art.25
[249] Ibid., art.26
[250] Ibid., art.27
[251] Ibid., art.28
[252] Ibid., art.7
[253] Ibid., art.8
[254] Ibid., art.9, para.1
[255] Ibid., articles 10-11
[256] Ibid., art.13

According to the Law the judges are persons with the authority to administer justice and perform duties in a professional manner.[257] All judges within the Transnistrian territory have the same status and differ only in their authority and competence. Features of the legal status of certain categories of judges, for example Constitutional Court judges, are determined by the [*de facto*] laws of Transnistria.[258] The judges have immunity.[259]

Ombudsman for Human Rights

The mandate of the Ombudsman for Human Rights was created for the Transnistrian region in accordance with Article 66 of the *de facto* Constitution of Transnistria[260] and the Law 'On Ombudsman for Human Rights'. The Law was adopted in 2005 and entered into force on 1 January 2006.[261] It establishes the legal and organisational framework of the Ombudsman in implementing the control functions of the Supreme Soviet[262] in the field of constitutional human rights and freedoms of the members of the public.

The Ombudsman is a permanent body of 'state' authority and shall exercise its powers as the sole organ of 'state' control in the sphere of constitutional rights and freedoms of individuals and residents of the Region. The regional Ombudsman operates independently from other *de facto* government agencies and officials. The activities of the Ombudsman complement existing means of protection of constitutional rights and freedoms, and does not replace or diminish the competence of *de facto* state bodies ensuring the protection and restoration of human rights and freedoms.[263] It is noteworthy that according to the regulations of the Law the powers of the Ombudsman cannot be terminated or restricted in case the powers of the Supreme Soviet (the *de facto* Parliament of Transnistria) are terminated or there is the state of emergency on the territory of Transnistrian region.[264]

According to the Law the main aim for the creation of the Ombudsman for Human Rights is to carry out the control over the observance of human rights and freedoms of individuals within the Transnistrian territory; in particular, the protection of the rights and freedoms enshrined in the *de facto* Constitution, as well as generally recognized principles and norms of international law and international treaties of Transnistria, compliance with and respect for human rights by *de facto* public authorities and local governments, prevention of violations of human rights and freedoms, bring the *de facto* legislation of Transnistria in conformity with its Constitution, improvement and further development of international cooperation for the protection of human rights and fundamental freedoms, prevention of all forms of discrimination, promotion of legal awareness and protection of confidential information.[265]

The Ombudsman has the right to the immediate reception by the *de facto* President of Transnistria, Chairman of the Supreme Soviet, Chairman of the Constitutional Court, Chairman of the Supreme

[257] The de facto Law On the Judicial System, No.180RP, 11 March 2002, art.17
[258] Ibid., art.18
[259] Ibid., art.22
[260] De facto Constitution, supra at 92, art.66 - For performing its controlling functions the Supreme Soviet [of Transnistria] shall be entitled to establish appropriate organs, whose establishment and order of functioning shall be provided by law.
[261] The de facto Constitutional Law 'on Ombudsman for Human Rights', No.657-KZ-III, 3 November 2005, Article 25
[262] The Supreme Soviet (Council) is the *de facto* Parliament of the Transnistrian region
[263] De facto Law on Ombudsman, supra at 261, art.3
[264] Ibid.
[265] Ibid., art.2

Court, Heads of local and executive bodies, etc.; Attend and speak at meetings of the Supreme Soviet, the *de facto* Cabinet of Ministers and other collective bodies and local self-government; Apply to the *de facto* Constitutional Court with inquiries; Have free access to the organs of *de facto* government, local governments, organisations; Request and receive documents (copies) required for consideration of the applications from the *de facto* state authorities. Visit the detention places, pre-trial detention facilities, prisons, institutions of compulsory treatment and re-education, psychiatric hospitals, interview people who are there, and get information about their conditions of detention; Attend the sessions of the courts of all levels, including in closed court sessions, subject to the consent of an entity on whose behalf the trial was adjourned; Examine the criminal and civil cases and cases on administrative violations, decisions (judgments) which entered into force;[266] Take measures, within its competence, in the case of a violation of human rights and freedoms of individuals and residents of the Region etc.[267]

During the first quarter of each year, the Ombudsman shall submit to the Supreme Soviet an annual report on the status of respect for and protection of the rights and freedoms of persons and the identified deficiencies in the legislation concerning the protection of the rights and freedoms of persons and.[268] Based on this annual report, the Supreme Soviet adopts a resolution. The report and the resolution are later published in official publications of the Transnistrian region, as well as the Ombudsman's Office.[269]

The Ombudsman for Human Rights has the immunity during the entire term of office. S/he cannot be subjected to criminal or administrative liability without the consent from the Supreme Soviet, except in cases of *in flagrante delicto*.[270]

Administration of Juvenile Justice in Practice

The following paragraph will describe the practice of administration of juvenile justice in the Region. The information contained in the paragraph is what could be derived from the meetings and interviews conducted with different stakeholders on both banks of the river Nistru/Dniestr. Limited information about the practice was also provided by the *de facto* Ministry of Justice (MoJ) through an e-mail reply. In the same e-mail it was stated that 'further research on the use of juvenile justice principles in Transnistria is not of practical interest.'[271]

Due to the limited access to information and due to lack of information from the accessible sources the paragraph cannot provide full picture of the situation in terms of juvenile justice in Transnistria. However, it will point out some of the issues that were addressed by number of various sources.

[266] The de facto Constitutional Law 'on Ombudsman for Human Rights', No.657-KZ-III, 3 November 2005, art.13
[267] Ibid., art.14
[268] Ibid., art.18
[269] Ibid.
[270] Ibid., art.21
[271] In an e-mail reply to the request for a meeting and information, 2 April 2013 'проведение дополнительных исследований в области использования принципов ювенальной юстиции в Приднестровье в настоящее время не представляет практического интереса'

As highlighted above, the *de facto* authorities of the Transnistrian region pledged to respect universally recognized principles and rules of international law, including the provisions of the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, etc.

As reviewed above there are some shortcomings in the law, but even with the existing provisions there would be no sense in having comprehensive system in line with international standards if they were not implemented in practice. The Committee on the Rights of the Child emphasized in its General Comment No.10 that in the administration of juvenile justice in practice the general principles, as well as fundamental principles of juvenile justice enshrined in articles 37 and 40 of the CRC have to be applied systematically.[272] These leading principles are: non-discrimination, best interests of the child, right to life, survival and development, right to be heard, treatment consistent with the promotion of the child's sense of dignity.

There is no separate system for juvenile justice in the Transnistrian breakaway region. It is part of the overall criminal justice system. As the *de facto* Ministry of Justice explained[273] relevant government authorities consider that it is not pertinent to replace the existing mechanism of prosecution and sentencing of juveniles at the current stage. This is due to the traditional value orientations and ethical standards that exist in the Transnistrian society. Same reason was specified by the Ombudsman of the Transnistrian region. According to Mr Kalko the Transnistrian society is not ready to accept separate juvenile justice system, as it is perceived as control and interference in their family lives.[274] As the civil society representatives pointed out there is a perception among the society that introducing separate and more comprehensive juvenile justice system will have negative consequences on the society. The civil society representatives explain that Russian TV companies in Transnistria, which air number of Finnish shows in which children are shown to be taken away from parents, due to smacking them or imposing strict methods of upbringing, have reverse influence and contribute to forming such opinions among Transnistrian residents. Nonetheless, the civil society representatives showed more concern about the approach of the judges and parliamentarians, who, as they pointed out, consider separate juvenile justice system to be a western concept and unacceptable and irrelevant for the Transnistrian reality. Strong non-acceptance is justified with the idea that creating separate laws for children would mean giving them more rights and restricting the rights of the parents.

Regional authorities do not plan any activities to raise public awareness about the need of the separate juvenile justice system and about its positive consequences on the public. Nor they have any discussions, action plans or strategies for the development of comprehensive juvenile justice system. Though the regional Ombudsman thinks that the civil education should be carried out to prepare the society through changing the public opinion towards the issue, he considers that this requires long time of preparation and cannot happen at once. Besides, Mr Kalko considers that authorities have enough of other more important problems to address, such as reaching the international recognition of Transnistrian independence. Mr Kalko believes that non-recognition of Transnistria as a State hinders its development. In addition, as the regional ombudsman pointed out, separate system will require separate normative legal base, specialized professionals, etc., which will require time and energy to elaborate.

[272] CRC GC No.10, supra at 6, para.5
[273] In an e-mail reply to the request for a meeting and information, 2 April 2013
[274] Meeting with the regional Ombudsman for Human Rights, Mr. Vasiliy Kalko, 18 April 2013

At the moment, juvenile justice is part of the overall justice system of the Transnistrian region, with some peculiarities in administrative as well as criminal justice cases. Mr Kalko pointed out that cases are reviewed in general manner, but there are specific features in criminal justice when dealing with children, such as the requirement of the legal representative to be present through the whole process, the interests to be represented by parents or legal representatives, different approach when communicating with them, requirement of a pedagogue and a legal representative to be present during the interrogation process, lower sentences for juveniles, separation from adults during detention or imprisonment.

The real distinction between criminal justice and juvenile justice of Transnistrian *de facto* justice system is, however, hard to see, as the approach seems to be very much the same, in practice.

Prevention of Juvenile Delinquency

As already pointed out above, development of measures aimed at preventing juvenile delinquency is one of the most important parts of a juvenile justice policy. However, developing such measures without their effective implementation would be pointless.

In order for the prevention programmes to be effective they should focus on the well-being of young children and take account of and address the causes of the delinquent behaviour and the needs of the child in line with international standards and norms.[275] To prevent re-offending, a rights-based approach shall be taken and more focus shall be made on rehabilitation rather than punishment. It is non-custodial rehabilitative programmes, counselling, psychiatric treatment, job mediation and supervision that serve as best ways to prevent re-offending.[276]

It needs to be taken into consideration that most juveniles stop delinquent behaviour when they become adults. The Riyadh Guidelines specifically affirms that States should give consideration to the fact that behaviour of juveniles 'that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood'.[277] Juvenile offenders start committing delinquent acts at different stages. Some start in early childhood, others in late adolescence, most offenders start committing offences in late childhood and stop in late adolescence.[278] In fact, as many as a third of youngsters will get involved in delinquent behaviour, but most of them will spontaneously stop as soon as they reach adulthood.[279] Juveniles who do so are called 'adolescent-limited offenders', because their delinquent behaviour is limited to their adolescence.[280]

[275] The Riyadh Guidelines, supra at 109, para.4
[276] Ibid.
[277] Ibid., para.5(e)
[278] Robert Agnew, supra at 5, p.74
[279] Barry Holman and Jason Ziedenberg, *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, A Justice Policy Institute Report, A Justice Policy Institute, 28 November 2006 , p.6
[280] Robert Agnew, supra at 5, p.74

Causes of Delinquency

There are more or less similar causes of juvenile delinquency all around the globe, but some causes are specific to a certain community, depending on the situation in the fields of political, social and economic life of that community.

The causes of juvenile delinquency in the Transnistrian region are also quite complex. However, though there has been no research carried out to study the causes of juvenile delinquency in the Transnistrian region, it is noteworthy to emphasize that it has been numerously pointed out by civil society representatives as well as the regional Ombudsman, that so called social orphans are often more inclined to delinquency. Social orphans are children, who are not necessarily parentless, but their parents have temporarily migrated to another country and left children behind, in the best case scenario with grandparents. Similar situation has been described as a cause of juvenile delinquency in the rest of Moldova, where as the Committee on the Rights of the Child (CRC) notes 'large number of children [is] affected by the migration of one or more parents seeking better employment opportunities abroad'.[281] The Committee points out that the migration has negative effects on the children involved, in particular the Committee is concerned that 'children left in the custody of caregivers *in loco parentis* do not always receive the education and moral support they need, that they are neglected, forced to take on adult responsibilities, and are more susceptible to exploitation and juvenile delinquency'.[282]

Mr Hammarberg also mentions the issue of emigration in his report. As it was reported to him 'there is a risk [that children left behind by parents or caregivers] may be subjects of discrimination and in danger of falling into social exclusion.'[283]

Another cause of juvenile delinquency in the region, frequently outlined by civil society representatives was domestic violence. Children being direct or indirect victims of domestic violence or children with alcoholic parents or caregivers are also under danger to be more susceptible to delinquent behaviour for the same reasons as described above, and primarily neglect and negative impact on children's development.

The experts of the field also point out that main causes of juvenile delinquency are socio-economic problems. Offences are mostly committed by children from dysfunctional families.[284]

Measures and Programmes

In order to implement a range of preventive measures the *de facto* Ministry of Internal Affairs in collaboration with the *de facto* Ministry of Education started to hold preventive operation 'Adolescent' (Подросток) in 2001.

The operation is annual and usually takes place in October of each year. However, it only lasts for approximately two weeks. This preventive operation aims to prevent juvenile delinquency and child

[281] CRC Concluding Observations, supra at 81
[282] Ibid, para.42
[283] Hammarberg, supra at 2, p.32
[284] http://www.srpska.ru/article.php?nid=627 [accessed on 7 July 2013]

neglect and to identify parents evading their responsibilities. During the operation different activities are planned, including conducting series of lectures in schools on the dangers of alcohol and tobacco abuse, drug use, HIV infection, prevention of Tuberculosis by experts in corresponding areas and in pre-schools on legal education, on traffic regulations and fire safety by the staff of the inspection for minors. Visits of school students to penal institutions for juveniles are also carried out.[285]

But also the part of the preventive operation is to carry out spot-checks in order to identify minors who are on record and are prone to commit offences, children from dysfunctional or disadvantaged families and children who have not started their studies yet. Participants of the operation, which usually consists of police officers and school teachers, check everyday living conditions of these children and identify the causes of their antisocial behaviour.[286] In the course of the operation humanitarian assistance is also provided to some of the children whose families are in very difficult socio-economic conditions. Also, within the framework of the operation the raids of adolescents are carried out in order to identify weapons and ammunition; also analysis are carried out to determine the level of involvement of students, including those belonging to 'risk-groups', in leisure-time activities, in particular raids are conducted in internet clubs, bars, discos and shops to identify the distribution and consumption of alcoholic beverages, tobacco and drugs by adolescents.[287]

Except for this programme there are no substantive programmes or measures developed aiming to prevent juvenile delinquency by addressing the root causes of the problem. Civil Society representatives pointed out that except for the Law on Prevention of Child Neglect and Juvenile Delinquency there is no specific strategy or plan developed by the *de facto* authorities of the region for the prevention of juvenile delinquency.

In practice the attention of the Transnistrian *de facto* authorities is more concentrated on the tertiary prevention of juvenile delinquency. Regrettably, the approach of these preventive measures is mainly punitive, focusing more on correctional measures than the use of community based measures and alternative measures to detention or imprisonment aiming at re-socialisation and rehabilitation of children in conflict with the law. This is also indicated in the recent Report on Human Rights in Transnistria by the Ombudsman's Office of the Transnistrian region, where it is pointed out that though one of the purposes of the administration of justice is prevention, in practice the provisions of international law and the local legislation are not fully observed. The report states that the basis of the administration of justice should not be punishment but provision of preconditions aimed at rehabilitation and prevention of further offending.[288]

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[285] http://www.srpska.ru/article.php?nid=627 [accessed on 7 July 2013]

[286] http://translate.google.com/#en/ru/Operation%20%D0%9F%D0%BE%D0%B4%D1%80%D0%BE%D1%81%D1%82%D0%BE%D0%BA [accessed on 7 July 2013]

[287] Ibid

[288] De facto Office of the Ombudsman for Human Rights in Transnistria, *Report of the Ombudsman for Human Rights for 2012:* About the observance and protection of human rights and freedoms of persons and [members of the public in Transnistria] by [the de facto] authorities, local authorities, associations of citizens, organizations, regardless of their organizational and legal forms of ownership, their officials and the identified deficiencies in the [de facto] legislation concerning the protection of the rights and freedoms of persons and [members of the public], Tiraspol, 2013, p.130, available at http://ombudsmanpmr.org/doclady_upolnomochennogo.htm [accessed on 19 July 2013]

Civil Society and the Community

Though governments (both *de facto* or *de jure*) are the primary duty-bearers in terms of the administration of justice or provision of prevention programmes,[289] the role of the civil society and the community as a whole in the prevention strategies is also very important. The Riyadh Guidelines points out that in order to have successful prevention of juvenile delinquency, the entire society has to make efforts to ensure 'harmonious development of adolescents, with respect for and promotion of their personality from early childhood.'[290]

As community-based prevention programmes, at all three levels, prove to be most humane, as they respect individual rights and are most effective, the Riyadh Guidelines stresses the importance of community and civil society involvement in the process and states that they should offer or strengthen the existing community-based services for juveniles.[291] Apart from providing the programmes and facilities, the communities and the civil society should also play active part in identifying crime prevention priorities, participate in the implementation process, and evaluate the programme outcomes.[292]

It is important for all relevant authorities to recognise and acknowledge that NGOs and civil society can play essential role in providing community-based programmes and services, such as rehabilitation and reintegration programmes, diversion, restorative justice, and thus contribute to preventing juvenile delinquency.[293]

It is crucial to have measures designed to consider the needs of children and address the causes of delinquency. Punitive prevention programmes should not be used as they show no efficiency and may even provoke subsequent delinquent behaviour.

The Committee on the Rights of the Child points out that it is crucial to create a positive environment, try to understand the causes of juvenile delinquency and choose a rights-based approach. For this the authorities in charge should conduct educational campaigns to raise public awareness. The Committee believes that the active and positive involvement of the members of the civil society, NGOs, media and the general community in this regard is important.[294]

The regional Ombudsman pointed out at the meeting with the author that a new concept on criminal justice policy has been elaborated by a working/study group specifically created for this in 2013.[295] According to Ombudsman the concept has already been approved recently. One of the issues of the new policy is said to be the prevention of juvenile offending. Based on the information obtained from Mr Kalko different organs of the *de facto* government, including the *de facto* Ministry of Internal Affairs, Inspectors and the Commission for the Protection of Minors, as well as representatives of the civil

[289] ECOSOC Resolution 2002/13, *Action to promote effective crime prevention (UN Guidelines for the Prevention of Crime)*, 24 July 2002, para.16
[290] The Riyadh Guidelines, supra at 109, para.2
[291] Ibid, para.33
[292] ECOSOC Resolution 2002/13, supra at 289, para.16
[293] Carolyn Hamilton, supra at 7, p.14
[294] CRC GC No.10, supra at 6, para.96
[295] Interview with the regional Ombudsman, 18 April 2013

society were involved in the working group elaborating the concept for the new policy. The policy is not yet available for review; therefore it is impossible to make assessment and draw conclusions.

Law Enforcement and Juvenile Delinquency

It was frequently emphasized by many respondents that law enforcement officers or militia report on their work based on the percentage of crimes solved. Higher the percentage of the solved cases and more serious the articles for which the cases are referred to the courts, higher the evaluation of the work of the officers is. The remuneration for their work is also said to be based on the amount of cases solved. This is to suggest that in order to get paid for the work, it is not the quality but the quantity of the cases solved that matters. Thus, there is danger that more focus will be made not on the procedural safeguards of the investigation, but on solving the crimes with whatever means. It was also pointed out that law enforcement officers allegedly stage some of the minor offences in order to increase the number of solved cases. Reportedly the victims of such staged offences are usually juvenile 'offenders'.

A case of Alexandru Bejan, who is charged by the *de facto* authorities with 'deceitful denunciation of acts of terrorism' and is currently awaiting final court decision, is allegedly fabricated.[296] The charge entails possible three years of custodial sentence. Al. Bejan is not under arrest at the moment.[297] The assumption is that there is a connection between the charges against Alexandru Bejan and his attendance at Latin-script 'Lucian Blaga' High School. However, such connection is not evident or proven, as after 2011 no other cases of intimidation or pressure were reported, with the exception of Alexandru Bejan case.[298] The lawyer of Bejan, Alexandru Zubco of Promo-LEX considers that the juvenile is yet another victim of the security services of Tiraspol and his arrest and charge aims to pressure and terrorise schools that teach using Latin-script.[299] Alexandru was taken by force from the school by two officers of the *de facto* Ministry of Security. At the temporary detention place he was allegedly forced by law enforcement bodies to admit committing a presumed terrorist offence and write a self-incrimination. Charge is allegedly based on materials obtained by blackmail, violence, pressure and violation of the right to defence. Alexandru Bejan had two different defence lawyers, but both of them finally refused to provide legal assistance, as he has been denying committing any offence and refusing to follow recommendation of lawyers to plead guilty. Alexandru Bejan was also confounded with the fact that he was in the list of suspects of the Transnistrian *de facto* law enforcement. According to the juvenile, in 2009 he assisted in a quarrel where his classmate was involved, without interfering. Alexandru Bejan was then detained to testify. Apparently his presence was qualified by the investigation bodies as co-participation. However, Alexandru claims that he was not notified and thus was unaware about himself being on record.[300]

It was also pointed out by number of civil society representatives that there are no specialized personnel or trainings on how to interrogate or interview children as offenders, victims or witnesses. Juliana

[296] Promo-LEX Newsletter, *Promo-LEX: Appeal regarding the constitutional authorities involvement in the case of Alexandru Bejan from Tiraspol*, Nr.60/X, October 2012, p.4
[297] As of 20 July 2013
[298] OSCE, *The Moldovan-Administered Latin-Script Schools in Transdniestria, Background, Current Situation, Analysis and Recommendations,* REPORT, November 2012, p.22
[299] Journalistic Investigation Center, *Kidnapped, Jailed and Tortured by Transnistrian Militia: Kidnapped from High School*, available at: http://www.investigatii.md/eng/index.php?art=235 [accessed on 20 July 2013]
[300] Ibid.

Abramova of NGO Rezonans referred to a case when a 12 year old child from the orphanage was allegedly beaten by a teacher. The information about this was provided to Rezonans by medical service personnel who examined the child. Rezonans addressed the regional Ombudsman and all relevant bodies with the case. The child was directly asked a question if he was beaten. The child did not reply, supposedly due to fear. Without further investigation the case was closed with a conclusion that the child was not beaten. Oxana Alistratova from NGO Interaction also pointed out this problem and stated that the law enforcement bodies do not use individual approach or psychological mechanisms based on the cognitive development of children when dealing with them. The result is that children frequently change their statements. Ms Alistratova also pointed out that the approach towards children does not differ between those with a status of being in conflict with the law, at risk or in contact with the law as a victim.

The involvement of the Commission for the Protection of Minors in the preliminary investigation of juvenile cases seems to be minimal. According to the *de facto* Ministry of Justice the interaction of the investigator with the Commission for the Protection of Minors at the stage of preliminary investigation is expressed only in the form of an investigator requesting the Commission to provide information whether any materials about the offences of the juvenile concerned had been reviewed by the Commission before. In order to obtain information about the juvenile the investigator sends requests to school – for the characterisation and performance of the juvenile, and the Inspection for Minors and to a mental hospital – to check if the juvenile is registered there.[301]

As to the Inspection for Minors, its main function is to identify and register children at risk and participate in preventive activities, as well as investigate the administrative offences committed by juveniles. As of 31 December 2012 there were 920 juveniles on record at the inspections for minors. During the reporting period there were 529 juveniles registered. There were 2379 protocols prepared regarding administrative offences derived from Article 170 of the *de facto* Code on Administrative Offences of Transnistria (parents or persons *in loco parentis* evading from upbringing children).[302]

It is noteworthy that the prosecutor's office carries out periodic audit of the work of the Inspection for Minors to determine if the functions are observed in line with the legislation protecting the rights and legitimate interests of children and youth. In 2008 the audit of the Inspection for Minors in the city of Bendery showed some inconsistencies, mainly due to incorrect registration of juveniles at risk. The audit revealed that officials at the registration did not hold interviews with children or their parents, they did not explain the reason for inclusion or removal of a child from the registration list, and children had been detained without knowledge and notification to their parents or guardians and without making record about their detention.[303] Similar audits are being carried out in all the districts of the Transnistrian region under the control of the *de facto* authorities. In 2011 in the district of Rîbniţa the periodic audit revealed that in number of cases the circumstances of the case were not investigated properly, the copy of the decision was not provided to the person against whom the decision was made or the handling of the copy was not recorded properly, also in cases where the fines were imposed the amount was indicated in the currency and not in accordance with the percentage of minimal monthly salary. Despite

[301] In an e-mail reply to the request for a meeting and information, 2 April 2013
[302] The *de facto* Code on Administrative Offences , No.163-Z-III, 19 July 2002, available at: http://justice.idknet.com/web.nsf/767eb8a58ad76a2bc22574d5002acf15/9ae8fa519f640d5ac22575d700317255!OpenDocument [accessed on 8 July 2013]
[303] http://www.regnum.ru/news/1105695.html [accessed on 8 July 2013]

the fact that some of the violations had been identified during previous inspections the problems persist.[304]

Another problematic issue pointed out by civil society representatives was the reorganisation of the General Prosecutor's Office and the creation of the Investigation Committee as a separate body. Though this is generally seen as a positive sign as it was aimed to limit the excessive power of the General Prosecutor, the confusion is caused because the division of functions and duties between these two organs is vague in existing regulations as well as in practice. The issue is deemed as problematic among civil society representatives as in case of necessity it is confusing to determine which body to address as a responsible one.

In the report submitted for the first Universal Periodic Review of Moldova in 2011, the UN country team in Moldova pointed out that number of cases of arbitrary detention and torture had been reported in the Transnistrian region.[305] Civil Society representatives have pointed out that there are less cases of such practice against juveniles, however they still exist. Reportedly juveniles are threatened to be tortured and raped if not given confessions or testaments.

Among others the case of Evghenii Sultanov, a 17 year-old boy from the city of Bendery, is a prominent one.

Reportedly Evghenii was arrested at 7 am in his apartment for the robbery of a woman and a young man which occurred late at previous night. The search of Evghenii's place of residence was carried out, but no evidence was found. Evghenii was detained and charged with robbery. In order to get the confession Evghenii was allegedly threatened that he would be put in a chamber where he would be tortured and raped. Evghenii did not confess. The only evidence against Evghenii was the testimony of one of the victims who recognized him with the colour of his eyes and the cheekbones. He was kept in pre-trial detention for one year, after which he was convicted for the crime and sentenced to three years of imprisonment.[306] As the author was told, it was in the interests of the investigators to open the case, due to reasons discussed earlier and reportedly the photo of Evghenii was shown to the female victim to identify Evghenii as a perpetrator.

The regional Ombudsman commented that there is no justification for beating or ill-treating children, this would be unacceptable for the government as well as the whole society. Mr Kalko still tried, however, to explain that such occurrences are infrequent and that 'officers are also human beings, who may be having a bad day or be in a bad mood'. He also stressed that he has not received any official complaints regarding the issue, thus he considers that children are not subjected to ill-treatment in a systematic manner and thus, this cannot be considered as a systematic or a systemic problem. He also stressed that in cases when such 'red line' is crossed the government reacts very strictly.

It is noteworthy that a delegation of the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of the Council of Europe that was carrying out the visit to the Transnistrian region to review the situation of persons deprived of their liberty in pre-trial and

[304] http://www.pridnestrovie-daily.net/gazeta/articles/view.aspx?ArticleID=23846 [accessed on 8 July 2013]
[305] UN Country Team in Moldova Submission to the UPR, supra at 79, para.30
[306] http://mediacenter.hostink.ru/konkyrsi/konkursnii-raboti/305-spravedlivosti-eto-est-ne-posledniy-no-reshitelnyy-boy.html [accessed on 8 July 2013]

penitentiary establishments in 2010 was informed that it would not be given the permission to conduct private interviews with prisoners on remand. As a result the delegation stopped its visit until it is be given the permission to enjoy the power to interview any person deprived of liberty in private, which is one of the fundamental characteristics of the preventive mechanism of the CPT.[307]

Juveniles on Remand

International law strictly limits the use of pre-trial detention through different general and child specific international and regional treaties, standards and norms.[308] Key International human rights treaties are the CRC and the ICCPR, which provide limitations on the use of pre-trial detention.[309] Others also provide that where possible judges or other authoritative bodies should consider alternatives to pre-trial detention, such as diversion, close supervision, etc.[310]

According to worldwide statistics, most juveniles deprived of their liberty are in detention awaiting trial. Majority of those children have either committed minor offences or are non-delinquent and eventually acquitted. Therefore the use of pre-trial detention is not only inappropriate, but also often disproportionate and unnecessary.[311]

The situation is no different in the case of Transnistrian region as well. Reportedly pre-trial detention is very frequently and extensively used against juveniles.

The *de facto* Ministry of Justice denied such practice and pointed out that the pre-trial detention of juveniles is less common than of adults. Also, it pointed out that as a rule pre-trial detention is not used against persons charged with crime of minor or moderate severity.[312] According to the *de facto* CPC, the detention as a preventive measure is applied by judicial decision (order) against the suspected or accused of committing a crime for which the criminal law envisages imprisonment for a term exceeding two years, if it is not possible to apply a softer measure.[313]

According to the statistics for the years of 2006-2010, provided by the *de facto* Ministry of Justice, preventive detention was used in respect of 200 juveniles in 2006, 175 juveniles – in 2007, 210 juveniles – in 2008, 157 in 2009 and 81 juveniles in 2010. There was no statistics provided regarding the number of juveniles convicted or sentenced to imprisonment out of those detained on remand. Thus it is impossible to draw an accurate conclusion. Nonetheless, considering that the number of juveniles at penitentiary establishments is around 40 at any given time, it could be suggested that pre-trial detention is unnecessarily used.

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[307] Council of Europe anti-torture Committee interrupts visit to the Transnistrian region of Moldova http://www.coe.md/index.php?option=com_content&view=article&id=200%3Acpt-stop-td-visit&catid=40%3Apress-releases-&Itemid=55&lang=en [accessed on 8 July 2013]

[308] UNICEF, *Administrative Detention of Children: A Global Report*, Child Protection Section, New York, 2011, p.5

[309] Ibid.

[310] The Beijing Rules, supra at 111, rule 13

[311] Defence for Children International (DCI), *Kids behind Bars-a study on children in conflict with the law: towards investing in prevention, stopping incarceration and meeting international standards*, Amsterdam, 2003, p.11

[312] In an e-mail reply to the request for a meeting and information, 2 April 2013

[313] De facto CPC, supra at 126, art.78

The report of the regional Ombudsman also gives numbers of those in pre-trial detention centres, not specific but including juveniles, and highlights that throughout 2012 out of 1571 persons held in pre-trial detention only 656 persons were sentenced to deprivation of liberty, which means that detention of more than 58% of detainees was disproportionate and unnecessary.

Though the demonstration of the necessity, proportionality and appropriateness of pre-trial detention is similarly required in regards to juveniles and adults, threshold is higher for juveniles, as it also requires such type of detention to be used as last resort, in limited circumstances and for the shortest appropriate length of time.[314]

According to the *de facto* CPC the preliminary investigations and detention during these investigations in criminal cases must be completed in no later than two months from the date of the institution of the proceedings before referring the case to the court for consideration.[315] If the investigation is not complete and if the preventive detention is necessary the period of pre-trial detention can be extended by a district court judge for up to six months. Further extensions can be carried out in respect of persons accused of grave and especially grave crimes for up to twelve months. The detention period can be further extended in exceptional cases, in respect of persons accused of committing serious crimes by the *de facto* Supreme Court judge, at the request of the investigator, up to eighteen months.[316] The *de facto* law does not allow for further extensions. The period of detention of the person against whom the case is in the court, may not exceed six months from the date of receipt of the case in court.[317] This period can be extended for up to three months, but in case of grave and especially grave crimes the period can be extended for three months every other time and practically can be extended without any limits.

Despite the regulations, the length of the pre-trial detention was another issue frequently emphasized as problematic by different sources. The Transnistrian *de facto* law does not provide regulations specific to juveniles. The period of detention is common, regardless the age of the accused. Reportedly there have been cases of five and seven years of pre-trial detention against adults, which is considered as overly excessive according to any standards set by international documents. As described above in the case of Evghenii Sultanov the duration of his pre-trial detention lasted for one year, which was disproportionate to and unnecessary for the offence he was charged with. Even in cases when the detention is necessary, it should be used for the shortest appropriate period of time. Article (2)(b) of the ICCPR requires that accused juveniles shall be brought 'as speedily as possible' for adjudication.[318] The Havana Rules also sets that courts shall award 'the highest priority to the most expeditious processing of such cases to ensure the shortest possible duration of detention.'[319]

Alternative Measures to Pre-trial Detention

Beijing Rules, as well as other international human rights documents, establishes that 'whenever possible, detention pending trial shall be replaced by alternative measures', such as bail, close supervision, intensive care or placement with a family or in an educational or home settings.[320]

[314] UNICEF, *Administrative Detention of Children: A Global Report,* Child Protection Section, New York, 2011, p.16
[315] De facto CPC, supra at 126, articles 79 and 116
[316] Ibid., art.79
[317] Ibid., art.212-1
[318] ICCPR, supra at 103, Art.10(2)(b)
[319] The Havana Rules, supra at 4 , rule 17
[320] The Beijing Rules, supra at 111, Rule 13.2

The *de facto* legislation of Transnistrian region does provide limited number of alternative measures to pre-trial detention, as already reviewed earlier. But, even if the legislation is fully equipped with all the necessary provisions, if they are not used in practice, they are practically useless.[321]

Reportedly alternative measures to pre-trial detention are rarely ever used in practice in the Transnistrian region. As civil society representatives noted there were numerous occasions when the parliamentarians made commitments to promote using alternative measures to detention and generally to deprivation of liberty but so far no real results have been made. General assumption is that the *de facto* officials fear the accused persons might flee the region.

Other problematic issues pointed out by the civil society representatives was the possibility of visitations and the separation of juvenile detainees from the adults. As it was pointed out numerously the right to receive visitors is highly restricted, due to the interests of the investigation. Reportedly, during the pre-trial detention the only person who can visit the juvenile convict is the defence lawyer. The relatives are given the possibility to visit upon request, but the visit is attended by the personnel of the establishment. The issue of separation of juvenile detainees was also pointed out. Though the law as well as internal regulations establish that juveniles shall be kept in a separate institution or separate part of the same institution, allegedly this regulation is often neglected and violated.

Juveniles in Court

All the court decisions made by the Transnistrian courts are considered to be unconstitutional by Moldovan constitutional authorities. Yet, as there is no effective control exercised over the territory, Moldovan authorities do not have power to overturn the decisions made by Transnistrian courts, and neither do they hold official information or statistics regarding the court activities in Transnistria.[322]

The report submitted by the UN team in Moldova to the UPR includes a recommendation about carrying out a 'high level study […] to examine possible models for improving access to justice for persons in Transnistria'.[323]

The National Human Rights Action Plan of 2011-2014, developed by Moldovan constitutional authorities, includes the section about the promotion and observance of human rights in the Transnistrian region. One of the objectives of the plan is to provide access to justice to the inhabitants of the Transnistrian region, including establishing a joint mechanism, with international organisations, for regular monitoring of conditions in the detention institutions in Transnistrian region and introducing the rehabilitation mechanism for the persons who were arbitrarily deprived their liberty. Yet, no specific activities have been carried out in this direction so far.

[321] Inter-Parliamentary Union and United Nations Children's Fund (UNICEF), *Child Protection: A handbook for Parliamentarians,* Handbook for Parliamentarians No.7, Geneva, 2004, p.26, available at http://www.ipu.org/pdf/publications/childprotection_en.pdf [accessed 9 July 2013]
[322] Meeting with the Center for Human Rights of Moldova (the Ombudsman's Office), 9 April 2013
[323] UN Country Team in Moldova, supra at 79, para.30

The Courts in the Transnistrian region are regulated by the provisions of the *de facto* Constitutional Law 'On the Judicial System'.[324] There are no separate courts or judges assigned to review juvenile cases. The judicial proceedings in regards to juveniles are carried out in the general manner.

Reportedly, the creation of separate courts or specialized judges is not supported by the *de facto* authorities and at present such changes are not considered.

Principles of fair and just trial are also reported to be poorly observed by the Transnistrian courts, especially those dealing with criminal cases. As Mr Hammarberg pointed out in his report, despite the inclusion of norms and principles of international conventions in the local legislation, these norms 'play only a limited role in the judicial system'.[325]

A paragraph is dedicated to the issue of ensuring the right to judicial protection, fair trial, legal assistance and timely execution of the judgment in Transnistria in the recent annual report of the regional Ombudsman.[326] According to the report, the regional Ombudsman received 336 complaints where citizens alleged the violation of their rights to judicial protection, fair and just trial, legal assistance and timely execution of the judgment. 176 out of these complaints were about criminal cases.[327] The report does not show specific statistics in relation to juveniles in this regard.

Decisions without Delay

Reportedly the judicial proceedings are very lengthy and consideration of criminal cases in courts is often delayed. This was also confirmed by the *de facto* Ministry of Justice. The Ministry pointed out that the delays are due to long periods of examinations, workload of the court, and no-show of persons at the hearing.[328] The report of the regional Ombudsman also discusses this issue and states that there is a shortage of qualified professionals in the courts, which entails high work-load for the judges and consequently generates the violation of judicial guarantees, including the timely consideration of cases. The report emphasizes that the average work-load remains to be considerably high at all times.[329] This situation is not conducive to rapid and high-quality conduct of judicial proceedings.

Considering the fact that the judicial proceedings in cases involving juveniles are carried out in general manner with only limited procedural peculiarities, the time for the decisions are excessively lengthy and in contradiction with the norms set by international human rights standards to handle each case expeditiously, without any unnecessary delay.[330]

Right to be Heard

The *de facto* Criminal Procedure Code provides that the participation of the juvenile defendant in the court hearing is required. Reportedly this provision is effectively carried out in practice. It is in compliance with one of the guarantees of the fair trial, which requires that the child alleged as or

[324] De facto Law 'On the Judicial System', supra at 241
[325] Hammarberg, supra at 2, p.13
[326] Report of the regional Ombudsman, supra at 288, para.5, pages 109-129
[327]Ibid., page 14
[328] In an e-mail reply to the request for a meeting and information, 2 April 2013, Supra n.11
[329]Report of the regional Ombudsman, supra at 288, p.121
[330] CRC, supra at 3, art.40(2)(b)(iii); and the Beijing Rules, supra at 111, rule 20.1

accused of having infringed the penal law is able to participate in the judicial proceedings effectively.[331] However, for the full enjoyment of the guarantees of the fair trial the proceedings shall be carried in the best interests of the juvenile, and not only given the right to attend the hearing, but also provided with the environment conducive to expressing himself/herself freely. Reportedly this guarantee is not exercised in practice. Civil society representatives emphasized that children are often deprived of the right to be heard in the judicial proceedings. This is in contradiction with one of the key guarantees of the fair trial.[332] Also, it should be noted that in order for a child to participate effectively in the proceedings it is important that s/he is informed not only about the charges, but also of the juvenile justice process, per se, as well as possible measures.[333]

The full enjoyment of the guarantee to be heard and to effective participation in the proceedings is also hindered with the violation of the principle of the equality of arms. Reportedly the prosecution is given advantage over the defence in the court hearings. Mr Hammarberg also touches this problem in his report, pointing out that he heard complaints that the defence in general is disadvantaged in comparison with the prosecution.[334]

Free Legal Assistance

There is no special separate system of legal assistance in the Transnistrian region in practice. However, the *de facto* legislation provides that in criminal proceedings of cases involving juveniles, defender is allowed from the moment of the institution of criminal proceedings and if needed the head of the legal aid or the Bar Association shall allocate a lawyer to defend the suspect or the accused within twenty-four hours from the time of receiving the request or the notification.[335] Reportedly, with unimportant delays, this provision is exercised in practice, but only in criminal case proceedings.

Other issues that were numerously pointed out by civil society representatives, and which are also covered by Mr Hammarberg in his report,[336] were the cases of bribery of judges as well as witnesses or even defendants and frequent fabrication of cases or evidences presented in the case. The issue of fabrication of charges is given attention by the regional Ombudsman as well. In his report he points out that he has received complaints of persons on remand regarding the issue.[337] However, considering that the *de facto* law limits the right of the Ombudsman to study the case before the court decision enters into force[338] the Ombudsman referred these complaints to other relevant *de facto* authorities, without following up on them.

The regional Ombudsman points out another problematic area of the judicial system in Transnistria. In the report it is stressed that the law grants the Ombudsman with the right to be present during the judicial proceedings as an observer. However, the effective exercise of this right in practice is limited as the application of the Ombudsman requesting the attendance can only be considered by one of the

[331] CRC, supra at 3, article 40(2)(b)(iv); and CRC GC No.10, supra at 6, para.46
[332] CRC, art.12; the Beijing Rules, supra at 111, rule 14.2; CRC GC No.10, para.45
[333] CRC GC No.10, supra at 6, para.44
[334] Hammarberg, supra at 2, p.6
[335] De facto CPC, supra at 126, art.43
[336] Hammarberg, supra at 2, p.13
[337] Report of the regional Ombudsman, supra at 288, p.131
[338] De facto Constitution Law on Ombudsman, supra at 261, art.17, para.5

leaders of the *de facto* Supreme Court of Transnistria. Such complicated procedures deprive the Ombudsman to be present during the court proceedings and to observe it.[339]

Other guarantees of a fair and just trial, such as the presumption of innocence, no retroactive legal norms unless the penalty is lighter, provision of prompt and direct information of the charges have not been specifically outlined by civil society representatives to be violated, however some concerns were still expressed that while other guarantees are not being observed the full enjoyment of fair and just trial is still jeopardized.

Alternative measures to Prosecution

The *de facto* law provides the alternative measures to prosecution, such as the procedure of the reconciliation with the victims, exemption from criminal liability due to active repentance and discontinuation of criminal proceedings against a person, if after the commission of the first time offence s/he voluntary pled guilty, contributed to solving the offence, repaired the damage caused, or otherwise made amends for the harm caused by the offence. One of the drawbacks of the Transnistrian alternatives to prosecution under Article 75 of the *de facto* Criminal Code and Article 5-7 of the *de facto* CPC, is the absence of the law, and hence the practice, of mediation – measures to assist the parties of the legal dispute in reconciliation, reparation, etc, which hinders the effective use of the elements of restorative justice. As outlined by the *de facto* Ministry of Justice, the introduction of mediation requires professional and public debate in Transnistria. Adoption of the aforesaid *de facto* Law is considered as a first step in the process of introducing elements of restorative justice in *de facto* law and practice.[340]

The statistical analysis of the termination of criminal proceedings against juveniles (due to reconciliation with the victim), provided by the *de facto* Ministry of Justice, for the period 2006-2010 shows the number of exemption of juveniles from criminal liability. In 2006 there are 4 recorded cases of termination of criminal case against a minor due to the reconciliation with the victims, in 2007 - 10, in 2008 - 9, in 2009 - 4, in 2010 - 20.

Sentencing of Juveniles

Custodial Sentences

The Transnistrian *de facto* legal framework includes the Law 'On the Rights of the Child', which establishes the provisions for the protection of the rights of the child. The Law establishes that neither capital punishment nor life imprisonment shall be imposed for offences committed by persons below 18 years of age.[341] The *de facto* CPC also does not impose death penalty or life imprisonment for the offences committed by juveniles. The measure is not used in practice, which is in line with standards and norms set by general and child specific international human rights documents.[342]

[339] Report of the regional Ombudsman, supra at 288, p.117
[340] In an e-mail reply to the request for a meeting and information, 2 April 2013, Supra at 11
[341] De facto Law 'On the Rights of the Child', No.61-3, 4 August 1997, art.28, available in Russian language at: http://zakon-pmr.com/DetailDoc.aspx?document=36338 [accessed on 1 July 2013]
[342] e.g. rule 19.1 of the Beijing Rules (supra n.111); Article 37(a) of the CRC (supra n.3); Article 6(5) of the ICCPR (supra n.103).

As to the imposition of custodial sentences, allegedly it is more frequently used against children who are from lower income families than in case of children with rich parents, which raises the doubt about corruption within the system. Civil society representatives state that despite the reality that most offenders come from parentless families, from families with substance addicted parents or otherwise dysfunctional families, or from families with poor economic background, the above mentioned tendency of rich people getting away with the offences is still very apparent.

Duration of Sentences

The regional Ombudsman pointed out in the interview that one of the peculiarities of the approach towards the juveniles in criminal case proceedings is the reduced terms of sentencing. However, neither law nor the practice shows this approach. Civil society representatives emphasized that sentence duration is the same for juveniles as it is for adults. Reportedly judges treat juveniles as adults and impose imprisonment the same exact way without considering the age of defendants. Civil society representatives pointed out some of the cases when juvenile defendants were convicted for theft with over five years of imprisonment. Reportedly one of the juveniles was convicted for stealing a bicycle with six years of imprisonment.

Early Release

With regard to convicted juveniles, the *de facto* law provides for special reduction in terms, after which the person may be conditionally released from serving the sentence, released from restrictions or the cancellation of criminal record can occur.[343]

Decision about the amnesty is made by the Supreme Soviet. The Supreme Soviet periodically drafts a law on amnesties, which is often connected to the date celebrating the creation of 'the Moldavian Republic of Transnistria'. As pointed out by the regional Ombudsman, underage convicts are always in the list of declared amnesties in the region.

In addition, the Pardon Commission has been set up through the Decree No.72 of the *de facto* President from 13 February 2006. The head of the Pardon Commission is the *de facto* Minister of Justice, the members of the Commission, *inter alia*, are the General Prosecutor, representative from the *de facto* Supreme Court, the *de facto* Ministers of Internal Affairs and Public Security, parliamentarians of the Supreme Soviet, etc. The Pardon Commission meets depending on the receipt of applications for pardon, but at least four times per year and conducts preliminary examination of applications for pardon of the convicts serving sentences in penal facilities of the Ministry of Justice. The final decision is made by the *de facto* President.[344] The pardon may envisage the release of the person from serving the sentence, or reduction of the term or replacement of the sentence. The applications are only reviewed if the person has served third of the term in cases of minor and moderate severity, and half of the term in cases of grave offence. There are no specific provisions in regards to juveniles. The applications from juvenile prisoners are also reviewed in the general manner. It is noteworthy that the prison administration of the juvenile penal establishment plays an important role, as among other criteria one of

[343] De facto Criminal Code, supra at 118, articles 91-94

[344] In accordance with Article 73 (3) of the *de facto* Constitution (supra n.92) and Article 84 of the *de facto* Criminal Procedure Code (supra n.126)

the basis for the decision on pardon is made is the characteristic recommendations provided by the prison administration. This creates an impression for civil society representatives that it is mainly based on the subjective attitude of the prison administration towards specific juveniles.

According to the *de facto* Law on Militia, after a person is released from imprisonment, the supervision and surveillance is carried out by law enforcement staff. This applies to juveniles as well. As pointed out by civil society representatives this is very extensively implemented in practice. Reportedly the overall approach is 'once a criminal, always a criminal'. It is noteworthy that the report submitted by the UN team in Moldova to the UPR also pointed out that persons released from custody in the Transnistrian region frequently flee the region with their family, fearing reprisal for reporting abuse.[345]

Non-custodial Sentences

The regional Ombudsman pointed out in the interview that imprisonment is not used against juveniles for the commission of the first-time minor offence. To support his statement Mr Kalko pointed out that there are 16 types of sentencing measures provided for by the law and only 7 of them are custodial sentences, the rest are non-custodial measures, such as conditional sentencing, restrictions, community service, financial penalty, etc. However, as reviewed above, the list of sanctions and measures of the Transnistrian *de facto* Criminal Code lacks the variety of measures to allow the judges to be flexible and avoid institutionalisation or imprisonment of a juvenile.

Contrary to the statement of the regional Ombudsman, the civil society representatives outlined that similarly to alternative measures to pre-trial detention, alternatives to imprisonment are provided for by the law, but are very rarely used in practice in regards to juveniles. Reportedly there are very few juveniles who were given alternative sentences to imprisonment. General feeling is that the juvenile cases do not really have alternative measures in use.

Administrative Charges

Administrative cases are mainly handled by the Inspection for Minors and the Commission for the Protection of Minors. The Commission reviews the administrative protocols, schools applications and notifications referred from or submitted by different agencies, organisations or individuals. Application can be filed for review to the Commission by anyone. Different organs of the *de facto* authority, such as the Inspection for Minors (law enforcement), adoption department, social-educational department, prosecutor's office, gather periodically to discuss the cases regarding different issues in relation to minors. The issues discussed are: allocating children to certain institutions, removing parental authority, the admissibility of the case to the court, exclusion of minors from compulsory education, review of administrative cases, making decisions on the imposition of an administrative penalty in accordance with applicable *de facto* law, etc.

No specific violations of procedural safeguards have been pointed out by any of the respondents or sources.

[345] UN Country Team in Moldova Submission to the UPR, supra at 79, para.30

Juveniles in the Penitentiary

Within the region there is one juvenile penitentiary establishment, the Juvenile Educational Colony, near the village of Aleksandrovka in Camenca district, for male juvenile prisoners. There is no separate establishment for female juvenile convicts; female juveniles are placed in Penitentiary Establishment No.3 with women.

The exact number of convicts in these penitentiary facilities, their age range and types of offences they are convicted for is not known to the author, due to above mentioned obstacles of access to information.

The official web-site of the Penitentiary Services of the *de facto* Ministry of Justice does not provide any statistical data about the convicts or the convictions, whatsoever. The only official source showing the number of juveniles serving the sentence of imprisonment is the annual report of the regional Ombudsman, were it provides that there are 33 inmates in the regime of juvenile penitentiary, out of which 30 are male and 3 female.[346] This number is very close to the approximate numbers given by different unofficial sources of information.

Convictions

As already pointed out earlier the author does not have official statistical data about the offences juveniles are convicted for. Based on different unofficial sources of information, mostly civil society representatives, most of the juveniles are reportedly convicted for theft and drug related offences (mostly possession of Cannabis). The report by Mr Hammarberg also shows that theft is what majority of juveniles had been sentenced for, but there are also some juveniles convicted for murder, assault and rape.[347]

Number of civil society representatives pointed out that the approach to the use and possession of Cannabis is very punitive. Reportedly the use of cannabis was recently decriminalized, but possession still remains. The *de facto* Criminal Code provides that cultivation of varieties of cannabis, poppy or other plants is punishable with a fine or compulsory work, as well as imprisonment for up to two years.[348] According to the civil society representatives, despite other alternatives, the severe punishment of imprisonment is most frequently applied and significant number of juveniles is serving their sentence for the use or possession of Cannabis.

Separation from adults

As already stated above male juveniles are separated from adults, as well as female and male juveniles are separated from each other. However, female juveniles are kept in the same institution as adult females.

The regional Ombudsman pointed out that female juveniles are kept in separate local areas within the women penitentiary establishment. However, contrary to this statement according to information given by the civil society representatives as well as Ms Sidorova, girls are not separated from adult females.

[346] Report of the regional Ombudsman, supra at 288, chapter 6, p.136
[347] Hammarberg, supra at 2, p.21
[348] De facto Criminal Code, supra at 118, art.229

They do not have separate cells and have everyday contact with adult prisoners. Reportedly the justification given by the *de facto* Ministry of Justice is the significantly low number of female juvenile convicts, which is approximately 5 at any given time. Women allegedly use the juveniles for achieving their control over other women and take away parcels brought to female juveniles. There are no complaints formally filed to the regional Ombudsman regarding the issue. The civil society representatives believe that this is because female juveniles fear reprisals.

This is in violation of the principle that children deprived of their liberty shall not be placed in adult penitentiary establishments, as placement of children in adult prisons may compromise their safety and well-being, as well as ability to rehabilitate and reintegrate into society after release.[349]

Contact with the outside world

The penitentiary establishment for male juveniles is located in Aleksandrovka village of the Camenca district, which is approximately 220 km away from Tiraspol and reportedly generally far from most of the places of residence of inmates. Though this is not in violation of any international norms, per se, it is not in line with recommendations to place juveniles in a facility that is 'as close as possible to the place of residence of his/her family' in order to facilitate visits.[350]

The issue of communication is generally reported to be troubling, both through physical visits and through telephone. The juveniles are isolated without proper or relevant justification. Allegedly the reasons given by the prison administration for rare and short visitations are discriminatory and connected with the fact that some of the juveniles do not have relatives or family members to visit; thus, in order to make it 'equal', the visitations and telephone calls have been artificially limited for all juvenile inmates. This is contrary to the right of juveniles to have adequate communication with the outside world as an integral part of the right to humane and fair treatment and is important for the preparation of juveniles to return to the society. According to the Havana Rules, every juvenile deprived of liberty should have the right 'to receive regular and frequent visits, in principle once a week and not less than once a month' and 'to communicate in writing or by telephone at least twice a week with the person of his or her choice'.[351]

Because of the distance, which requires lengthy transportations, reportedly the juvenile facility is rarely visited by *de facto* officials as well, even in case of interest in the situation at the facility. According to the regional Ombudsman the distance was also complained by the teachers of the establishment.

Conditions

All sources of information suggest that conditions at the juvenile educational colony are generally far better than in any other penitentiary establishments of the Region.

Reportedly the establishment is furnished with facilities for sports and other leisure activities, as well as outdoor sports fields.

[349] CRC GC No.10, supra at 6, para.85
[350] Ibid., para.87
[351] the Havana Rules, supra at 4, rules 60-61

Reportedly juveniles also have better nutrition than other establishments, which is due to having 100 hectares of land where the juveniles grow fruits and vegetables. The colony also has its own farm with animals (pigs, cows, chicken) that the juveniles take care of themselves on daily basis. According to some of the sources the work of juveniles of age 14-16 is maximum 4 hours per day and those of age 16-18 work for maximum 6 hours per day. Reportedly they are paid for their work. The farm is considered as an advantage of this institution, because this is the only institution with a farm. It was not possible to determine if the work of juveniles is in line with international labour standards.

It is noteworthy that female juveniles are not provided with similar conditions.

Treatment

According to the regional Ombudsman the population of the juvenile educational colony is lower than number of prison personnel. The convicts are never left alone without proper supervision, and there are night duties as well. In positive perspective this allows for individualized treatment of juveniles and is in line with the Havana rules.[352]

It was not possible to determine if the restraints or disciplinary measures are used in practice and if they are limited to cases when a juvenile is of an imminent threat to himself/herself or others. However, the problem of ill-treating certain social group within the colony population was frequently outlined during different interviews. It was explained that juveniles who are identified as homosexuals are separated from the rest of the juveniles. Items used by the separated group are not used by the rest. Reportedly the prison administration also participates in the discrimination based on sexual orientation by inaction. This problematic issue of so called 'untouchables' is also emphasized by Mr Hammarberg in his report, where he also pointed out that the management of the institution appeared to be aware about the risk that these boys were facing.[353]

Education

Juveniles at the Juvenile Educational Colony have school on the premises and are generally provided with education. However, the problem regarding the issue arose in 2010 when the *de facto* Ministry of Justice and the *de facto* Ministry of Education issued joint Decree No. 289/2230, stating that the costs for the educational process in the Colony will be funded through reducing or limiting the funding of the work of teachers, purchase of textbooks and stationary and implementation of certain organisational and methodological educational processes.

All limitations negatively affected the education process of juveniles, but the most problematic one appeared to be the issue with funding the teachers' work.

An application about the issue was filed to the regional Ombudsman by establishment personnel complaining about certain decisions. The complainants were teachers, who are simultaneously heads of departments within the establishment (but pedagogues by education). They were complaining about the salaries, because they have been given additional tasks without being additionally paid for them. More

[352] Ibid., rule 30
[353] Hammarberg, supra at 2, p.21

specifically, as the regional Ombudsman describes in his annual report,[354] a complex situation developed because earlier some of the staff members of the Colony received additional payment for teaching the convicted juveniles, but then leadership of the *de facto* Penitentiary Services made a decision to cancel the position of 'teacher' and impute teaching tasks to other members of the staff of the Colony by modifying the staff and creating a staff unit of 'teacher-pedagogue', leaving the base salary the same, but placing additional work-load on pedagogues. Thus, the pedagogues without appropriate education as teachers are required to teach juvenile offenders without additional payment.

The regional Ombudsman applied to relevant bodies and the issue is currently under review by the *de facto* Ministries of Justice and Education to solve this complex problem.

Reportedly, since the decision about cutting down the budget was made, all costs were cut down in the school and it was not provided with enough resources and funds for stationary items and transportation for teachers. Besides, the facility is outside the village, so teachers cannot walk to the place. As a result the quality of education is very low.

Vocational Trainings

According to civil society representatives there are some different types of vocational trainings provided for male juveniles. To the knowledge of NGO Rezonans, vocational courses, namely cutting on the wood, are provided for male juveniles.

The NGO Rezonans has carried out two projects for juveniles in the Juvenile Educational Colony in 2007 and 2010 in partnership with the Organization for Security and Co-operation in Europe (OSCE) Mission. The objectives of both projects were similar and envisaged conducting trainings for juvenile prisoners by their peers from the public, providing educational seminars on child rights and possibilities after release, etc. In 2010 the project was further enhanced and additional activities were carried out, namely psychological and legal counselling was provided for juvenile prisoners in private without the supervision from the administration. In 2010, within the project Rezonans also provided some hygienic and stationary products. Also sport equipment worth of 2,000 Euros and books were provided to the colony, which is still in its possession.

It is noteworthy that female juveniles are not provided with similar programmes.

Medical Services

It was not possible to get comprehensive information about the medical services provided for the juvenile convicts or if juveniles are given medical check by physicians upon admission. Information was accessible only regarding couple of issues and only through unofficial sources.

Reportedly in 2009 the organisation Medicines without Borders (Medecins Sans Frontieres) provided rooms for TB treatment, which is available to the day. In 2010 there were no TB and HIV patients among juvenile convicts. None of the juvenile prisoners have complained about medical services openly.

[354] Report of the regional Ombudsman, supra at 288

According to the latest annual report of the regional Ombudsman the complaints received from prisons also pointed to the improper medical care. The report says that the Ombudsman addressed all the applications by ensuring the medical examination was provided to those in need or requesting information about the health conditions of the applicants.[355] The Ombudsman does not specify if any of the applicants were juveniles. The report also points to the need of material and technical equipment for the surgical department.[356]

In addition, it has been complained by the female section of the Penitentiary Establishment No.3 that in order to maintain proper health the consultation with the gynaecologist is needed. But such a specialist is not within the medical personnel of the establishment.[357]

Yet, in his report the regional Ombudsman pointed out that the problem in regards to the medical services is not as much the lack of delivery as the quality of the delivered services.[358]

Transfer to adult prisons

As already pointed out earlier, the Minimum Age of Criminal Responsibility (MACR) is determined to be 16 and children between 14 and 16 years of age are also held liable for the offences of serious nature. A juvenile serving a sentence in the penitentiary establishment is transferred to the adults' facility upon acquiring adulthood. However, as pointed out by the regional Ombudsman, in practice exceptions are made and a juvenile may be kept in juvenile facility up to the age of 21, based on the decision of the administration, depending on the offence, behaviour and the period still remaining to serve. The regional Ombudsman did receive a request from the juvenile who was soon to turn 18 and who did not want to be transferred to adults' penitentiary facility once he would become 18. This practice has also been confirmed by civil society representatives.

Complaints Mechanism

According to his report, in 2012 the regional Ombudsman received 1,510 complaints, which contained individual and collective complaints of violations of the rights of specific individuals or reports on human rights violations. 168 of these complaints were from convicts, accused individuals or others on their behalf, 121 out of these complaints were from the penitentiary system.[359] Treatment of convicted persons and persons held in prisons of Transnistrian region, occupy a significant place in the mass of complaints to the Ombudsman.

But apparently these statistics do not concern juvenile convicts, as during the interview the regional Ombudsman stated that there have been no complaints filed from the side of juvenile convicts since very long time ago. There was only one request of a juvenile who was turning 18 and wanted to remain in the juvenile educational colony instead of being transferred to the adults' establishment. The juvenile was granted his request.

[355] Report of the regional Ombudsman, supra at 288, p.131
[356] Ibid., p.144
[357] Ibid., p.145
[358] Ibid., p.136
[359] Ibid., pp.3-4

The regional Ombudsman also pointed out that some of the complaints that he has received previously concern violation of rights that have occurred several years ago, which are inadmissible according to the *de facto* Law on the Ombudsman that provides that the complaint shall be filed to the Ombudsman no later than one year after the alleged violation occurred.[360] The regional Ombudsman is authorized to make exceptions, but only up to two years. To give an example the regional Ombudsman made up a case, when someone was physically ill-treated and only complained about it two years later. In such case scenario it would be too late, because the signs of the ill-treatment on the body would be gone and it would be hard to determine the truth. At that point it would only be possible to refer to the medical records during the period of the alleged violation and check it for evidences. However, if the alleged violation occurred more than two years ago, the regional Ombudsman declares the application as inadmissible.

During the conversation regarding the issue of complaints, the regional Ombudsman outlined that there is a possibility that a child may be complaining about the violation that has not happened but was fabricated to put blame on the prison personnel. The regional Ombudsman oddly supported this statement with a theory, developed by Cesare Lombroso, an Italian penal doctor-psychiatrist from the early 20th century, which carries an idea that criminals are born criminals (theory about 'born criminals'). The regional Ombudsman continued with saying that though the environment also has impact on children, the theory about born criminals cannot be ignored. Mr Kalko concluded by saying that all children need to be dealt with individually, because some require more strictness than others.

The author would like to emphasize that overall impression was that the problem seems to be not as much in the procedures and regulations, but the attitude of the regional Ombudsman towards the issue itself.

It was not possible to obtain information about the complaints referred to *de facto* executive organs.

Monitoring and Evaluation

International human rights documents setting international standards for the administration of justice include provisions emphasizing the need for monitoring of conditions of detention and treatment of prisoners by bodies independent from the system. Standard Minimum Rules for the Treatment of Prisoners as well as European Prison Rules recommend regular inspection of penal institutions by qualified and independent persons or bodies.[361] The Beijing Rules stresses that a regular evaluative research mechanism shall be established within the system to collect relevant data and information in order to analyse and plan reforms and improvements.[362] The commentary to the Rules suggests that independent persons or bodies shall be the ones conducting the research.[363] The Committee for the Rights of the Child (CRC) also recommends that juvenile justice practice is regularly evaluated by

[360] De facto Law on the Ombudsman, supra at 261, art.17
[361] United Nations, *Standard Minimum Rules for the Treatment of Prisoners*, 30 August 1955, para.55; and Council of Europe: Committee of Ministers, *Recommendation Rec(2006)2 of the Committee of Ministers to Member States on the European Prison Rules*, 11 January 2006, Rec(2006)2, para.93.1.
[362] The Beijing Rules, supra at111, rule 30.3
[363] Ibid., rule 30, Commentary

independent bodies, and stresses the importance of involvement of children in the process, in particular those who have been in contact with the system.[364]

According to the *de facto* Law 'On Ombudsman for Human Rights' the regional Ombudsman has the right to visit the detention places, *inter alia*, pre-trial detention facilities and penitentiary establishments, interview people detained, and get information about their conditions of detention. As the regional Ombudsman told the author visits to detention places, including juvenile penitentiary facilities, are regularly conducted by the Ombudsman's office.

The author was told that the Ombudsman's Office is the only independent body (along with the Commission for the Protection of Minors which has the authority to monitor the conditions of the Closed Type Special Educational Institution)[365] that has the authority to monitor the conditions and treatment at places of the deprivation of liberty. Reportedly, the only 'outside' person/body to be allowed in the penitentiary system was the UN Senior Expert, Mr Thomas Hammarberg.

As to the Moldovan constitutional authorities, as noted earlier, the National Human Rights Action Plan for 2011-2014 have been elaborated, which, as one of the objectives, includes establishing a joint mechanism with international organisation for regular monitoring of conditions in the detention institutions in the Transnistrian region. This objective has not been implemented just yet. As the Ombudsman noted in the annual report the hindering factor is that 'the constitutional and international organisations, other officials have free access to detention facilities from Transdniestria only with the permission of the government from Tiraspol'.[366]

The interrupted visit by the CPT, described above, is also noteworthy in this regard.

Training of Personnel

In the opinion of the Committee on the Rights of the Child providing systematic and ongoing trainings on relevant provisions of international treaties regarding children's rights to those professionals who are involved in the administration of justice, specifically juvenile justice, is the key for the quality of the administration of juvenile justice in practice.[367]

Reportedly there are no regular trainings conducted for the penitentiary personnel (or law enforcement and judiciary personnel) in the Transnistrian region.

Rehabilitation

According to the regional Ombudsman prisoners are prepared for the release from the moment they are detained. However rehabilitation programs do not exist for adults or for juveniles. And there is no perspective that it will exist in the nearest future. There was also no rehabilitation provided for former

[364] CRC GC No.10, supra at 6, para.99
[365] Regulations on the Commission for the Protection of Minors (Annex to the Order of the *de facto* President on Approval of Regulations of the Commission for the Protection of Minors), No.457, 28 August 2006, art.4(i)
[366] Centre for Human Rights of the Republic of Moldova, *Report on the Observance of Human Rights in the Republic of Moldova in 2011*, Chisinau, 2012, p.134
[367] CRC GC No.10, supra at 6, para.97

warriors. In the opinion of Mr Kalko, even if there were programs in theory, they would not be carried out in practice, because it is not rational and thus possible in today's reality of Transnistria.

As Mr Kalko pointed out there are three areas to be addressed for the rehabilitation to make sense and be successful: family integration, accommodation and employment. As the number of unemployment is very high, the relevant authorities cannot make it compulsory for the employers to employ anyone, as the employers are free in deciding who to employ.[368]

Conclusion

The report tried to show the findings of the research study conducted on the juvenile justice situation in the breakaway Transnistrian region of Moldova. The research entailed undertaking desk- and field-based research. The desk-based research involved making a list of the standards, norms, leading principles and core elements of a comprehensive juvenile justice policy set by relevant general and child-specific international and regional documents. The relevant *de facto* legal framework was also thoroughly studied. Field-based research involved gathering information through meetings and interviews about the practice of administration of juvenile justice in the Region. For the purposes of the research the *de facto* law and practice of the administration of juvenile justice was then compared with relevant international standards and leading principles to see if they were in compliance.

Despite the obstacles that the author encountered during the research in terms of limited access to information and lack of information from the accessible sources, it was still more or less possible to reveal relevant key points that help in drawing conclusion about the research topic.

The *de facto* Constitution as well as other laws make reference to the international human rights standards and emphasize that all actions of the authorities shall be based on the principles of the rule of law, democracy and rights and legal interests of individuals. The *de facto* Constitution provides extensive list of human rights and freedoms, as well as basic principles regarding criminal justice. The *de facto* authorities have pledged to respect universally recognized principles and rules of international law, including the provisions of the Convention on the Rights of the Child, the International Covenant on Civil and Political Rights, etc. The *de facto* Criminal Code and the Criminal Procedure Code, as well as other relevant *de facto* laws, also include most of the basic norms and principles for the proper administration of juvenile justice. However, there are also some basic principles missing out from the law, such as setting the limits specifically for a juvenile for the period of detention before the judicial decision, determining the limit to the number or duration of interrogations of juveniles, providing right for effective participation of a juvenile in the judicial proceedings, etc. The *de facto* legal framework also lacks variety of alternative measures to the deprivation of liberty which would allow judges to be more flexible while adjudicating. Thus, the *de facto* law needs further review and harmonisation with internationally recognised standards and norms.

Still, even with some shortcomings in the law, more problematic areas and gaps were encountered with implementing those existing provisions that are in line with international human rights standards and norms in practice. And even more concerning among the research findings was the overall approach,

[368] Meeting with the regional Ombudsman for Human Rights, Mr. Vasiliy Kalko, 18 April 2013

including from certain decision-making bodies in the Region, towards number of issues regarding certain elements of the comprehensive juvenile justice policies. The approach was generally more punitive than child-rights based.

There is no separate juvenile justice system or policy, there are no separate juvenile courts, juvenile judges, or other professionals specialising in criminal cases involving juveniles in the Transnistrian region. There are no discussions taking place to alter the situation. The reason for this is the traditional value orientations and ethical standards of the Transnistrian society that deem separate juvenile justice system as irrelevant for the Transnistrian reality. This strong non-acceptance is justified with the idea that creating separate and more comprehensive legal safeguards for children would mean giving them more rights on the expense of restricting the rights of the parents.

Some of the problematic areas of the administration of juvenile justice in practice, which were identified based on limited sources available or accessible during the research, include the lack of preventive programmes and measures – regrettably, those few existing programmes focus more on correctional measures than the use of community-based measures; lack of involvement of the civil society or the community members in the administration of juvenile justice and specifically at the level of prevention of juvenile delinquency; certain vagueness between the functions of different institutions, e.g. the Investigation Committee and the Prosecutor's Office; frequently used unnecessary and lengthy pre-trial detention; significantly lengthy judicial proceedings and delays in reviewing criminal cases; alleged psychological torture of juveniles during interrogations; poorly developed alternatives to prosecution and imprisonment, as well as absence of mediation services within restorative justice practices; imprisonment excessively imposed on juvenile offenders; frequently outlined problem of bribery within the law enforcement system, as well as the judiciary; violation of the principle to separate children from adults, as female juveniles are kept with women convicts; criminalisation and frequent custodial sentencing for the possession of Cannabis; unjustified restrictions for juvenile convicts on the visitations of and communication with family members; ill-treatment and discrimination based on sexual orientation in the juvenile educational colony; lack of rehabilitation programmes; supervision used excessively towards conditionally released juveniles, with the approach 'once a criminal, always a criminal'. At the same time, there is an ongoing problem in regards to access to education for juveniles kept in juvenile educational colony in Camenca region. The issue is currently under review by the *de facto* Ministries of Justice and Education to solve this complex problem.

Also, the report briefly assessed the role of the Moldovan constitutional authorities in the implementation of juvenile justice in the Transnistrian region. It was found that though there are certain action plans developed, there are still virtually no actions taken in practice to promote the human rights in the administration of juvenile justice in the Region.

The status of the Region is, certainly, one of the hindering factors for both, constitutional and de facto authorities, for ensuring full observance of human rights there. But basic human rights principles, especially those concerning children cannot be neglected and violations cannot be justified.

Recommendations

Regional Authorities

The author recommends to:

1. Review the approach towards children in conflict with the law. In all decisions made within the scope of the administration of juvenile justice, the approach needs to be child-rights based and primarily serving the best interests of the child.
2. Take all necessary measures to ensure that all children in conflict with the law are treated equally;
3. Review the legislation to bring it in full consistency with international law and in particular in line with child-specific international human rights standards and norms;
4. Take all appropriate measures to prevent and combat cases of torture or other forms of ill-treatment; Provide a proper definition of the term 'torture' in the Criminal Code.
5. Introduce and provide regular trainings for all professionals, involved in the administration of juvenile justice, on the applicable human rights standards and legal norms and safeguards, as well as on relevant issues, such as the development of children, causes of their delinquent behaviour, etc.
6. Carry out public awareness raising campaigns on the need and positive aspects of a separate juvenile justice system;
7. Start discussions, elaborate action plans or strategies, in consultation with the representatives of the civil society, for the development and introduction of separate and more comprehensive juvenile justice system; Carry out, promote and/or support campaigns for raising public awareness of the importance of community involvement in prevention activities;
8. Develop more programmes focusing on the root causes of the delinquency and serving as primary and secondary prevention programmes; Develop specific strategy or plan and introduce a set of measures aimed at preventing juvenile delinquency;
9. Determine more specific regulations for interrogation of juveniles, including the duration of interrogations and humane treatment of juveniles consistent with their sense of dignity and worth.
10. Develop and introduce more alternative measures to detention and imprisonment that are aimed at rehabilitation and re-socialisation of juvenile offenders, as the current list in the Criminal Code lacks the variety of measures to allow the flexibility to the judges or other relevant authorities to use them in practice. This at the same time will serve as an effective way for tertiary prevention.
11. To avoid confusion and abuse of power, as well as delays in the investigation process, more clear lines need to be drawn between the functions, duties and rights of the Investigation Committee and the General Prosecutor's Office.
12. Develop a strategy / a comprehensive action plan to combat the causes of delinquent behaviour among juveniles. e.g. more initiatives to be developed for the protection, supportive intervention and assistance of children left behind by parents who went abroad for work.

13. Start discussing the establishment of juvenile courts either as a separate court or as part of the existing courts and/or the appointment of specialised judges to deal with criminal cases involving juveniles. The judges dealing with the cases of juvenile justice need to undergo special trainings.
14. To avoid lengthy judicial proceedings, shorter time limits should be set and implemented for the court decisions regarding juvenile defendants than those set for adults. Judges shall take the account of the age of the juvenile defendant when adjudicating.
15. Take necessary measures to ensure the effective participation of a juvenile defendant in all proceedings.
16. Take appropriate measures to decrease the extensive supervision of the juveniles conditionally released from serving the sentence and rather ensure the provision of necessary assistance and support;
17. Introduce mediation practices and other measures to assist the parties of the legal dispute in reconciliation, reparation, etc. Acknowledge that NGOs and civil society can play essential role in providing community-based programmes and services, such as rehabilitation and reintegration programmes;
18. Take necessary measures to ensure that treatment of children in conflict with the law is in accordance with the child's age and promotes the child's reintegration and assumption of a constructive role in society.
19. Take all appropriate steps to discourage the practice and act upon the cases of corruption within the law enforcement, judiciary or penitentiary systems.
20. Take all measures to ensure that the right of juvenile detainees to maintain contact and communication with family members and receive visitors is fully respected, promoted and facilitated. Exceptional circumstances limiting this contact should be clearly described in the law and not be left to the discretion of the competent authorities (CRC, General Comment No.10, paragraph 87).
21. All necessary measures need to be taken to ensure the separation of female juveniles from women convicts, as it is in violation of the principle that children deprived of liberty shall not be placed in adult prisons.
22. Take measures to eradicate the practice of ill-treatment and discrimination based on sexual orientation of male juveniles in the Juvenile Educational Colony.
23. Take measures to resolve the problem in the provision of right to education for male juveniles at the Juvenile Educational Colony in timely manner and considering the best interests of children; Take measures to provide access to education for female juveniles;
24. Develop and introduce rehabilitation programmes for children in conflict with law.
25. Collect the disaggregated data on the practice of the administration of juvenile justice, such as the number and age-range of detained or convicted juveniles, the use and average duration of pre-trial detention, sanctions imposed or measures used on them; and make it accessible for the general public and other interested individuals;
26. Carry out regular evaluation of juvenile justice practices, preferably by independent and impartial academic institutions, or other representatives of civil society;

27. Allow and support regular monitoring and inspection of penal establishments by qualified and independent persons or bodies;

Civil Society Representatives (NGOs, academic society, International and Intergovernmental organisations)

The author recommends to:

1. To the extent possible, observe the implementation of necessary changes proposed above in the recommendations towards the *de facto* authorities;
2. Develop a strategy to encourage more cooperation on the issues of justice for children on the level of the civil society;
3. Exchange relevant experience and information.

For Constitutional Authorities:

The author recommends to:

1. To the extent possible, monitor and participate in the implementation of necessary changes proposed above in the recommendations towards the *de facto* authorities.
2. Start implementing the points from the National Human Rights Action Plan 2011-2014 regarding the human rights in Transnistrian region;
3. Consider withdrawing reservations and declarations, which are aimed at negating from human rights obligations of Moldova over the Transnistrian territory.
4. More initiative and involvement of the Center for Human Rights of Moldova, particularly Children's Advocate, in the human rights issues in the administration of juvenile justice in the Transnistrian region.