Social Court: A Model of Child-Friendly Justice

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Project

The “Child-Friendly Justice: Developing the Concept of Social Court Practices” project (CFJ-DCSCP) aims to improve access to justice for children in an enhanced vulnerable situation in the criminal justice system. This will be done by developing and disseminating specialised models of individualised assessment of their needs, barriers, and situation in line with international and European law. To that end, the project includes a research and tool development component to identify existing and ongoing problems, make recommendations and provide practice-oriented guidance for criminal justice professionals involved in individual assessments in criminal proceedings for child victims or children who are suspects or accused of committing a crime that are also in a vulnerable situation. It focuses on children deprived of parental care, unaccompanied children, and children with mental disabilities. This Model sets out standards, practice-oriented guidance, and a tool for a Model Child-Friendly Court, tailored to be implemented in Bulgaria, integrating a model of individual assessment, which includes a particular focus on children deprived of parental care.

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I. What does it take to achieve a good model for child-friendly justice?

A good model of Child-Friendly Justice is adaptable to both children suspected or accused of committing a crime and child victims or witnesses. It guarantees the child's best interests and respect for their rights and dignity. It also ensures **checks and balances between the** parties and institutions involved.

The model consists of the following elements:

a. Implements procedural rights (in addition to fair trial guarantees), including the right to support and legal assistance on first contact with the justice system, the right to an individual assessment (IA), and the right to be heard and to be prepared for a hearing. It advocates for detention only as a last resort and under appropriate conditions and the use of appropriate non-custodial measures;

b. Prepares professionals and police officers, prosecutors, lawyers specialised in working with children, as well as judges who have undergone additional training;[1]

c. Supports a participatory environment, with professionals that support, use appropriate language, and facilitate parental/guardian involvement, and the engagement of a supportive local and school community;

d. Ensures appropriate infrastructure, such as rooms where a child will be interviewed (in the civil proceedings) or will give testimonies as a suspect (informally) and as an accused or witness ('blue rooms').

This Model focuses on components of criminal proceedings, which have been identified during this project as requiring reform to enable children in contact with the law to participate in proceedings.[2] The proposed solutions are based on the philosophy and values of two EU Directives - Directive 2012/29/EU and Directive (EU) 2016/800; and the UN Convention on the Rights of the Child.

This Model has been developed within the framework of national legislation in force as of February 2021 and does not foresee legislative changes. Undoubtedly, the improvement of the Criminal Procedure Code and adequate transposition of the EU Directives into the Bulgarian legislation is an important goal and a prerequisite for establishing a child-friendly justice system, but this requires time and appropriate legislative procedures. The aim is to outline the essential elements of the Model that can be piloted here and now.

[1] **Criminal Procedure Code: Art. 385.** In cases for crimes committed by underage persons, pre-trial proceedings shall be conducted by appointed investigative bodies with appropriate training.

[2] Drawing from desk research, focus groups, interviews and consultation meetings with criminal justice professionals, child protection professionals and children. See our report: *Can Justice in Bulgaria be Child-Friendly?: A Contextualized Analysis of the Steps, Safeguards and the Reluctance in terms of the Implementation of Directive 2012/29/EU and Directive 2016/800/EU*, https://validity.ngo/wp-content/uploads/2021/10/D2.1-Report-of-Action-Research_EN.pdf

This Model is also meant to serve as practical guidelines for stakeholders directly involved with children in judicial proceedings. It sets out guidance for piloting new tools and solutions it provides. This Model has been validated by professionals involved in four trainings that took place on 3-5 December 2021, 13-16 February 2022, 23-25 February 2022, and 30-31 March – 1 April 2022.

The Model may be subject to further revision, enrichment, and development according to the different experiences of children and professionals in the criminal justice system. To achieve these goals, the authors will rely on the feedback of criminal justice professionals and relevant stakeholders who are participants in trainings based on this Model and the contribution of professionals who have reviewed the Model.

This instrument aims to guarantee the rights, respect for justice, and the protection of the best interests of children involved in, or parties to, criminal proceedings by developing and piloting a model of individual assessment to assist the competent authorities concerned.

II. Principles

Each step in implementing this model requires meeting the following **seven** principles:

- *Decentralisation of decision-making* for it to be as close as possible to the child, and empowerment of professionals working directly with the child;
- Developing a *cross-sectoral and inter-institutional approach*, which includes coordination between institutions through the development of clear and child-sensitive *protocols for working together using the different instruments*, as well as introducing the principle of *multidisciplinarity* in the development of joint assessments, and implementation of procedural facilitation and support measures;
- *Timeliness* and *effectiveness of* preventive and protective measures;
- *Transparency* in the actions and approaches of the institutions and the steps taken by them so that it is clear from the outset who is (and who is not) doing what with the child, so that there is a free exchange of experience and good practices between institutions to enhanced shared understanding;
- *accountability* that provides assurance that measures, programmes, and policies are in line with their objectives;
- *traceability* so that the court is aware of what the child has been through and who is responsible for the (in)actions taken;
- *check and balances* - always have a third party involved when it comes to activities involving a child and do not allow even for a moment the child to be under the complete dependence of a single adult, whether it is a police officer, DPS inspector, social worker, etc.;

- *Prevention* - investment in strengthening support networks for children who encounter the justice and penal system, including working with parents and relatives, schools, communities, and active local organisations.

III. Why we do it

1. To contribute to the *promotion among the* general public and professionals of an enhanced understanding that a child is a person and that *respect for the dignity and rights of the child is a fundamental prerequisite for* the effectiveness of systems that come into contact with the child (justice, social, health, education, etc.), as well as for the complete socialisation of the child as a future free and active citizen. In this sense, the initiative's success in introducing and practicing child-friendly justice in Bulgaria is an indicator of the modernisation of our legal and social system and the level of civility of society itself.

2. To ensure the least traumatic participation of children in the justice system and ensure that every child has a chance of recovery and resocialisation after coming into contact with the justice system and guarantee compensation for harms they have suffered as victims of crimes.

3. To show that some courts have established good coordination practices between the child protection system and the criminal and civil justice systems. Our goal is to encourage more courts to adopt and implement such methods and particularly in the provision of legal aid to children, in the carrying out of hearings (and preparation for hearings) of children, and in the development of an Individual Assessment (IA) that serves to protect both the best interests of the child and the functions of the justice system. These good practices, which can also be legislated for sustainability, are the basis for an **integrated socio-legal system** to protect children's rights.

4. To illustrate that **an integrated socio-legal system** for the protection of children's rights provides:

   - ✓ *prevention and effectiveness*, because without child-friendly justice and measures, children fail to exit situations that result in them repeatedly coming into contact with the justice system time after time;

   - ✓ *trust in the justice system* by children, parents, school, society, and media in the justice and social systems. Trust is the key to seeking protection of the system in a timely manner; any delay in response causes further harm to the child.

   - ✓ *community building and development* - the critical role of the (local) judge as an authority who is in the best place to find a tailored response to children in contact with the justice system, given their knowledge of communities, local institutions, services, and relationships that can ensure that children's rights and interests are safeguarded.

IV. Practical challenges

Practical challenges were identified during the initial research[3] and validated during the trainings:

1. Although the legislation in force protects children's rights in general, the criminal justice system for children is still focused on **punishment or prosecution,** and existing tools are tailored more to the **goals of criminal proceedings than to the** best interests of the child.

2. Often, when a child **comes into initial contact** with the criminal justice system (police custody), their rights are not protected. The measures taken (e.g., detention or police interview/interrogation) are not in their best interests and are not as child-friendly as possible.

3. Specialisation of judges for cases involving children takes place in the large regional courts (Sofia, Varna, Plovdiv, and Burgas). In smaller regional courts, specialisation is reliant on the willingness of the court's president to apply the rules of the Judiciary System Act on the random distribution of cases (Article 9) and the Rules of Court Administration. This legislation allows for the possibility that issues concerning a specific child can be allocated to a judge already familiar with that child's judicial record instead of applying the standard method of random distribution cases.

4. The **communication and interaction** between criminal justice, child protection, and social services systems is insufficient. This causes children to "drop out" of support schemes, lengthy proceedings and decisions that often do not respect the rights of the child.

5. The **Individual Assessment** (IA) of detained children or children suspected of committing or charged with a crime has been introduced in a non-explicit manner and without allocation of resources that are necessary to guarantee its implementation (e.g., expansion of the network of experts, resources for the preparation of the assessment, training of specialists, etc.).

6. An individual assessment, when conducted, is not used to create conditions for the **realisation of children's rights**. Issues have also been identified in how **hearings** of children are carried out.

7. There is no legal requirement for IAs to be multi-disciplinary and carried out as early as possible to assist in timely and effective decision-making about the child's specific needs, nor are the child's personal characteristics adequately catered for.

[3] See: BCNL, *Can Justice in Bulgaria be Child Friendly? A Contextualized Analysis of the Steps, Safeguards and the Reluctance in terms of the Implementation of Directive 2012/29/EU and Directive 2016/800/EU,* pp. 7-13.

8. Although Bulgarian civil legislation, case law, and child protection social work have developed since the 2000s, a formalistic attitude pervades these institutions concerning children's rights. In most civil and administrative proceedings involving children, a report or an opinion of the Social Assistance Directorate (SAD) is required or allowed. This contains elements of IA, for example, in cases under the Child Protection Act, the Family Code, the Protection from Domestic Violence Act, or the Asylum and Refugees Act. However, the report very often does not provide substantive information about the child, nor does it contain a proper screening of needs necessary to support best interests assessments of the child. The report often is not authored by a multidisciplinary team but rather by social workers without sufficient time and skills. Thus, an inadequately prepared report/IA is likely to put the child at further risk.

9. A **regression is observed in the capacity and functioning of the child protection system,** which is expected to ensure the training of professionals and the structures that should protect the interests and rights of children in criminal proceedings.

10. The training of teachers to recognise signs of anxiety, violence, aggression, underdevelopment of school practices for students to socialise, get empowered, debate, and gain negotiation and conflict resolution skills is not sufficient. There are no systematic efforts to raise the awareness of parents on these issues as well as on positive parenting.

Model on Child-Friendly Justice

The important **components** of the Model, which were validated during the trainings, are:

Supporting children when they come into contact with the justice system

1. Pre-trial phase

The first contact of the child with the **criminal justice system** (CJS) if in the pre-trial phase of the proceedings – at the place of offence and during the police investigation. The main actors are the police and the prosecutor. Support for a child arrested/suspected of committing a crime necessarily includes:

- Contact with a parent, guardian, or caregiver (third-party – a relative of or kin to the child).[4]

- Provision of legal assistance and participation of a lawyer.

- Involvement of other professionals, such as psychologists and social workers, depending on referral by criminal proceedings' authorities.

Issues were identified such as: compliance of the police with obligations to provide a defence counsel when detaining a child, to inform a parent/guardian or another appropriate person, and to inform the child of their right to remain silent.[5] The Criminal Procedure Code does not govern the status of the suspect.[6] This means that before the start of investigation all the interactions with the child are under the Ministry of Interior Act (MIA). Notwithstanding these are administrative, not criminal proceedings, the child has all the rights under Art. 74 MIA. The police usually avoids access to a lawyer and justifies this by two points: the child is not interrogated at this stage, but just participates in informal conversation, and the data from this conversation cannot be used as evidence in criminal proceedings.

[4] Article 386 paragraph 4 CPC reads: In cases of detention, minors shall be placed in appropriate premises separately from adults, and their parents or guardians and the director of the educational establishment shall be notified immediately if the detainee is a student. (5) (New, SG No. 7/2019) In order to protect the best interests of the minor, the notification of a specific person under paragraph (4) may be postponed for a period of up to 24 hours where there is an urgent need to prevent the occurrence of serious adverse consequences for the life, liberty or physical integrity of a person or where it is necessary to take action by the investigative authorities, the obstruction of which would seriously impede criminal proceedings. The postponement of such notification shall be applied in the light of the particular circumstances of each case and shall not go beyond what is necessary and shall not be based solely on the type or gravity of the offence committed. In this case, the State Agency for Child Protection shall be immediately notified of the detention and of the postponement of notification.

[5] **Ministry of Interior Act (MIA**): Article 72. (1) Police bodies may detain a person: 1. of whom data exist that he/she had committed a crime;… (4) (Amended, SG No. 77/2018, effective 1.01.2019) The person detained shall be entitled to appeal the legality of the detention before the district court of the head office of the authority. The court shall rule on the appeal without delay, as the judgement of the court shall be final and is not subject of cassation appeal under the procedure of the Code of Administrative Procedure. (5) (Supplemented, SG No. 7/2019) From the moment of being detained, the person has the right to a defence counsel, and the right to refuse defence and the consequences of such refusal for him/her, as well as his/her right to refuse to give explanations when the detention is based on item 1 of paragraph 1 shall be explained to the person detained. (6) The respective body shall be obliged to notify of the detention any person, designated by the detainee. (8) Detained under-age persons shall be accommodated in special premises separately from the adult detainees.
Article 74. (1) A written detention warrant shall be issued for the persons under article 72, paragraph 1. (2) The following shall be specified in the warrant under paragraph 1: 1. (amended, SG No. 14/2015) the name, position and place of work of the police body which has issued the warrant; 2. (amended, SG No. 14/2015) the factual and legal grounds for the detention; 3. information individualising the detained person; 4. the date and hour of detention; 5. the restriction of the person's rights under Article 73; 6. his/her right to: a) appeal before the court the legality of the detention; b) defence counsel as of the moment of detention; c) medical care; d) a telephone call with which to inform of his/her detention;

[6] CPC Article 23. (1) Where the conditions laid down in this Code are present, the competent State authority shall be obliged to initiate criminal proceedings. (2) In the cases provided for in this Code, criminal proceedings shall be deemed to have been instituted by the first act initiating the investigation. Article 94. (1) The participation of a defence counsel in criminal proceedings shall be mandatory where: 1. the **accused** is a minor.

Children may also come into contact with the criminal justice system where they are victims of crime, or having experienced violence, including domestic violence. This requires preparing a child's appearance in a courtroom or even for enforcing a court order (e.g., measures under the Protection from Domestic Violence Act). The professionals with whom the child is confronted in the situations mentioned above could be a police officer, a prosecutor, or a social worker from the SAD.

In these cases, defence mechanisms analogous to those during criminal proceedings but tailored to the specific proceedings they are aimed at should be applied:

- Explanation to the child, in an accessible manner, of their procedural status and rights, including their right to an individual assessment;

- Collection of fundamental information (name, age, gender, etc.) and identify factors that determine a vulnerable situation (illness, belonging to a vulnerable group, etc.) at the earliest stage of the proceedings;

- Assessment of whether there is a need for, and the provision of, legal aid and/or other social services.

To be able to **implement these mechanisms** in practice, it is necessary to:

- *Hear the child:* By specially trained police, prosecution staff members, and lawyers. A lawyer is more likely to be involved in criminal proceedings, and the requirement for specialisation is essential. The lawyer can be freely chosen by the child/parent/guardian or be an ex-officio lawyer under the Legal Aid Act. The lawyer should be familiar with the rights and characteristics of children,[7] trained to work with children, and trained in how to provide them with information appropriately (i.e., we are talking about changing attitudes and acquiring specific skills for working with children);[8]

- *Checks and balances to guarantee respect for children's views* – there should be multiple stakeholders involved to ensure accountability, respect for the child's rights, and to prevent the child from being abused.

When a child is a victim of human trafficking, both the State Agency for Child Protection and the Ministry of Interior must be notified within 24 hours. When a child victim of trafficking

[7] The Higher Bar Council, together with the NBPB, should consider rules for the introduction of specialisation for lawyers working with children and a sub-register of lawyers who have undergone the relevant training, as well as measures to reward these lawyers. Accordingly - briefing the SSP, police, prosecution for the register.
[8] In the pre-trial phase, the judge has no functions to implement this component of the model. We must continue to rely on the level of training and attitudes of the police and prosecutors in place. In this regard, there are no guarantees as to how support will be provided in practice during piloting of the model, if there is resistance among these groups of professionals, on the other hand there is a possibility for control by the court if the lawyer of the child appeals a violation.

is identified, the **Coordination Mechanism for Referral and Care of Unaccompanied and Trafficked Children Returning from Abroad** shall be applied**.**

2. Judicial phase

Provision of legal assistance (lawyer, representative) and that a parent, guardian, or a relative has been notified.

In the trial phase of the proceedings, the first step undertaken by the court should be to assess whether the child has already been adequately informed of their rights and then proceed with the appointment of a lawyer for the child. There should be sufficient time for a lawyer to communicate with the child and inform them of their procedural rights in an accessible manner, ensuring the child understands them.[9]

An Individual Assessment has been conducted at pre-trial phase

1. Goal

An individual assessment should be performed to enable the participation of:

- Children suspected of or accused of a crime;
- child victims of crime;
- children, parties, or participants in administrative (under the Asylum and Refugees Act) or civil proceedings (under the Child Protection Act, the Domestic Violence Act).

Preparing an IA for different groups of children includes an assessment of the specific needs or barriers of the child and the development of recommendations that address them.

2. It is a right

An IA could be interpreted as a right of a child involved in court proceedings, although the two directives are not explicit on this**.** This right guarantees other rights of the child in criminal proceedings - the right to participation (including assistance, support, and protection), a tailored hearing, appropriate custodial measures, protection measures, education, and diversion from court proceedings and serving a sentence.

[9] If we include here protection measures, which are considered under the Child Protection Act, Civil Procedural Code, respectively, and appeals of orders for protection measures under the Administrative Procedural Code, the court must also appoint a special representative of the child - a lawyer from legal aid, whom the court must oblige to explain to the child what their rights are, what protection measure is in question, for what period of time the measure is determined, how the measure is reviewed and what other possibilities exist when reviewing the measure (Article 22 of the Legal Aid Act).

The IA enables an assessment and determination of the **best interests of the child, which is their right (Article 3 UNCRC). An IA is also a procedural guarantee that such an assessment and determination will be carried out.**

An IA covers an assessment of all the circumstances linked to the child, the environment that affects them, and is relevant to the child's contact with the justice system, not the societal risk of crime. When it comes to a crime committed by a child, the public interest is best protected not by imposing a punishment but by ensuring rehabilitation of the child (Article 60 of the Criminal Code). The interests of the child must therefore be given priority. The victim's interests must also be adequately protected, i.e., a balance of interests is necessary, which can be achieved using restorative justice, including diversion from formal justice. To determine the best interests, listening to the child and the child's participation in the development of the IA is crucial. The IA essentially presents the decision maker with the information that enables an assessment and determination of the best interests of the particular child in the concrete **procedural** situation (see Checklist and Form for an IA).

Discussions among the professionals participating in the trainings revealed that even with the modest wording of Article 387 of the CPC, it is possible to carry out an IA, taking into account all the circumstances linked to the child and referred to in Directive 2016/800. There is no statutory obstacle to collecting the information referred to in the Directive.[10]

Individual assessment for detained children

Objectives of an IA should be read in line with Directive 2016/800's goal to ensure child suspects or accused criminal proceedings can understand and follow those proceedings and exercise their right to a fair trial, and foster their social integration:[11]

(a) whether a specific **measure should** be taken **for the benefit of** the child (e.g. access to protection, education, training and social integration);

(b) an assessment of the **appropriateness and effectiveness of any precautionary measures** for the child (e.g., detention);

(c) to help make a **decision or an action in the course of criminal proceedings**, including sentencing (e.g., finding evidence, determining the penalty and its amount and *manner of serving*).

In Bulgaria, IA goals are, to some extent, developed in the legislation governing the execution of sentences in the criminal and criminal procedure codes. The Bulgarian legislator also formally sets the goals of the Individual Assessment and social measures in the scope of the justice process, but under the paradigm of protecting the public interest to prevent recidivism and harm to society. The Implementation of Penal Sanctions and

[10] Criminal Procedure Code: Collecting information about the personality of the underage person Article 387: In the course of investigation and judicial trial evidence shall be collected about the date, month and year of birth of the underage person, about the education, environment and conditions of living thereof, and evidence whether the crime was due to the influence of adult persons.

[11] According to Directive 2016/800, Article 7 and recital 1.

Detention in Custody Act (IPSDCA)[12] and the Rules for the Implementation of the IPSDCA[13] include mechanisms for preparation of an IA and measures for the protection of the interests of the child in criminal proceedings, developed as measures for correction of convicted juveniles. However, the problem is that the IA thus remains closed in the criminal system without connection to the child protection system.

This Model aims to go beyond the current national paradigm. The new legislation evolving under the influence of international human rights law and EU law (Directive 2012/29/EU and Directive (EU) 2016/800) sets out broader goals, including children's participation and respect for their best interest.

1. Components of an IA:

- **Individual characteristics and circumstances of the child** - including names, age (or presumed age), gender, contact details, personality characteristics, level of maturity, the economic, social, and family background of the child;

- **Assessment of specific needs** of the (particular) child (for participation, including protection, education, training, and social integration);

- **Information on characteristics of the child that put them at higher risk of violence, exclusion, and secondary victimisation** – such as belonging to a vulnerable group, including children with disabilities, asylum-seekers, and children deprived of parental care;

[12] ISPDCA: Article 55 (2) (Supplemented, SG No. 103/2012) Before expiration of the period for stay at the reception unit, an assessment of the risk of recidivism and the risk of damage shall be prepared for each newly admitted person, as well as an assessment of the personality traits, health status and working capacity and recommendations for future group or individual work. The said assessment shall be prepared by the relevant social worker, the medical officer of the prison and the psychologist …
Article 154. (1) (Amended, SG No. 103/2012) During his or her stay in the reception unit, every sentenced person shall be enrolled in the adaptation programme; an assessment of the risk of recidivism and the risk of damage, as well as an initial report, shall be prepared. (2) (Amended, SG No. 103/2012) The initial report shall include: 1. (amended, SG No. 103/2012) an assessment of the risk of recidivism and the risk of damage; 2. causative factors of the risk of recidivism; 3. (amended, SG No. 103/2012) a proposal for remedying personality deficiencies and containing the causative factors of the risk of recidivism and the risk of damage. (3) (New, SG No. 103/2012, amended, SG No. 13/2017, effective 7.02.2017) Persons with psychiatric and mental problems for whom it is impossible to carry out the diagnostic activities referred to in Paragraph 1 herein shall be subjected to psychiatric and psychological evaluation. (4) (New, SG No. 103/2012) Accused persons and defendants who have been placed in a reception unit shall be enrolled in the adaptation programme, and an assessment of the risk of damage shall be prepared for them. (5) (Renumbered from Paragraph 3, amended, SG No. 103/2012) The rules for assessing the risk of recidivism and the risk of damage shall be endorsed by the Minister of Justice.
Article 155. (1) The evaluation of the sentenced person shall be modified depending on the behaviour of the person deprived of his or her liberty.

[13] Article 120. (1) In places of deprivation of liberty shall be carried out individual and group diagnostic activity, which shall include: 1. examination of a separate case and assessment of the risk of recurrence and damages; 2. psychological research; (2) The activity under par. 1 shall be carried out by the inspectors for social activities and correctional work, the inspectors for probation, the inspectors' psychologists and the inspectors' pedagogues according to approved methodologies and in interaction with other employees of the prison.

2. Additional components when the child is placed for care outside of the family:

- Collection of information about the child's parents, guardian(s), and why the child was placed in care.
- Assessment of the environment in which the child is placed – such as foster family, temporary accommodation centre, or other.
- Identification or support provided to the child by the SAD and care facilities - social worker or service provider.
- Existence of a mechanism for reporting child abuse or neglect both in criminal proceedings and in alternative care.
- Incidents of institutional violence, domestic violence, or peer violence perpetration in alternative care and how they were addressed.
- Previous participation in legal proceedings and support provided in connection to them.

The **following information should be clarified for the court from this assessment**: options for social services and effective social interventions, specific child protection, and supportive measures. These educational measures are appropriate to be implemented. (See Checklist)

3. Who can carry out an IA within the model?

The timing of the preparation of the IA is not explicitly stated in the law but can be derived from Article 387 of the CPC (data collection is the responsibility of the investigation (police and investigators) and the prosecution (prosecutor) acting at the pre-trial stage). The assessment can and should be updated in the course of the proceedings, which has been fully supported by participants in the trainings.

The current legislation allows three approaches to the preparation of an IA.

IA prepared in the system of criminal justice

There are probation and prison services in the criminal justice system, whose functions may overlap as regulated by the IPSDCA. But they do not seem to have been developed to their full potential in practice. They are subordinated to the Minister of Justice and are under the jurisdiction of the General Directorate for the Execution of Punishments (GDEP) at the Ministry of Justice.[14] Initially, they ensured the execution of imprisonment, but after introducing the punishment without imprisonment - probation (2002), their competencies were expanded. This includes the competence to prepare assessments and reports, carry

[14] Rules for the Implementation of the IPSDCA, article 6: GD "Execution of Punishments" is organised in central administration and territorial services. (3) The territorial services shall be the prisons and the regional services "Execution of Punishments".

out activities for implementation and updating the offender's assessment, execution of sentences, and activities of prison and probation services in accordance with good practices (Article 7, item 6, and item 7 of the Rules for the Implementation of the IPSDCA).

Functions for preparing a report similar to the IA are assigned to probation councils, which prepare pre-trial reports at the court's request (Article 202, paragraph 2 of the IPSDCA). According to Art. 202, paragraph 3 of the IPSDCA within the area of practice of each regional court, there shall be established probation councils, composed of 1. chairperson: a probation officer or a legal adviser from the relevant territorial service; 2. members: representatives of the municipalities, the precinct departments of the Ministry of Interior, the territorial structures of health care, education, welfare and the employment services. A prosecutor from the respective regional prosecutor's office participates in the meetings of the probation council. Representatives of non-governmental organisations may be involved in the meetings of the probation councils as well. The General Directorate determines the nominal composition of the probation councils for the Execution of Punishments (GDEP) on the proposal of the heads of the regional services "Execution of Punishments."

In addition, the IPSDCA assigns to the specialists in prisons the preparation of an IA of the risks faced by accused children who are on remand (Article 154 of the IPSDCA). For children in custody, the IA has a multidisciplinary nature - according to Article 55 of the IPSDCA, the risk of recidivism assessment of those deprived of liberty is carried out by a custodial medical doctor, social worker, and psychologist.

A problem was identified during the trainings with regard to this option. The prosecutors and judges are reluctant to use this opportunity (which offers at least trained professionals from the probation offices) because it is regulated for already convicted persons, which would conflict with the presumption of innocence.[15]

Opportunity for joint action in the scope of the Criminal Procedure Code

The Individual Assessment has, so far, not been regulated by the CPC. However, it is possible to partially fulfil the functions of the IA by carrying out an "expert assessment"[16] or by using the data collected about the child by persons authorised for this purpose.[17]

Examination under the Criminal Procedure Code takes place either in the pre-trial or trial phase and applies to all types of offences. Without being explicitly regulated, pre-trial

[15] It is, however, equally possible that the prosecution and judiciary are not very familiar with this option because the probation service is under the Ministry of Justice. Only one judge mentioned that she has used this option.

[16] Pursuant to §1 (4) of the Additional Provisions of the Ordinance on the Registry, Qualifications, and Remunerations of Expert Witnesses (2015), the 'expert examination' is a regulated procedural activity performed at the request of the competent authority (prosecutor or judge) by persons who have special expertise to examine specific items or other circumstances relevant to clarifying particular circumstances. See: BCNL, *Can Justice in Bulgaria be Child Friendly? A Contextualized Analysis of the Steps, Safeguards and the Reluctance in terms of the Implementation of Directive 2012/29/EU and Directive 2016/800/EU,* pp.47-48.

[17] Article 144 CPC and the special regulation for children, which complements the general one - Article 387 CPC.

authorities **(police)** may collect data on the child from various sources. These are most likely to be inspectors in **Children's Pedagogical Rooms (CPR)** (Article 7, paragraph 6 of the Ordinance on Children's Pedagogical Rooms). The authorities may request information from the CPR. The CPRs are bodies created under the Control of Juvenile Anti-social Behaviour Act and are functionally linked to Local Commissions for Combating Juvenile Delinquency which review cases brought before them together with a report prepared by the CPRs. This is the usual path followed by the police and prosecution, according to participants in the trainings.

The involvement of the **SAD** in criminal proceedings is oriented toward children at risk (those who lack of care or protection from violence) and not with the perpetration of a particular crime. However, the general wording of Article 15(6) of the Child Protection Act (CPA) is the legal avenue that is used in practice when a child is suspected or is accused of committing a crime to request a social report from the SAD. This report can be used to answer questions covered by an IA, regarding personal characteristics, needs, and protection measures within criminal proceedings. An Individual Assessment under the CPA can be made at the earliest possible stage, but this depends on the personal initiative of the pre-trial authorities and the discretion of the SAD (capacity, etc.). The Child Protection Act (CPA), in conjunction with Article 386 of the Criminal Procedure Code (CPC), stipulates the obligation for immediate notification of Social Assistance Directorates (SAD) (Article 15(6) CPA).

Notification of the SAD located in the region of the current address/place where the child is detained is a mandatory step in the development of the case and guarantees the involvement of the SAD. However, participants in the trainings admitted that notifying the SAD does not always happen.

All expertise and opinions, including social reports, are paid for within the budgets of the respective systems[18].

Coordination is already possible, under the current national legal framework, at the **pre-trial stage,** and should be used to achieve the goals of IA.

The problems with the current national approach include: 1) the expert assessment is assigned to an individual expert[19], not to a multidisciplinary team as deemed by the objectives and scope of the IA according to the Directive, and; 2) the scope of the information and the tasks of the expert assessment are much narrower than the stipulated

[18] **Article 15** paragraph 6 reads that: In each case, the court (the prosecutor is part of the judicial system, so he is also obliged), Decision No. 11/2016 of the Constitutional Court in case No. 7/2016) or the administrative authority shall notify the Social Assistance Directorate at the current address of the child, and the provisions of the Civil Procedure Code shall apply to the notification by the court, and the provisions of the Administrative Procedure Code shall apply to the notification by the administrative authority. The Social Assistance Directorate shall send a representative who shall express an opinion and, failing that, provide a report.

[19] **Article 385.** In cases of offences committed by minors, pre-trial proceedings shall be conducted by designated investigative bodies with special training. **Article 52.** (1) Investigative bodies shall be: 1. investigators; 2. employees of the Ministry of the Interior appointed to the position of "investigating police officer".

in the Directives[20]. Since it comes from different sources, it is very likely that the information thus gathered is contained or framed in different protocols or expert reports as part of the overall case materials. The data is not used to determine personal needs and necessary measures but mainly is focused on the offence and its circumstances (for instance to prove the innocence or guilt of the offender and determine punishment according to art. 378 CPC). There are no limitations for the court to commission expert opinions and, if necessary, the preparation of additional expert reports. When commissioning an expert assessment, the court must formulate its parameters and specific tasks. A disadvantage of the proposed solution is that if the evaluation is carried out at the court's request in the framework of the criminal proceedings, this can only happen in the trial phase. In other words, there are no clear legal guarantees for the preparation of the IA in the pre-trial stage. As practice shows, violations of children's rights often occur in the pre-trial phase.[21] It will be challenging to remedy this shortcoming without changes in police and prosecutorial practices.

Coordination mechanism for an IA according to the CPA model

This is yet another possibility for the IA to be prepared according to the Model of the coordination mechanism, with the judge in the leading position as the one who will assign an assessment to be carried out by the police, the SAD and the CPR and to set a coordination meeting for the discussion of the IA. In the pre-trial phase, the prosecutor may coordinate the IA. This possibility creates the connection and coordination between the criminal justice system and the child protection system. Thus, both systems contribute, and their functions for resocialisation of the child - which is also a task of the punishment, can be exploited in the best way. This IA has the potential for real multidisciplinarity, introducing the capacity of both systems, and will therefore be a more effective tool for determining the best interests of the child. The discussions during trainings confirmed this conclusion and at least in one of the places, the coordination mechanism is used for a preparation of IA.

In conclusion, the current legislation does not prevent an individual assessment of a child suspected or accused of a crime from being carried out. However, the regimes for it vary. This can be viewed both as an opportunity and an obstacle for a unified system and practice for conducting IAs. This does not impede the pre-trial and trial authorities from using different regimes and assigning a multidisciplinary IA to the CPR or SAD, specifying which institutions are to be involved and the tasks of the IA. However, with the transposition of Directive (EU) 2016/800, the legislator should amend the Bulgarian translation of IA – including by avoiding the term 'personal

[20] **CCP, Article 144.** (1) Where special knowledge in the field of science, art or technology is necessary to clarify certain circumstances of the case, the court or the pre-trial proceedings authority shall appoint an expert. **Article 387**: Collection of data on the personality of the minor: the investigation and prosecution shall collect data on the date, month and year of birth of the minor, the education, environment and conditions in which this person lived, and data on the likelihood that an adult influenced the commission of the alleged offence.

[21] See: BCNL, *Can Justice in Bulgaria be Child Friendly? A Contextualized Analysis of the Steps, Safeguards and the Reluctance in terms of the Implementation of Directive 2012/29/EU and Directive 2016/800/EU*, pp. 7-13.

characteristic' – and create a unified regime, which is a prerequisite for the appropriate implementation of the objectives of the IA.[22]

Child victims of crime and violence

1. Objectives and content of the IA

The goals of Directive 2012/29/EU are to ensure victims of crime are "able to participate in criminal proceedings". Furthermore, a child's best interests must be a primary consideration in criminal proceedings, which must be assessed on an individual basis.[23]

The IA should focus on the child's specific participation barriers. This includes protection needs. In cases of child victims of crimes, the presumption is that they need protection, and such an assessment should always be carried out.

According to Directive 2012/29, **the purpose of an IA is to** identify:

- *specific protection needs; and*
- *to establish whether and to what extent victims will benefit from special measures in the course of criminal proceedings* because of **their particular vulnerability to** secondary[24] and repeated victimisation, intimidation, and retaliation.

2. Components of the IA

According to Directive 2012/29/EU, Article 22:

- the personal characteristics of the child victim – general information – names, age (or presumed age), gender, contact details, and other characteristics of the child such as disability, membership of a vulnerable group, asylum seeker, etc.;
- the type or nature of the offence (e.g., the seriousness of the offense, a crime motivated by prejudice or discrimination);
- the circumstances of the offense (e.g., relating in particular to the personal characteristics of the victim; to victims who are in a relationship or dependency with the offender that makes them particularly vulnerable - victims of terrorism, organised crime, human trafficking, gender-based violence, intimate partner violence, sexual violence or exploitation, or hate crime; and to victims with disabilities);

[22] A Bill was proposed which did not take into account the different existing regimes. The Bill was heavily critiqued by the judiciary.
[23] Directive 2012/29/EU, Article 1.
[24] Secondary victimisation can be defined as the occurrence of negative consequences for victims that may result from their involvement in criminal proceedings, including their exposure to perpetrators, judicial authorities and/or the general public.

Therefore, IA specifically includes:

- An assessment of the child's needs concerning the crime experienced and the existing support system's (family, guardian, social service, etc.) capacity to meet those needs adequately, focusing on the child's best interests. This has implications for what protection measures should be taken.

- Assessment of the risks to the child - the risk of re-victimisation, intimidation, and retaliation, which may be due to various factors (the individual characteristics of the victim; the type and nature of the crime; the circumstances of perpetration); and the risk of secondary victimisation, related to the vulnerable situation of the child as a witness and/or participant in legal proceedings; there are implications for what procedural measures can be provided as well as protective and supportive measures for the child or their relative, victim of violence.

- Assessment of the child's injuries and the specific needs of child victims of abuse for treatment, rehabilitation, and special support in their recovery. Medical assessment.

- Specialised psychological assessment of the child and their family.

- Suggestions for appropriate protection and/or support measures based on the findings of the IA.

3. Additional components when the child is placed for care outside of the family:

- Collection of information about the child's parents, guardian(s), and the reasons the child was placed in care.

- Assessment of the environment in which the child is placed – such as foster family, temporary accommodation centre, or other.

- Identification of support provided to the child by the SAD and care facilities - social worker or service provider.

- Existence of mechanisms for reporting child abuse or neglect both in criminal proceedings and in alternative care.

- Incidents of institutional violence, domestic violence, or peer violence perpetration in alternative care and how they were addressed.

- Previous participation in legal proceedings and support provided in connection to them.

From this assessment, the following information should be made clear for the court: information about the child's personality, age, maturity, needs and barriers, social and

family environment, the relationship between the perpetrator and the victim, specific vulnerability of the child because of the specific criminal act, and the environment in which they are raised.

4. When and by whom the IA is performed:

According to the Criminal Procedure Code, where a child is a victim or witness of a crime and has the procedural status of a witness, the IA is also carried out in the form of an **expert opinion**. This IA is **optional**, not mandatory, but it is linked to certain special protective measures for child victims in the scope of criminal proceedings.[25]

Options for coordinated interaction

When a child is a victim, there are clearer legal grounds for coordinating the criminal justice and child protection systems. The CPA enables an IA to take place at the earliest stage, namely after being signalled in respect of a child victim of violence (Article 36d of the Child Protection Act). When there is evidence of a crime, the SAD notifies the district prosecutor's office to take measures against the perpetrator under the Criminal Code (Article 36d, paragraph 5 of the Child Protection Act). When the child is a victim of domestic violence, the SAD may request or make submissions for the prosecutor to take measures against the holder of parental responsibility.[26] When the first criminal complaint is made to a criminal justice authority, they must notify the SAD.

A Coordination Mechanism (CM) is triggered by establishing a multidisciplinary team to assess the case and prepare a plan of action to protect the child (Art. 36d-36e of the Child Protection Act). This assessment contains the requisites of the IA, meaning there is legislation resembling a statutory form for the IA.[27] The final part of the Report includes the needs of the child and measures to be taken to ensure their rights. Thus, the child may benefit from the more favourable provisions of the Child Protection Act and the Protection from Domestic Violence Act. The Report could serve as an IA within criminal proceedings. Representatives of pre-trial and trial authorities as well as the child's lawyer and parent could request an IA. A consensus exists among the stakeholders about this opportunity, which was confirmed in the trainings. However, the practice still needs to be established. According to the Social Activities and Practices Institute, "the use of this framework

[25] An expert examination may also be appointed to **establish the specific protection needs of a witness (Article 144(3) of the CPC) in** relation to his/her participation in criminal proceedings. The term *"specific protection needs"* is defined in §1, paragraph 4 of the Additional Provisions of the CCP, according to which "such needs would exist when it *is necessary to apply additional means of protection against secondary and repeated victimisation, intimidation and retaliation, emotional or psychological suffering, including to preserve the dignity of the victim during interrogation".* It should be borne in mind, however, that this definition deviates from the purposes of IA as set out in the Directive (Article 22 §1). The CPD interchanges and conflates the two components, the understanding being that needs will exist if a remedy is necessary, rather than the other way around - that a specifically identified need will necessitate provision of a remedy. Where the witness is a child, IA is always necessary.

[26] When the violence is committed by a parent, by a person entrusted with the care of the child, or by a person entrusted with the care of the child, the SSP **may apply to** the court or the prosecutor for taking measures against the perpetrator under the DPA (Art.36e, para.4 of the DPA).

[27] According to the Rules for Implementation of the CPA - Annex 1a.

depends on the competencies of the actors and very rarely constitutes an IA within the meaning of Directive 2012/29/EU. In any case, the SAD, independently or through the appointment of a social service provider, must assess the signal of violence against the child and prepare an IA. In most cases, however, this assessment only serves to decide on a protection measure under the CPA and is not provided to the investigating authorities, who do not require it."

The DVPA also does not explicitly provide for the preparation of an IA. Still, such is included in court proceedings for protection as the rules of the Civil Procedural Code apply (Article 13). In proceedings for issuing a protection order, evidence under the CPC is admissible. Evidence in proceedings under par. 1 may also be = reports, records, and other documents issued by the SAD, by medical doctors and psychologists who have assessed the victim, and documents issued by social service providers licensed under the Social Services Act.

For each case of a trafficked child, the Social Assistance Directorate in the region of the child's current/permanent address prepares a report on the assessment of the child's needs and an action plan together with the Crisis Centre team, which all team members sign. The action plan may include measures to support the family to minimise the risk of the child being removed or trafficked again. Pending clarification of the child's situation and the preparation of a social report by the Child Protection Department, the child shall be temporarily placed in a Crisis Centre. Crisis intervention in the case of a trafficked child is carried out by specialists of the Crisis Centre where the child is placed.

Where the child seeking protection is a foreigner, they shall be placed in a temporary registration and reception centre or other place of shelter by the State Agency for Refugees. The assessment of urgent needs shall be carried out by an interviewer involved in their case to establish the facts and circumstances relevant to the proceedings for granting special protection under the Asylum and Refugee Act (ARA).

Another option is for the judge to request a child social service provider to establish a *multidisciplinary assessment team to complete the* tasks of the IA. The provider should prepare this assessment:

- in cooperation and collaboration with the SAD - Child Protection Department, Children's Pedagogical Room, other providers of social services for children working on the territory of the court, providers of educational services, medical specialists, and others;

- with the child’s active participation, parents, guardians, relatives, and/or carers;

- taking into account the child's views, opinions, and best interests; and

- the children's pedagogical room and the SAD-Child Protection Department provide the team with the available information about the child.

In other civil and administrative proceedings, the assessment focuses on determining the most appropriate manner and conditions for the child to appear in court.

The conclusion is that by enforcing the set coordination mechanisms between institutions in cases of child abuse or trafficking, the preparation of a multidisciplinary assessment is more feasible. However, the legislation is fragmented and unclear about the scope of the obliged parties and the assessment and its content. Given the state of the legislation, motivation from criminal proceedings authorities is required, and good contacts and interaction are established between the authorities under the CPA and the CPC.

Privacy

The IA will, in general, contain sensitive data about the child. This means that possible dissemination of the content of the IA would put the child's emotional development and the preservation of their dignity at serious risk. The legislation in force such as the Child Protection Act and the Protection of Personal Information Act is in line with the EU law and provides for the necessary protection of the privacy of the child.

Training

It is also necessary to train all participants - the representatives of the legal profession (judges, lawyers, bailiffs, prosecutors) concerning the assignment of an IA, its objectives, and the need for such an assessment.

Hearing of a child / giving testimony within the scope of the criminal proceedings

When hearing children, criminal justice and child protection professionals also require good listening skills. This is an essential component of the Model. Under the Child Protection Act, every child over the age of 10 involved in administrative or judicial proceedings should be heard.

The hearing should take place:

- after informing the child in advance what the purpose of the hearing is and what the case is about. The child should be informed that a psychologist or other specialist will be present for their support. The information should be provided in an accessible way;

- in an appropriate setting, taking into account the age and maturity of the child and their other relevant characteristics, e.g., disability (possibility of communication by non-verbal means) or gender (girl victim of sexual offence being assisted by a female), preferably not in a courtroom where everyone is wearing formal dress, but not in a so-called ‘blue room’ full of stuffed toys, as such a setting is inappropriate for older children;

- excluding contact with the accused where they are a child victim of violence and especially sexual violence (crime), e.g., by videoconference;

- in the presence of a psychologist (specialist) to support the child in the hearing process. As part of the Model, we do not recommend that this should be a social worker from the Child Protection Department because these social workers are formally involved and do not have the skills to support the child or assist in countering undue influence. The court may appoint a specialist (psychologist or social worker, employee of a child social service provider) to support the child at this stage. Practice shows that judges prefer to appoint expert psychologists, but consideration may also be given to the possibility of involving social workers, employees of childcare providers who have a proven track record in this field; a parent, guardian, custodian, other person caring for the child or other relative known to the child may also be present, except where this is not in the child's best interests or where there is a conflict of interest;

- that the role of the support professional attending the hearing is only to support the child and not to mediate between the court and the child. The court should ask questions. To the extent that it is the practice for the court to seek confirmation from the support professional that the child has freely expressed their views at the hearing, it is necessary to create an opportunity for that support professional to have been in contact with the child before the hearing to be able to adequately assess whether the child is freely expressing their views or has been manipulated into expressing a particular view;

- For a child with a disability, the provision of information and counselling must be made in accessible formats for people with different types of disabilities, including mobility obstacles in the hearing, computer-assisted communication, etc. (s. 53(2)(6) of the People with Disabilities Act); and

- By using other forms of communications (such as sign language, Braille, and easy-to-read versions) within the meaning of §1 of the Supplementary Provisions, items 3 and 4 of the People with Disabilities Act. Procedural accommodations must also be provided for effective participation in the proceedings;

- For refugee or disabled children, an additional procedural accommodation is provided in the Civil Proceedings Code (appointment of an interpreter or translator) may be needed,

- to hear children with disabilities, including those with intellectual disabilities, notwithstanding the provision of the Code of Criminal Procedure that the testimony of people with disabilities may not be credited.

Safeguards in the criminal proceedings that follow from the IA

The purpose of the IA is to inform the authority controlling the relevant stage of the proceedings of the need to implement measures for the realisation of certain rights and possible solutions in the best interest of the child. The IA informs about the needs of the child and necessary measures at that particular stage of the proceedings and beyond.

1. Measures for children suspected, charged, and punished for a crime at the stage of criminal justice proceedings:

The IA may inform the assessment of the **appropriateness and effectiveness of any measures**, including coercive measures (e.g., detention or non-detention, determination of the penalty and its amount and manner of serving a sentence). The UNCRC requires that detention and deprivation of the child's liberty be applied as a measure of last resort and in proportion to the offence and the child's characteristics according to the IA. As a rule, community measures are appropriate.

Pursuant to Article 386, paragraph 2 of the CPC, remand in custody shall be taken **in exceptional cases only**. Pursuant to Article 22, paragraph 3 of the CPC - cases in which the accused is remanded in custody shall be investigated, considered, and decided with priority over other cases. The measure shall be imposed under the conditions of Article 63 of the CPC and in accordance with the procedure of Articles 64-65 of the CPC. The principle is not to impose detention and instead use other non-custodial measures to prevent the child's separation from their environment. Custody is an exceptional measure and must be applied subject to several conditions and, above all, for the shortest period of time.

The Criminal Procedure Code allows for rather long periods of pre-trial detention (in custody), no exception being made for children – generally up to two months and as an exception – up to eight months if the person is charged with a serious intentional offence, and no longer than one year and six months if the person is accused of a crime punishable by not less than fifteen years' imprisonment or another more severe penalty.

Another measure that might be undertaken depending on the IA is for the prosecutor or the court to decide **in the course of the criminal proceedings** whether to apply the options provided for in Article 61 of the Criminal Code for diversion from criminal justice proceedings,[28] or at sentencing to impose a non-custodial measure of punishment. [29]

[28] Criminal Code Article 61. In respect of a juvenile who has committed, through infatuation or frivolousness, a crime which does not constitute a great danger to society, the public prosecutor may decide not to institute or to terminate the pre-trial proceedings instituted, and the court may decide not to commit him for trial or not to sentence him, if educational measures under the Law on Combating Juvenile Delinquency can be successfully applied to him. (2) In such cases, the court may itself impose an educational measure by notifying the local commission for combating juvenile delinquency or by sending the file for the imposition of such a measure to the commission. (3) Where the public prosecutor decides not to initiate pre-trial proceedings or to discontinue the pre-trial proceedings initiated, he shall send the file to the commission for the imposition of an educational measure.

[29] Criminal Code Article 64. (1) Where the punishment imposed is a deprivation of liberty of less than one year and its execution is not suspended under Article 66, the minor shall be released from serving it and the court shall place him in a boarding school or impose on him another educational measure provided for in the Law on Combating Juvenile Delinquency. (2) Upon the proposal of the public prosecutor or of the relevant local commission for combating antisocial behaviour of minors, the court may, even after the sentence has been passed, replace the placement in an educational boarding school with another educational measure. (3) The rule of par. (a) where the minor has committed an offence while serving a custodial sentence, and (b) where the minor has been sentenced after having reached the age of majority. (4) The rule of par. (1) shall not apply in cases of reconviction if the court finds that for the correction and re-education of the offender it

2. Measures for child victims at the stage of criminal justice proceedings:

Protective measures should be determined for a child victim of crime, depending on the *child protection needs* identified by the IA *and their particular vulnerability in criminal proceedings* to secondary[30] and repeated victimisation, intimidation, and retaliation. These may include - 1/ measures to prevent an encounter of the child with the perpetrator during interrogation, 2/ interrogation by a person of the same sex, 3/ a single interrogation for the entire process, 4/ all necessary witness protection measures to protect the life of the child and their family. The Bulgarian CPC allows for the following protective measures:

- Immediate witness protection under Article 123 of the CPC when it may be presumed that as a result of the testimony, a real danger has arisen or may arise to the life or health of the witness, his ascendants, descendants, brothers, sisters, spouse or persons with whom he is in a particularly close relationship.

- Protection under the Protection of Persons at Risk in Criminal Proceedings Act.

- Interrogation where measures are taken to avoid contact with the accused, including in specially equipped premises or by videoconference or telephone conference (Article 140(5) of the CPC).

- Immediate notification in cases when: 1. the accused violates the pre-trial detention measure of house arrest or remand in custody, and 2. the pre-trial detention measure of house arrest or remand in custody is revoked or replaced (Article 67 of the CPC).

3. Additional protective measures for specific groups

When a child is placed for care outside the family, protective measures may include a protective regime of personal relations and contact with parents or other relatives and kin, special monitoring by the SAD, a reintegration plan, and measures for the perpetrator of the violence. Rehabilitation measures can be implemented by referring to social services under the Social Service Act.

Child support measures that follow from an IA

Protective measures will be applied depending on the needs of a child suspected or accused of a crime, and on the degree of vulnerability of the child victims of crime. These needs shall be established with the IA.

Within the criminal proceedings, support measures - social and educational - must be implemented by an act of the prosecutor or the court when the IA identifies the needs for

is necessary for him to serve the penalty of deprivation of liberty and where- (a) its term is not less than six months; or (b) if the offender has already served a penalty of deprivation of liberty.

[30] Secondary victimisation can be defined as the occurrence of negative consequences for victims that may result from their involvement in criminal proceedings, including their exposure to contact with perpetrators, judicial authorities and/or the general public.

such. The court might determine support measures with the sentence when the punishment is probation.[31]

Types of support measures:

- Social and educational measures.
- Health care.

4. Social measures

According to Directive 2016/800, Article 7, one of the purposes of the IA is to establish the need for the child to benefit from a specific measure (e.g., support, protection, education, examinations, social integration, etc.). The current Bulgarian legislation foresees the applicability of such measures, but their implementation depends on a good level of cooperation and coordination between the institutions involved: minister of justice, minister of education and science and minister of labour and social policy as well as social service providers.

5. Measures while the child is in detention

Measures may be applied in custody, including access to education, in accordance with the IPSDCA and in connection with the Pre-School and School Education Act (PSEA). The general rule is that custody rules apply to detainees in arrest and correctional facilities (Article 247, paragraph 2 IPSDCA). The implementation of these measures can be monitored and controlled by judges, prosecutors, and the Ombudsperson (art. 6-7 IPSDCA and art. 28a of the Ombudsperson Act).

In case of detention, the child's education continues in a special school (Article 45 PSEA and Article 162 of the IPSDCA). Persons deprived of their liberty, who have not attained the age of 16 years, shall be subject to compulsory schooling at schools at places of deprivation of liberty. Persons deprived of their liberty, aged 16 or above, shall study at schools under Paragraph 1 of their choice. The educational, training, and qualification activities at the places of deprivation of liberty shall include: 1) general and vocational education; 2) vocational training; 3) literacy and vocational courses, and 4) social education.

Re-socialisation measures are also available. The social and correctional-education work inspectors, jointly with the other fields of activity personnel, volunteers, and suitably trained external experts, carry out specialised programmes for individual and group work (Article

[31] Criminal Code, article 42a: (New, SG No. 92/2002 - effective 1.01.2005 - amended, SG No. 26/2004, effective 1.01.2004) (1) (Amended, SG No. 103/2004, effective 1.01.2005) Probation is a system of non-custodial measures for control and intervention that shall be imposed separately or collectively. (2) (Amended, SG No. 103/2004, effective 1.01.2005) Probation measures shall be: 1. Compulsory registration at the current address; 2. Mandatory regular appointments with a probation officer; 3. Restrictions on free movement; 4. (Amended, SG No. 75/2006) Admission to vocational training courses, public intervention programmes; 5. Corrective labour; 6. Community service. (4) Measures under Paragraph 2, items 1 and 2 shall be mandatorily imposed on all offenders sentenced to probation, whereas measures under Paragraph 2, items 5 and 6 shall not be imposed on young persons who have not turned 16 years of age.

157 – 158 IPSDCA). The programmes aim to 1. motivate and encourage law-abiding behaviour; 2. to increase social competence and to build behavioural skills; 3. overcome dependencies. Participation of sentenced persons in specialised programmes is voluntary. According to art. 157a IPSDCA before they are released, persons deprived of their liberty are to be enrolled in a programme preparing them for life after release.

Individual work is carried out with convicted persons. The work includes 1. provision of information regarding the legal and social status and the possibilities to relax the conditions of serving a sentence; 2. assistance in addressing problem situations and building skills to cope with difficulties; 3. referral to and intermediation with outside organisations for solving particular problems; 4. motivation for active participation and cooperation in preparation for return to life in society after release (art. 158 IPSDCA). Educational, training, and qualifying activities, accessible on an equal footing to all persons deprived of their liberty, are implemented at places of deprivation of liberty (art. 159 IPSDCA). Additionally, tourist outings, visits to cultural events, and sports events outside the areas of deprivation of liberty may be organised for juveniles (art. 164 IPSDCA).

Work on the resocialisation of persons deprived of their liberty shall be assisted by representatives of supervisory boards, boards for control of juvenile anti-social behaviour, territorial structures of the Ministry of Labour and Social Policy, civil society and religious associations, and non-governmental organisations (art. 170, para. 1 IPSDCA). When organising work with regard to imprisoned children, particular attention shall be paid to opportunities for their vocational training (Article172, para. 3 IPSDCA).

6. Community measures in the scope of the criminal proceedings

When the child is not in custody, the law does not contain specific measures that criminal authorities can take.[32] The IA establishes the child's needs for protection, education, training, and social integration, as well as the child's specific vulnerable situation, such as placement for care outside the family, difficulties in learning and communication, disability, and others. The authority that commissioned the IA must refer the child to the SAD (Article 7, paragraph 2 CPA). The SAD prepares an individual action plan to implement protection measures under Chapter 4 of the Child Protection Act. Within the framework of this support, the mechanism under the Social Service Act for integrated support between different measures could also be applied, such as the school and the social service acting in a common support plan to be monitored by the court.

There should be no obstacle for the criminal court to order special educational measures provided for children according to the Pre-school and School Education Act, which can be implemented in the school where child subject to measures studies and by engaging

[32] According to Article 386, paragraph 1 of the CPC, the following measures may be imposed on the child: 1. supervision of the parents or the guardian; 2. supervision of the administration of the educational institution where the minor is placed; 3. supervision of the inspector at the children's pedagogical room or a member of the local commission for combating antisocial acts of minors; 4. detention in custody.

additional support, e.g., referral to a Center for Support of Personal Development (art. 26 Pre-school and School Education Act) for provision of individual training, etc.

In relation to the implementation of Directive 2012/29, social and protective measures may also be taken under the Social Services Act (SSA), the Protection from Domestic Violence Act, and the Anti-Trafficking in Persons Act, including provision of shelter. The SAD informs and refers to support services for victims (Article 74 SSA). The victim may be referred to recovery programmes (Article 5 in conjunction with Article 6 of the Protection from Domestic Violence Act). The measure is imposed by a court's decision, which sets one or more protection measures (Article 16 of the Protection from Domestic Violence Act). When a child is a victim of a crime or violence, measures under the Child Protection Act should always be undertaken.

The Anti-Trafficking in Persons Act provides social services to support trafficked persons. These services are shelters for temporary accommodation of victims of trafficking and shelters for subsequent reintegration. The shelters accommodate persons who have declared that they are victims of trafficking. Admission shall be at their request for at least 30 days.

In cases where the violence results from a crime, social support may be provided to victims who have suffered material and non-material damage due to crimes of a general nature under the Crime Victim Assistance and Financial Compensation Act. The forms of assistance to victims of crime are:

1. medical care for emergency conditions under the Health Act;

2. psychological counselling and assistance from specialists - psychologists from victim support organisations;

3. free legal aid under the Legal Aid Act;

4. practical assistance.

The IA is of particular importance when probation is imposed, which allows the implementation of various measures within the community.

Informing the child of the act of the court

The child or their guardian or custodian should be adequately informed of the court's decision and the possibilities for appeal. The special representative/advocate can do this for the child. Alternatively, the court may give the special representative/advocate such instructions. The views of the child should be taken into account about the possibilities of appeal.

V. Annex

- **Checklist for an IA for use by judges**