

# Confronting Normative Frameworks with Practical Realities: Redefining Juvenile Justice in Slovenia

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**There are many reasons for the differential treatment of young people within criminal justice.<sup>1</sup> They are believed to differ significantly from adults convicted of crime in several aspects that are crucial for criminal justice treatment, especially in their physical and mental development. Recent studies in neuroscience and psychology have found that the human brain, especially in the parts concerned with impulse control and anticipating consequences, is still developing into a person's twenties.<sup>2</sup> Young people's capacity for moral judgement may also not be fully developed,<sup>3</sup> and children are thought to be significantly more prone to be influenced by their environment and peers than adults.<sup>4</sup>**

Over time, two different systems for treating young people involved in crime have developed globally: the welfare and justice approach. The welfare model stemmed from the first specialised courts in the USA and was originally characterised by an understanding of young people's offending behaviour as a consequence of inadequate living and family conditions. According to the welfare approach, juvenile justice treatment aimed not to punish the child but to address the causes of their delinquent behaviour. The model has spread throughout Europe and the US;<sup>5</sup>

however, particularly in the US, it has mainly developed outside criminal law and thus suffered from a lack of procedural guarantees. It has also been criticised for combining the often contradictory concepts of education and punishment.<sup>6</sup> The justice model thus developed in the US mainly as a response to — and critique of — the welfare model, seeking to increase procedural safeguards and rights for young people and their parents. In parallel with acquiring rights, the child gradually also assumed greater responsibility,<sup>7</sup> which has — again, especially in the US context — led to a markedly stricter system and more repressive treatment of young people involved in crime.

Modern countries are still broadly grouped into these two categories, although most jurisdictions and their juvenile justice systems use a mix of both. Contemporary welfare models almost necessarily include procedural guarantees, partly mandated by international instruments to protect children's rights. On the other hand, current justice models are not exclusively punitive but also entail welfare elements. At the same time, additional trends have developed which depart from the two classical models: more recent concepts of restorative justice and diversion are greatly emphasised in contemporary juvenile justice systems.<sup>8</sup> The discourse of child-friendly justice,

1. Filipič, K. (2013). Mladoletniško kazensko pravo [Juvenile criminal law]. In L. Bavcon, A. Šelih, D., Korošec, M. Ambrož, & K. Filipič (Eds.), *Kazensko pravo [Criminal law]*, (pp. 495–544). The Official Gazette of the Republic of Slovenia, Ltd.; Scott, E., & Steinberg, L. (2008). Adolescent Development and the Regulation of Youth Crime. *The Future of Children*, 18(2), 15-33.
2. Barendregt, C., & Laan, A. (2019). Neuroscientific insights and the Dutch adolescent criminal law: A brief report. *Journal of Criminal Justice*, 65.
3. Ashkar, P., & Kenny, D. (2007). Moral Reasoning of Adolescent Male Offenders. *Criminal Justice and Behavior*, 34, 108-118; Romeral, L. F., Fernandez, J. S., & Fraguera, J. A. G. (2018). Moral reasoning in adolescent offenders: A meta-analytic review. *Psicothema*, 30(3), 289–294.
4. See, for example, Cullingford, C., & Morrison, J. (1997). Peer Group Pressure Within and Outside School. *British Educational Research Journal*, 23, 61-80; Walters, G. (2018). Resistance to Peer Influence and Crime Desistance in Emerging Adulthood: A Moderated Mediation Analysis. *Law and Human Behavior*, 42, 520-530; or for a different view, Ungar, M. (2000). The myth of peer pressure. *Adolescence*, 35(137), 167-180.
5. Dumortier, E. (2018). Under pressure? The foundations of children's courts in Europe. In V. B. Goldson (Ed.), *Juvenile Justice in Europe: Past, Present & Future* (pp. 3-23). Routledge.
6. See footnote 1: Filipič (2013).
7. See footnote 1: Filipič (2013).
8. Završnik, A. (2008). Konceptualne zagate restorativne pravičnosti – nova paradigma modernega odzivanja na kriminaliteto? [Conceptual dilemmas of restorative justice - a new paradigm for modern responses to criminality?]. *Revija za kriminalistiko in kriminologijo [Journal of criminal investigation and criminology]*, 59(2), 125-140; McAra, S., & McVie, L. (2010). Youth crime and justice: Key messages from the Edinburgh study of youth transitions and crime. *Criminology & Criminal Justice*, 10(2), 179-209.

promoted mainly by the Council of Europe,<sup>9</sup> is also greatly important, particularly from a procedural perspective.

However, the reality of juvenile justice often does not fully reflect the ideas debated at the conceptual and principled levels of juvenile criminal law. Goldson distinguishes between the shared youth justice narratives at the conceptual level and the differences that arise between countries upon a finer-grained analysis.<sup>10</sup> In this sense, he finds that European systems are very similar and ambitious at the level of concepts and ideas, where key issues include respect for human rights and moderation in sanctioning on the one hand and the issue of punishment and penalty on the other. At the level of implementation, however, referring to Dünkel,<sup>11</sup> he argues that countries appearing very similar at the conceptual level can differ greatly, so significant differences in the treatment of young people emerge in the European area in practice.

This article identifies how a similar gap between discourse, at the conceptual level, and practice can exist within one individual system, as exemplified by the Slovenian juvenile justice system. In Slovenia, a welfare model of juvenile criminal law with moderate sanctions, aimed at helping minors who find themselves in criminal proceedings, is considered the norm.<sup>12</sup> However, few studies have examined how young people involved in crime are treated in proceedings on the ground. This article aims to fill this gap using the country as an example by, first, briefly outlining the normative framework of juvenile criminal law in Slovenia. It then presents the results of a recent empirical study into the functioning of Slovenian juvenile justice in practice, explaining its methodological approach and main findings. Through the discussion and conclusion, the article conceptualises the differences between ideas and

their implementation. Last, it offers some possible directions for treating young people differently in Slovenia and lessons which can be learned from it and applied elsewhere.

### **The treatment of young people involved in crime in Slovenia: A normative view**

The foundations of the Slovenian juvenile criminal law — focused on the welfare and needs of the child — were laid mainly in the 1950s in the then-progressive Yugoslav criminal law. The 1951 Yugoslav Criminal Code divided young people into two age groups: younger (14-15 years) and older (16-17 years) juveniles. More importantly, it required that the criminal procedure against young people focused on their personality, needs, and personal and family circumstances. According to the 1959 amendments to the Yugoslav Criminal Code, the court could only impose educational measures on younger adolescents involved in crime (14-15 years old), while older young people (16-17 years old) could be sentenced mainly to educational measures and exceptionally to penalties; a fine or juvenile imprisonment.<sup>13</sup>

Since Slovenia's independence in 1991, the treatment of young people has been part of the general Criminal Code (CC) and Criminal Procedure Act (CPA).<sup>14</sup> Under the CC, the age of criminal responsibility is 14 years, and young people are classified into three groups:

1. children under 14, who are not dealt with by the courts but by social welfare authorities;
2. minors aged 14 and 15, upon which the court can only impose an educational measure;
3. older minors aged 16 and 17, upon which the court will usually impose an educational measure, exceptionally sentence them with a penalty (fine or juvenile imprisonment).

Over time, two different systems for treating young people involved in crime have developed globally: the welfare and justice approach.

9. Liefwaard T., & Kilkelly, U. (2018). Child-friendly justice: past, present and future. In V.B. Goldson (Ed.), *Juvenile Justice in Europe. Past, Present and Future* (pp. 57-73). Routledge.

10. Goldson, V. B. (2018). Reading the Present and Mapping the Future(s) of Juvenile Justice in Europe: Complexities and Challenges. In V. B. Goldson (Ed.), *Juvenile Justice in Europe: Past, Present and Future* (pp. 209-253). Routledge.

11. Zimring, V. F., Langer, M., & Tannenhaus, D. S. (2015). Juvenile Justice in Global Perspective. In F. Dünkel (Ed.), *Juvenile Justice and Crime Policy in Europe* (pp. 9-62). New York University Press.

12. Filipčič, K. (2015). Mladoletniško prestopništvo [Juvenile Delinquency]. In A. Šelih & K. Filipčič (Eds.), *Kriminologija [Criminology]* (pp. 405-432). GV založba in Inštitut za kriminologijo pri Pravni fakulteti [GV and Institute of Criminology at the Faculty of Law]; Filipčič, K., & Plesničar, M. (2017). Slovenia. In S. H. Decker, & N. Marteache Solans (Eds.), *International handbook of juvenile justice* (pp. 395-419). Springer.

13. See footnote 1: Filipčič (2013).

14. Criminal Code (KZ-94) (1995). Uradni list RS [The Official Gazette of the Republic of Slovenia, Ltd.]; (Nb. 95/04 and following.); Criminal Procedure Act (ZKP) (2021). Uradni list RS [The Official Gazette of the Republic of Slovenia, Ltd.]; (Nb. 176/21 and following.).

According to Article 73 of the CC, the purpose of educational measures and penalties for young people is to ensure their education and re-education through protection, assistance, supervision, training, and the development of their personal responsibility. Article 453 of the CPA states that all authorities dealing with young people shall consider their mental development, sensitivity, and personal characteristics in all proceedings. According to Article 461 of the CPA, all authorities involved in proceedings against a minor from which reports or opinions are requested must act quickly to bring the proceedings to a conclusion as promptly as possible.

Despite an amendment to the Slovenian CC in 2008, which envisioned a separate law dealing only with young people involved in crime, Slovenia has not (yet) adopted such a law — despite several failed attempts. The most recent attempt was the draft Liability of Minors for Criminal Offences Act,<sup>15</sup> which did not pass the legislative process due to challenges that could not be adequately addressed,<sup>16</sup> resulting in the old CC's continued use for young people.

### The police and prosecutorial levels

In Slovenian criminal proceedings, the 'legality principle' applies to adult and young defendants.<sup>17</sup> More specifically, this means that the police must forward any criminal complaint recorded against a young person to the public prosecutor. This way, diversion at the police level is not possible and the prosecutor as a legal professional always investigates the complaint, adding an extra layer of protection for young people in conflict with the law.

If there is evidence that a young person has committed a criminal offence, the public prosecutor must generally request that criminal proceedings be initiated based on the principle of legality. However, there are four exceptions under the current CPA when the prosecution can act without a request to initiate criminal proceedings, which reflects the ideas of diversion in the Slovenian system:<sup>18</sup>

1. Expediency principle: for minor offences (up to three years imprisonment or a fine), the public prosecutor can decide not to prosecute if they consider official action unnecessary.
2. Minor significance of the offence: if there is a discrepancy between the minor seriousness of the offence and the potential adverse consequences of

prosecution for the child, the prosecutor can dismiss the charge.

3. Alternative procedures: for offences punishable by up to five years of imprisonment, the prosecutor may opt for a settlement or deferred prosecution, where the young person must carry out certain tasks (repairing damage, donating, or doing community service).
4. Enforcement of a sentence or educational measure: if the enforcement of a sentence or educational measure is already underway, the public prosecutor may decide not to request that criminal proceedings be brought for the young person's second offence if these would not be sensible.

### The judicial level

No specialised juvenile criminal courts exist in Slovenia. Like in criminal cases against adults, District courts are responsible for first-instance decisions on juvenile offences, Courts of Appeal adjudicate in criminal complaints against first-instance judicial decisions, and the Supreme Court deals with extraordinary measures filed against decisions at lower levels.

At the first level, juvenile criminal court proceedings are divided into two phases: the preparatory proceedings and the panel session or main hearing. If the court does not dismiss the case due to the expediency principle, minor significance of the offence, or an ongoing educational measure or sanction and imposes a criminal sanction on the young person, there is a third phase, namely the enforcement and monitoring of the criminal sanction. Some specialisation exists in Slovenian youth justice and is two-fold. First, semi-specialised juvenile judges decide — depending on their caseload — in cases against adults, but are also permanently assigned juvenile criminal cases. At the level of District Courts, holding jurisdiction over serious adult criminal offences, punishable by three years of imprisonment and more, a panel of judges, composed of one professional and two lay judges, decides in juvenile criminal cases. Formally, lay judges, who are typically educators or experts in juvenile matters, cooperate with the professional judge equally when deciding on the verdict and the educational measure or sentence. In practice, the lay judges tend to follow the professional judge's reasoning and decision-making.

15. Predlog Zakona o mladoletnih storilcih kaznivih dejanj [Draft Young Offenders Act] (ZOMSKD). (2019). EVA: 2018-2030-0046 – predlog [draft], 24. 12. 2019.

16. Council of Europe (2021). *Improving the Juvenile Justice System and Strengthening the Education and Training of Penitentiary Staff* (Inception Report Component I: 21S110). Strasbourg: Council of Europe – Children's Rights Division.

17. Šugman Stubbs, K., Gorkič, P., & Fišer, Z. (2020). Temelji kazenskega procesnega prava [The Foundations of Criminal Procedural Law]. GV Založba [GV].

18. See footnote 8: McAra & McVie (2018).

Second, the professional judge deciding in juvenile criminal cases receives training in proceedings against young people in conflict with the law and topics related to child development and mental health alongside prosecutors, police officers, and mediators. The training was introduced by the

recently amended Article 452.b of the CPA and is run by the Slovenian Centre for Judicial Education.

The juvenile chamber decides whether the young person has committed an offence and, if so, imposes one (or more) of the sanctions in Table 1.

**Table 1: Sanctions against juveniles convicted of crime (CC, 1994)<sup>19</sup>**

<b>Educational<sup>20</sup> measure</b>	<ul style="list-style-type: none"> <li>(I) Non-residential               <ul style="list-style-type: none"> <li>(a) reprimand,</li> <li>(b) instructions and prohibitions (11 different options),<sup>21</sup></li> <li>(c) supervision by a social welfare authority,</li> </ul> </li> <li>(II) Residential               <ul style="list-style-type: none"> <li>(d) placement in an educational home,</li> <li>(e) placement in a correctional home,</li> <li>(f) placement in an institution for physically and mentally disabled youth.</li> </ul> </li> </ul>
<b>Penalty</b>	<ul style="list-style-type: none"> <li>(a) a fine,<sup>22</sup></li> <li>(b) juvenile imprisonment<sup>23</sup> (as the main penalties),</li> <li>(c) prohibition from driving a motor vehicle,</li> <li>(d) expelling an alien from the country (as secondary penalties).</li> </ul>
<b>Safety measure</b>	<ul style="list-style-type: none"> <li>(a) compulsory psychiatric treatment and care in a medical institution,</li> <li>(b) compulsory psychiatric treatment at liberty,</li> <li>(c) deprivation of driving licence,</li> <li>(d) confiscation of objects.</li> </ul>

19. There are four types of sanctions according to Slovenian penal law and the CC: sentences (e.g. prison and fines), admonitory sanctions (e.g. suspended sentence), safety measures (e.g. compulsory psychiatric treatment), and educational measures. For juveniles, the court may only use different types of educational measures and, in exceptional circumstances, the sentence of juvenile imprisonment or a fine. Under certain conditions, the court can also impose upon juveniles some safety measures.
20. When deciding which educational measure to apply, the main criterion for the court is the juvenile's resocialisation, followed by the seriousness of the offence. Six educational measures may be imposed on juveniles. The reprimand, instructions and prohibitions, and supervision by a social welfare authority are non-residential and carried out in the community, whereby the juvenile stays in their existing home environment. Placement in an educational home, correctional home, or an institution for physically and mentally disabled youth are residential and exclude the juvenile from their home environment when this is assessed by the court as necessary for the young person and their development. Courts are restrictive in using residential educational measures. In over 90% of cases when an educational measure is imposed, courts apply one of the non-residential educational measures, so the juvenile continues living in their home environment and carries out the educational measure in the community under the supervision of social services and the court. Non-residential educational measures can be imposed for up to one year. There is no fixed term for the child to spend in the educational institution, correctional home, or institution for physically and mentally disabled youth as the court does not set the duration of these sanctions in their final decision. The minimum length of a residential educational measure is set by the CC to one year, while the maximum is three years. After the educational measure's first year, the juvenile may be conditionally released from a residential placement, and in that case, the court may decide the young person be supervised by social services.
21. The court may issue the following instructions and prohibitions to a juvenile perpetrator: 1) to make a personal apology to the injured person; 2) to reach a settlement with the injured person by means of payment, work or otherwise in order to recover the damages caused in the course of committing the offence. 3) regular attendance at school; 4) to take up a form of vocational education or to take up a form of employment suitable to the perpetrator's knowledge, skills and inclinations; 5) to live with a specified family or in a certain institution, etc; 6) to perform community service or work for humanitarian organisations; 7) to submit themselves to treatment in an appropriate health institution; 8) to attend sessions of educational, vocational, psychological or other consultation; 9) to attend a course of social training; 10) to pass an examination on the traffic regulations; 11) under conditions applying to adult perpetrators, prohibition from operating a motor vehicle may be enforced; (Article 77 of the CC (94)).
22. A fine can only be imposed on a juvenile if they have their own income or other financial means and can pay the fine by themselves. If the young person does not pay the imposed fine, the fine cannot be substituted by a prison sentence. In case of non-payment, the fine is converted into one of the non-residential educational measures. In practice, fines are rarely used for juvenile offenders. According to data from the Statistical Office of the Republic of Slovenia, between 98% and 100% of all juvenile cases where the young person receives a court-imposed sanction, the court chooses an educational measure.
23. Before imposing a sentence of juvenile imprisonment, the court must justify its use in detail, i.e. explain why a less severe sanction is not applicable. Imprisonment is rarely imposed upon juveniles in Slovenia. On average, 0.55 % of juveniles are sentenced to juvenile imprisonment. In the last few years, just one juvenile per year was imprisoned, or there were no juvenile prisoners. According to data from the Statistical Office of the Republic of Slovenia, the sum of imprisoned juveniles in the last 11 years is just 15. Juvenile imprisonment is only possible for older juvenile offenders aged 16-17 and, under particular conditions, for young adults aged 18-21. A juvenile prison sentence can only be imposed in the case of a serious offence for which a sentence of five years of imprisonment or more is prescribed in the CC for adults. The court considers the seriousness of the offence and the level of the juvenile's criminal responsibility, as well as the juvenile's maturity and the time necessary for their rehabilitation and vocational training. A juvenile may be imprisoned between a minimum of six months and a maximum of five years. In the case of criminal offences punishable by thirty years of imprisonment for adults (e.g. aggravated murder), the maximum prison sentence for juveniles is ten years.

The chamber decides at a panel session or main hearing without the public being present. This is an exception from the principle of open justice that the CPA proscribes to protect the child's identity and wellbeing. The juvenile chamber may impose a fine, juvenile imprisonment, or a residential educational measure only at the main hearing. The court may impose any of the selected safety measures on the young person if certain conditions are met.

The child's age is a crucial factor in the choice of educational measure or punishment. The court may impose a penalty only on older young people (16 and 17 years of age) and in exceptional cases (if the offence is severe, the level of criminal responsibility is high, etc.). In deciding on the appropriate sanction, particularly in the case of educational measures, the judge considers the young person's personality, maturity, and needs, and not so much the seriousness of the committed offence. The severity of the offence becomes more important when the court decides whether the young person should be committed to a correctional home or imprisoned.

Once the court has imposed the sanction, the social welfare authority (in the case of non-residential measures) or the educational or correctional home (in the case of residential educational measures) must report to the juvenile court judge every six months on the success of the educational measure as part of the judicial review of the sanction's enforcement. Juvenile judges can suspend or modify the educational measure to better achieve its purpose in case of positive enforcement results, the child's changed needs, or if new circumstances arise that did not exist or were not known when the judicial decision was made (Article 83 of the CC).

### **The treatment of young people involved in crime in Slovenia: A practical view**

Following the presentation of Slovenian juvenile justice, its normative ideas, and principles, the second

part of the article outlines the main findings of the empirical research conducted to explore the system's practical functioning and welfare orientation. This is based on a case file analysis of 150 prosecutorial and 170 judicial files, conducted between 2021 and 2023 as part of an EU and CoE co-funded project on improving the juvenile justice system.<sup>24</sup> The study aimed to identify and investigate the practical problems in juvenile justice in Slovenia and make recommendations for further research, policy, and practice. The results are grouped into three parts, covering:

- The dynamics of prosecutorial diversion,
- Selected issues during the trial,
- Sanctioning people convicted of crime and monitoring sentence execution.

Along with the results, the following analysis considers possible solutions to the problems that arise in practice.

### **The dark side of prosecutorial diversion**

In Slovenia, diversion is often used in juvenile criminal law cases but not always applied following the abovementioned legal provisions. Prosecutors divert young people from the criminal justice system in almost half of all criminal complaints by the police. Since Slovenia's independence in 1991, youth crime has been low, and steadily decreasing for more than 30 years. According to Police data and the Statistical Office of the

Republic of Slovenia, the number of juveniles involved in crime has more than halved from 1,912 in 2004 to 903 in 2022. The number of registered criminal offences committed by young people has dropped from 3,349 in 2004 to 1,192 in 2022. In the same time, the number of juveniles in custody decreased from 1,827 in 2012 to 1,192 in 2022.<sup>25</sup>

In 2020, for example, 830 young people in Slovenia were charged, that is registered by the police, while only 193 or 23 per cent of those received a court-imposed sanction: a non-residential educational measure in 91.7 per cent and a residential educational

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24. The study was carried out in the framework of the project *Improving the juvenile justice system and strengthening the education and training of prison staff*, funded by the EU and the Council of Europe, the results of which are collected in Plesničar, M. M., Balažič, M., Arnež, J., Ramuž Cvetkovič, I., Skočir, M., & Filipčič, K. (2023). *European Union – Council of Europe joint project on improving the juvenile justice system and strengthening the education and training of penitentiary staff in Slovenia*: National research and gap analysis. Strasbourg: Council of Europe – Children's Rights Division.; and Arnež, J. (2023). *Improving the juvenile justice system in Slovenia: Analysis of the case law related to juvenile justice with a focus on young offenders* (Lot 2 Report). Council of Europe.

25. See footnote 24: Plesničar et al. (2023), and Arnež (2023).

measure in 8.3 per cent, and no young person received a prison sentence or fine.<sup>26</sup> That year, prosecutors dismissed over 50 per cent of cases; approximately 25 per cent due to the minor significance of the offence, 15 per cent due to withdrawal of prosecution by the injured party; 15 per cent due to deferred prosecution; and less than 2 per cent due to successful mediation.

However, the inspected case files revealed that diversionary practices were plagued by inconsistencies: prosecutors did not always prosecute all similarly serious crimes or divert equally minor offences, and it was often not clear from the prosecutorial case files or final decisions why the prosecutors pursued a prosecution, especially where the cases (based on the description of the offence) did not seem complex. On the other hand, prosecutors sometimes used diversion in cases where the gravity of the offences appeared to be (at least) equal to those for which they had previously requested criminal proceedings, again without further explanation in their decisions or case files.

Apart from considering the lesser severity of the offence, the CPA prescribes that diversion must be in the child's best interests, based on what the prosecution knows about their personal and family circumstances. It was thus surprising that the inspected prosecutorial files contained little information on the young people and their families. In 93 per cent of diverted cases, the prosecution did not obtain a report from the social welfare authority, although obtaining information on their personal, familial, and extra-familial circumstances is essential for an informed prosecutorial decision. Further, prosecutors did not ask the young person's parents for information about the child or invite the families, social workers, or other professionals to an interview as possible, according to Article 466 of the CPA.

The case file analysis also revealed that diversion was sometimes unequally distributed geographically. Specifically, mediation was unevenly used by prosecutors in different districts, mainly due to different practices and accessibility of mediators. In the case of deferred prosecution, some inconsistencies were found

between different prosecutors' offices regarding the amount of community work required, the time available for young people to complete the tasks assigned, and the young people's income in terms of the obligation to make reparation or other types of payment. In addition, the types of cases where prosecutorial diversion based on the expediency principle was used overlapped with cases where the court dismissed the proceedings on the same grounds after a preparatory procedure had been carried out. However, analysing these practices in more detail was difficult, as the prosecutorial and court statistics did not distinguish between the different categories and levels of dismissals.

### The practical barriers to a fair trial

In parallel to the prosecutorial test of whether diversion is in the child's best interest, courts in Slovenia have a legal obligation under Article 469 of the CPA to carry out and update the young person's holistic individual assessment. Only a thorough individual assessment can be a sound foundation for the judicial decision and appropriate educational measures or penalties. In the inspected case files, courts diligently carried out the individual assessment as part of the preliminary proceedings by interviewing the young person and their parents and obtaining a report from the social welfare authorities.

However, the problematic length of judicial proceedings in Slovenia necessitated a new individual assessment and information gathering from the young person, their parents, social services authorities, and other institutions as part of the panel session or main hearing. More specifically, 69 per cent of the court proceedings in the sample lasted more than a year, which meant that the young person's circumstances might have changed significantly in the intervening period, and a new individual assessment had to be conducted. A thorough but rapid one-off individual assessment of the child in a more expeditious judicial procedure would be more beneficial for the child. It would also save energy, costs, and time.

## No specialised juvenile criminal courts exist in Slovenia.

26. In Slovenia, there are ten educational institutions, designed for juveniles and young people in need of care. A child can be placed into such an institution based on a decision of the family court (e.g. if parents cannot take proper care of the child; if the child often runs away from home; or does not go to school) or based on the decision of the criminal court if the juvenile has committed a crime. With a total capacity of 400 children, fewer than 5% of the occupants in educational homes are juveniles who have committed a crime. There is one correctional home in Slovenia, correctional home Radeče, that can house 47 young people. It accepts those who have committed serious offences and require intense specialised supervision and support. Only one prison in Slovenia, namely the prison in Celje, accepts juveniles involved in crime.

In practice, delays accumulate in court proceedings against young people in Slovenia; however, this is not because any institution acts particularly slowly compared to others. Many of the problems with the length of court proceedings arise because there are no juvenile judges *per se*. As mentioned above, judges who decide in juvenile cases deal with both proceedings against adults involved in crime (sexual offences, domestic violence) and proceedings against young people. The specialisation of judges, prosecutors, and perhaps social workers could allow a more succinct, focused, and coherent decision-making system, enabling swift assessments of juveniles and ensuring a system of more expeditious follow-up during criminal proceedings and the subsequent phase of the enforcement of sanctions.

Another sore spot of the Slovenian juvenile justice system is the use of pre-trial detention. In Slovenia, pre-trial detention is rarely applied against juveniles;<sup>27</sup> when it is, courts adequately explain and justify their decision based on the conducted case file analysis. In the 170 inspected judicial files, pre-trial detention was used in only 7 per cent of cases. However, 64 per cent of the detained young people were placed with adults and only 18 per cent with other children. In 18 per cent of cases, the information on the young person's placement was unknown from the case file.<sup>28</sup> The need for a judge to issue a written order to detain a young person with adults, after obtaining the opinion of the prison administration, is now part of an amended Article 473 of the CPA (2021). This is a welcome and necessary normative change. However, in the long term, the number of juvenile pre-trial detentions should be reduced even further, and the focus should be on alternatives to detention, which are now non-existent. In addition, children should not be

detained together with adults, and a detention centre or unit should be set up for young people only.<sup>29</sup>

### **The pitfalls of sanctioning and monitoring sanction execution**

The sentencing policy of Slovenian courts concerning young people is generally consistent with the system's welfare orientation. On average, 92 per cent of young people involved in crime are subject to non-residential and 7.5 per cent to residential educational measures. Imprisonment of young people is used as a measure of last resort and has not been imposed in more than 0.5 per cent of cases in the last five years.<sup>30</sup> According to the case file analysis, the court's reasoning for the final decision is also satisfactory and roughly reflects the requirements of the normative framework. However, while final court decisions refer to the objectives of educational measures set out in the CC, they are not always sufficiently individualised based on the young person's personal and family circumstances. To some extent, this reflects one of the system's greatest weaknesses: the role of social services and their (in)ability to advise the judiciary on the most appropriate educational measure for a particular young person.

Another practical difficulty in Slovenian juvenile justice practice is that courts rarely modify educational measures because of a minor's cooperation, non-cooperation, or changed circumstances, adapting the measure to the child's needs. In such cases, they often do not convene a hearing or a session following Article 490 of the CPA to address the non-cooperation of the young person or the changed circumstances and, if necessary, to modify the educational measure imposed. Judicial monitoring of the enforcement of educational

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27. Since 2014, the absolute number of juveniles in pre-trial detention has dropped from an average of 16.7 (2005-2014) to an average of 6.6 (2015-2022) per year, but the percentage of young people detained for longer than three months has risen substantially, amounting to an average of 39.6 % between 2015 and 2022 (21 juveniles in total). Further research is needed to explore the exact drivers of such trends. It seems possible to assume that the drop in the absolute number of young people detained signals the court's practice of detaining juveniles who committed serious offences only, which could also explain why these young people are then detained for a longer time. The court might take longer to decide in complex cases involving serious crimes. Hence, the juvenile defendants might therefore be detained for longer.

28. See footnote 24: Arnež (2023).

29. This may, however, sound more feasible than it is. There is only a handful of young people in detention every year and judges are often faced with the dilemma of either placing them with adults involved in crime or placing them in isolation. Hence the need for alternatives to pre-trial detention is crucial.

30. See footnote 24: Plesničar et al. (2023).

measures is difficult due to the number of cases that judges deal with and the expiry of the maximum period of the educational measure allowed by law before a hearing can be convened, especially in non-residential educational measures that can be imposed for up to a year. Perhaps if judges dealt only with juvenile criminal cases, they could consult social welfare authorities more frequently and thus start replacing the educational measure as soon as they become aware of the child's breach of the educational measure or their changed circumstances. This cooperation could be more effective if some social workers dealt only with juvenile criminal cases and if they were in regular contact with young people and their families to check the implementation of educational measures. Following Article 489 of the CPA, social welfare authorities, educational homes, and the correctional home report to the court regularly (every six months) on the progress of the educational measures imposed. However, the case file analysis revealed that the reports on implementing educational measures are sometimes too generic and not sufficiently detailed about the specific tasks imposed by the court. In practice, problems also occur with enforcing particular types of educational measures. Although courts often impose educational measures of instructions and prohibitions according to Article 77 of the CC, social welfare authorities sometimes carry out these educational measures as supervision by the social welfare authority (Article 78 of the CC). They also often start enforcing the instructions and prohibitions long after the courts have imposed them, sometimes even beginning the execution of this educational measure close to their one-year maximum duration. More research is needed to determine the precise organisational difficulties social services and courts face in executing and monitoring the imposed instructions and prohibitions.

In some cases, meetings between social workers and minors, under the supervision of the social welfare authority, are infrequent; instructions and prohibitions can also be made on short notice, and each depends on the willingness of the individual social worker. While some social workers consistently meet with the young people and establish a relationship in which they can

positively influence their development and desistance, others are in contact with the child only by telephone. Such inconsistent practices are not satisfactory. The social worker should regularly be in close contact with the minor. Last, the court should formally suspend any educational measure in line with Article 490 of the CPA if the juvenile does not need the treatment or assistance they are receiving anymore due to changed circumstances, development, or needs. The court should also suspend the educational measure if the legally permitted period of the educational measure has expired. Nevertheless, in a significant proportion of the cases in the sample, the court did not hold a closing session at the end of the measure, particularly in the case of non-residential educational measures, nor did

they issue a decision to suspend the educational measure formally, as required by law. As a consequence, non-residential and residential educational measures formally exceeded the proscribed maximum in 8 per cent and 24 per cent of cases, although it was not possible to determine from the inspected case files whether young people were also subject to these measures for longer than allowed in practice. Also, the courts sometimes merely informed the Ministry of Justice (MoJ) that the educational measure had been suspended due to the expiry of the time allowed by law, followed by sending a note about

the expiry to the young person, parents, and their social worker. The absence of a proper conclusion of the proceedings sends the wrong message to juveniles — either they perceive it as a denial of the proceedings' importance, their own agency, or both. In line with ideas of procedural justice, which may be even more relevant for young people than adults,<sup>31</sup> this certainly does not contribute to their positive attitude towards the system and society at large, and very probably not to their rehabilitation, which should be the overarching aim of their treatment.

## Conclusion

Based on the analysis of prosecutorial and judicial case files, our research exposed a clear gap between juvenile justice discourse, at the level of concepts and norms, and practice within the Slovenian juvenile justice

...diversionary practices were plagued by inconsistencies: prosecutors did not always prosecute all similarly serious crimes or divert equally minor offences.

31. Tyler, T. R. (2006). *Why People Obey the Law* (Revised edition). Princeton University Press; Tyler, T. R. (2003). Procedural Justice, Legitimacy, and the Effective Rule of Law. *Crime and Justice*, 30, 283–357.

system. Although treating juvenile people is largely adequate at the normative level and leans towards a welfare model with sufficient procedural safeguards, the practical results of prosecutorial and judicial proceedings are often far from the normative ideal.

Although Slovenia — like other European countries — has seen a decline in juvenile offences and young people convicted of crime,<sup>32</sup> the appropriate treatment of juveniles is essential to modern legal regimes. Moreover, in times of a general drop in juvenile offending, the excuses of policymakers about how the system cannot be better regulated are less and less convincing. The Slovenian system rests on seemingly sensible yet somewhat outdated normative foundations. These, unfortunately, no longer offer (all) the answers to the issues of our time and whose application is a significant challenge.

It is thus crucial to address the identified practical issues in Slovenian juvenile justice as part of future policy considerations and amendments. An important step in the Slovenian context seems to be (more) specialised treatment of young people at all levels — certainly at the level of the courts and prosecutors' offices, but also more broadly, with improved cooperation between courts, prosecutors, schools, social services, and other relevant bodies that could contribute to a comprehensive, timely, and coordinated treatment of children with emotional and behavioural difficulties. Providing specialised knowledge to those dealing with juveniles involved in crime in proceedings on the ground is a prerequisite for their professional and fair treatment. Such a specialisation of judges, prosecutors, mediators, and defence lawyers is currently underway, but is insufficient.

More specifically, after the end of the European Union and Council of Europe's project 'Improving the juvenile justice system and strengthening the education and training of penitentiary staff in Slovenia' in 2023, the Slovenian MoJ was determined to use the produced research and gap analysis and case law analysis to review the existing draft Liability of Minors for Criminal Offences Act or draft a new specialised code for dealing with juvenile people according to a roadmap for implementing the recommendations. The roadmap offers short-, mid-term, and long-term implementation

suggestions for the MoJ regarding the Liability of Minors for Criminal Offences Act, none yet underway.

Recently, the Slovenian Centre for Judicial Education has provided basic training in juvenile proceedings for judges, prosecutors, and mediators, which serves as a substantive juvenile justice specialisation. The Bar Association has also organised similar training for lawyers. However, the analysis above has shown that it would also be sensible to introduce specialised units for juvenile criminal cases at the level of courts and prosecutor's offices, which would be able to deal with young people more expediently, efficiently, and appropriately. It has been recommended to amend the Courts Act to establish specialised juvenile criminal departments and judges to better align with international juvenile justice standards,<sup>33</sup> but these amendments have, to the best of our knowledge, not yet been introduced. Also, despite Slovenia's willingness to promote child-friendlier practices of dealing with young people and designing a roadmap to implement the Liability of Minors for Criminal Offences Act, the act has not yet been put into effect or prepared, which is unsatisfactory. This seems especially problematic when considering the various attempts to implement the act in the recent decade and the general

agreement of all actors in the field and the public for its implementation.<sup>34</sup>

Moreover, responding to recent incidents of violence involving young Roma people involved in crime, some conservative MPs have proposed a draft act amending the CC that contradicts the MoJ's preparation documents. The draft suggests widening the options to imprison young people for less serious offences and lowering the minimum age for imprisonment to 14. Despite evidence that such measures have proven to be ineffective in the past or in other jurisdictions, the proponents believe that harsher penalties will deter young people, particularly from the Roma community, from committing crime. Such attempts at politicising youth justice have not been a common practice in Slovenia in the past and present a concerning trend.

In addition to challenges for courts and prosecutor's offices, there are significant challenges for

Many of the problems with the length of court proceedings arise because there are no juvenile judges per se.

32. See footnote 24: Plesničar et al. (2023).

33. See footnote 24: Arnež (2023).

34. Filipčič, K., & Prelič, D. (2011). Deprivation of Liberty of Juvenile Offenders in Slovenia. *The Prison Journal*, 91(4), 448–466.

social work centres, identified through the case files review. Social services play a vital role in juvenile justice proceedings at the level of information gathering, the enforcement of educational measures, and when they deal with children who commit crimes before they reach the age of 14. In their key tasks concerning juvenile justice proceedings, it has become apparent that the work of social services centres has been bureaucratised due to lack of funding and staff shortages, which is preventing in-depth and hands-on work with young people and their families, leading to unequal and unprofessional treatment that is not in the child's best interest. Although difficult, it is thus also urgent to consider the reorganisation of social welfare authorities and an optimisation of how the many roles of social services are divided between social workers to better cater to the needs of young people in conflict with the law.

Our findings on the Slovenian juvenile justice system are important for the system itself but may also offer insights that resonate across many European countries. The gap between normative ideals and practical implementation is not unique to Slovenia. It reflects a broader challenge that many countries face in aligning their juvenile justice systems with modern

expectations and standards. Slovenia's experience underscores the importance of ongoing reform and specialisation to bridge this gap, providing insights for policymakers and practitioners.

In Slovenia, there is consensus among practitioners working in the field of youth justice to enhance professional and institutional specialisation with the hope of creating fairer responses to all young people in conflict with the law without hindering the ability of professionals to exercise discretion at the same time. In this task, Slovenia aims to follow its traditional youth justice orientation and focus on a welfare model with procedural safeguards, which also aligns with contemporary European principles of juvenile justice. However, the practical shortcomings identified in Slovenia remain to serve as critical points for reflection, urging other nations that cater to child-friendly youth justice discourses, in theory, to assess and refine the impact of their youth justice systems on the ground. By addressing these challenges, other systems can enhance their juvenile justice frameworks and improve youth justice practices, ensuring young people involved in crime receive the necessary support and guidance for rehabilitation and reintegration into society.