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

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Project

The goal of the “Child-Friendly Justice: Developing the Concept of Social Court Practices” project (CFJ-DCSCP) is to improve access to justice for children with enhanced vulnerabilities in the criminal justice system by developing and disseminating specialised models of individualised assessment of their needs in line with international and European law. To that end, the project includes a research component, which seeks to identify existing and ongoing problems and make recommendations connected to individual assessments in criminal proceedings involving vulnerable child victims or children who are suspects or accused of committing a crime. It has a special focus on children deprived of parental care, unaccompanied minors and children with mental disabilities. This report sets out the research’s main findings in Bulgaria, which corresponds to Deliverable no. 2.1 (“Report of Action-Research”), activity no. 2.1 (“Mapping of existing judicial practices”) in this project.

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Executive Summary

This report sets out the outcomes of a study about the child's right to an individual assessment in criminal proceedings in Bulgaria, either as a victim or a suspect or accused of committing a crime. It includes connected rights, including respect for the best interests of the child and right to be heard. The study took place between September 2020 – January 2021 as part of the EU co-funded project "Child-Friendly Justice: Developing the concept of social court practices".[1]

The right to individual assessment is analysed within the context of: 1) the research of attitudes (participatory action research) of stakeholders involved in individual assessments and connected institutional practices. This is to define what is working in the Bulgarian institutions and what the reasons behind good and bad practices are. 2) Examining the level of transposition, implementation and understanding of Directive (EU) 2016/800[2] and Directive (EU) 2012/29[3], which establish, among others, minimum standards on the rights, support and protection for child suspect or accused of committing a crime and child victim of crime, respectively. The Directives are viewed as tools for modernisation of the child justice therefore the individual assessment is studied not in isolation but rather as an integral part of a child-friendly justice in Bulgaria.

The study comprises a desk review of the relevant legislation in force in Bulgaria, draft laws, academic literature and NGO expertise. An integral part of the study is an action research with the views and comments of 33 respondents from 6 locations in Bulgaria – children, judges, police officers and inspectors from Child Pedagogical Rooms, lawyers, social workers, psychologists and psychiatrists[4].

Worrying conclusions of the report are that notwithstanding the criminal legislation in Bulgaria is in compliance with international human rights standards, the state overwhelmingly fails to shape its capacity to respond to the specific rights and needs of children. The two EU directives have provided a little impact on that. The first attempt to their transposition in Bulgaria seems to resulted to only formally replicated legislation. Another disturbing conclusion comes from practitioners that expressed high levels of dissatisfaction about the implementation of the rules, rarely in the best interests of the child.

According to the authors of the report, the modernization of the Bulgarian legal and judicial system is mostly a "top-down" process. The EU and the international influence are crucial for many reforms, including of the child protection system. Regrettably, most local professionals and institutions perceive innovations just as foreign implants in the local culture. The project aims to introduce/confirm a different way of conducting reforms: by empowering practices which pave the way for new approaches by piloting and demonstrating how this can be achieved in the local context.

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[1] For more information: https://validity.ngo/projects-2/child-friendly-justice/

[2] Directive (EU) 2016/800 of the European Parliament and the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.

[3] Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 on establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA

[4] Detailed description of the profile of the interviewed persons is in Appendix 1.

The main conclusions of the study are as follows:

- The transposition of the two Directives is imitative. The main message has not been translated – that the individual assessment (IA) should not be viewed as a form of obtaining evidence or used for purposes of punishment. Neither the Code of Criminal Procedure, nor the Draft Law Amending it sets out any objectives of the IA pertaining to useful measures for the child or special needs or specific remand measures.

- The rights of the child in the criminal justice system remain a vague concept in contrast to the well-integrated concept of rights of the accused person to a fair trial, which is a result from a long-term impact of the European Convention on Human Rights and Fundamental Freedoms (ECHR) and the judgements of the Court in Strasbourg.

- The right to IA is not guaranteed by means of other rights – such as informing the child of the proceedings, its purpose, stages, the child's involvement and the consequences thereof; hearing the child in an appropriate setting, including with the participation of trained professionals. The biggest gaps have been identified at the stage of the pre-trial procedure at which the police and the prosecutor's office have a leading role.

- The criminal justice system when engaged with children-offenders or victims does not function in coordination with the systems of education, health and social protection. This makes illusory the implementation of the goal of rehabilitation and reintegration of children being in contact with the criminal justice system.

- A general drawback of this legal framework has been identified, namely the reluctance to lay down more criteria for individual assessment, such as specific circumstances or characteristics of the individuals concerned.

- Even in such framework, a normative basis for carrying out of IA of a child offender exists as an obligation of the investigation and prosecution, however, it depends to a large extent on the personal motivation of judges, prosecutors and police officers. The above-mentioned structural gaps as well as the insufficient capacity and sensitivity of the system prevent the implementation of IA in line with the standards.

- The protection of the rights of the child in the Criminal Code, including the introduction of IA, is not supported with the necessary resources (e.g., expanding the network of experts, tools for carrying out the IA, training of specialists, etc.)

- The Draft Law of 2020 suggests for an opening of the system to the others and to giving more attention to the special needs and interests of children.

Nevertheless, very promising practices have been established where judges seek opportunities for the protection of children's rights. The key macro-structural prerequisite for the efficient institutionalized protection of the rights of the child and for ensuring primary consideration for its interests is the successful public modernization.

Hence, the main recommendations from this research are, as follows:

- Piloting innovative models of carrying out of individual assessments and advocating for the adoption of standard framework of multidisciplinary IA;
- Training of professionals in the area of child justice, including integration of child's rights as a subject for university students;
- Drawing up separate protocols for the use of the blue rooms for interviewing and hearing children; expanding the network of blue rooms across the country;
- Supervision, psychological and professional support for the professionals in the social policy and justice systems who work with children;
- Ensuring access to information about the activity of all institutions for child protection in the country;
- Building a uniform national system for gathering reliable statistics related to children and their special protection by the society;
- Decentralizing social services;
- Building a national network of accessible quality services at the local level, working with the local communities, awareness-raising campaigns on the rights of the child, child protection, and child-friendly justice;
- Implementing public social policies, with a major focus on training and employment, instead of social assistance policies which contribute to long-term dependencies and do not respect the individual's dignity.

I. Introduction

The subject of the research is the level of transposition and implementation of the two Directives with a focus on the child's right to an individual assessment. The analysis pursues to identify the way in which the Bulgarian legislator has introduced the Directives, the gaps in the national laws, as well as the existing "promising practices" in terms of the exercise of procedural rights, in particular the right to an individual assessment and the outcomes thereof for children. The report is organised around the individual assessment of a child involved in criminal proceedings as stipulated into the two EU Directives but involves also a wide range of issues, which emerged during the process of analysing responses received to the interviews.

Part one describes the objectives of the study against the goals of the project. Particular attention is given to the methodology of the research: *the research of attitudes* (participatory action research), which is a method of structured learning through experience. It has been developed for the purpose of studying and promoting change within groups, organizations and communities, and it reflects the key role of participation in acquiring knowledge. The choice of this method is motivated by the view shared within the team that the top-down judicial reforms do not prove to be sufficiently effective. The focus is placed on the practice and the aim is to define what is working in the Bulgarian institutional practices and what the reasons behind the good and bad practices are.

Part two is dealing in two subsequent paragraphs with the two directives and their transposition to the Bulgarian legislation. Each paragraph starts with an overview of the way the individual assessment of a child is implemented – either the child is a suspect and accused or has a victim's status in the criminal proceedings. These paragraphs are followed by a comparative analysis of each Directive against its actual or planned transposition by a Draft Law of 2020, still pending for voting at the National Assembly.

Part three presents the overall assessment of the current situation in sectors engaged with protection and promotion of children's rights. The analyses lead to context related conclusions and recommendations for future actions.

This report sets out the beginning of an ongoing research on the attitudes and practice in the area of child justice. The current phase of the research pursues to only justify and systematize working hypotheses which will allow the *approval of child-sensitive practices that are innovative in the Bulgarian context*. The empirical verification of these hypotheses requires a much broader and in-depth research outside the scope of this project.

Part four presents the main conclusions of the study.

II. Subject, goals and methodology of the research

To analyse the implementation and transposition of the two EU Directives, this study: reviews the changes in the legislation and in practice in terms of their implementation (and the preparedness for their implementation). We made an analysis of the steps for amending the legislation, and conducted a careful survey of the attitudes in practice based on the opinions of various professionals involved in this topic.

The research applies a combination of methods: documentary research; data gathering; identification of promising practices, surveying changes in attitudes. *The documentary research covers*: analysis of the Directives, the Convention on the Rights of the Child, and the effective domestic legislation; the relevant general comments of the Committee on the Rights of the Child, reports of the European Commission, the European Parliament and the Council of Europe; academic research; reports of NGOs, etc. The process of *data gathering* was based on 15 inquires made to Bulgarian institutions under the Access to Public Information Act. The responses have been received by the end of the research are presented in Appendix 2[5].

The research includes *practices* in implementing a child-sensitive approach (in particular, in respect of vulnerable children; children who are offenders/victims; children with mental disabilities; migrant children; and children deprived of parental care). We understand the child-sensitive approach as any adaptation of procedures needed for the protection of children's rights in judicial proceedings. In terms of illustration, the report presents cases showing how the court works or has difficulties in working with the social services in relation to assessing and determining the best interest of a particular child, and how the court hears and assesses the child's views.

The research of attitudes (participatory action research) is a method of structured learning through experience. It has been developed for the purpose of studying and promoting change within groups, organizations and communities, and it reflects the key role of participation in acquiring knowledge. Another important task of the research is recording the opinions of the relevant actors in the community who are part of various judicial procedures involving children – judges, lawyers, and other professionals included in the administration of justice. This helps cast light on specific gaps in the learning, knowledge and competences of the professional groups working with children in criminal and civil proceedings, in particular the knowledge and deficiencies in terms of applying the best practices and the aforementioned standards in the international and European law.

This report is entirely of a pilot nature: its only goal is a justification and systematization of working hypotheses which will allow the *approval of child-sensitive practices that are innovative in the Bulgarian context*. The empirical verification of these hypotheses requires a much broader and in-depth research outside the scope of this project. The report presents some initial findings of the research resulting from reflections and feedback. The process of research on the hypotheses will continue till the end of the project when we will be able to make a comprehensive and in-depth analysis of the key hypotheses.

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[5] Within the framework of the research, inquiries for access to public information were made to the following institutions: State Agency for Child Protection (SACP); Central Commission for the Prevention of Juvenile Delinquency; Ministry of Justice (MOJ); Ministry of Interior (MOI); Ombudsman of the Republic of Bulgaria; Prosecutor's Office of the Republic of Bulgaria; Supreme Court of Cassation (SCC); Social Assistance Agency (SAA); State Agency for Refugees (SAR); National Statistical Institute (NSI).

III. The general context of Bulgarian law and practice regarding the rights of children in the criminal and civil justice systems: views of practitioners

Before embarking on an in-depth analysis on the topic of individual assessment and connected issues in criminal proceedings for vulnerable children, it is necessary first, to put all the information into context. As it will be shown in this section, this study suggests there are several systemic and societal issues, which hinder full the implementation of the two EU Directives as well as the modernization of criminal proceedings towards a child-friendly justice system. Issues that go as far as affecting the child protection system, which exist to support, protect children and inform the process of individual assessment in criminal proceedings.

The contemporary Bulgarian society enjoys the protection of human rights provided by the 1991 Constitution, as well as by a number of international treaties.[6] The Bulgarian Constitution has a special provision dedicated to child protection:

> Art. 14. "The family, motherhood, and children shall be under the protection of the state and the society."

1. Public attitudes and gaps in the systems

The Bulgarian culture and value system define children as a supreme value. This is maybe the reason why over recent years the topic about children and their "rights" has become an important part of the public debate, which takes place mostly in the social media but also in a number of multidimensional public campaigns. An example would be the campaign related to a paediatric hospital which gathered, via a civil initiative, over 7,000 signatures within a few days and received the 2019 Man of the Year award of the Bulgarian Helsinki Committee. Another example are campaigns against legislation, which provides rights to children and therefore "threatens the traditional Bulgarian values and family". The discussion on what rights children have in Bulgaria involves also political leaders of the day and decision-makers, which, of course, strengthens also the potential for changing both the legislation and the policies in this area.[7]

> *In our country we treat children as if they were herds; we are always scolding them, and shouting at them —"Come on, you are being so slow". Our problems are within the society. Most parents say "the child is mine, and we can do whatever we want with that child"; however, the child is not an item. Parents say "it is driving me nuts"; however, you are not allowed to slap and beat the child …* [Judge from a regional court (female)]

[6] E.g., European Convention on Human Rights, Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment and others.

[7] See more in: https://boldbg.net/en/2020/01/30/bold-position-family/ ; https://childhub.org/en/child-protection-news/bulgaria-conspiracy-theories-and-misinformation-how-they-affect-childrens

2. Absence of infrastructure and specialized institutions supporting children's rehabilitation and social integration

A boy of Roma origin, aged approx. 12 as of the date of the offence, aged 13 during the procedure, lived in extreme poverty, being deprived of adequate care in a family environment. The boy started perpetrating offences (thefts) in order to provide food for himself, and subsequently the offences were increasing. A protection measure was taken: the boy was accommodated with a professional foster family, which discontinued his delinquency for some time. As a result of the inadequate behaviour of the social services and the absence of appropriate rehabilitation services, G. resumed his offending behaviour – he got involved in drug-related activities; became a victim of lechery, of mental and physical harassment by an adult who exploited him in relation to this activity; after suffering abuse, G. himself became an accomplice in lechery and abuse with respect to a man with a different sexual orientation. Court case from 2018, Regional Court of Lukovit.

The research has identified issues not only at the "entry" but also at the "exit" of the judicial proceedings: whether it be administrative, civil or criminal procedures, judges have pointed out that in most cases the actions taken are not based on the best interest of the child but rather on choosing the lesser of two evils.

> *There are cases which really sadden me, as I feel at a loss. Speaking about the child who had found shelter in the community centre, I asked the social worker what we can do to help the mother. The answer was that the mother could attend sessions for anger management. Well, this woman had an alcohol problem, she didn't have an issue with anger itself, anger was due to the alcohol. Hence, a catch 22 situation – I ruled on placing the child at an institution; however, by doing so I didn't solve the problem, and I don't have mechanisms to solve it, because there are no options for it* [Judge from a regional court (female)].

> *The Supreme Judicial Council scolded me, and this is why I approached directly the Court of the EU with which any judge has the right to directly communicate through requests for preliminary rulings. At the end of the day, the answer of CEC could help me achieve something which I cannot achieve only by means of values. (…) [As] the state has deceived us assuring us that these directives have been transposed, but this is not the case.* [Judge from a regional court (female)]

The absence of adequate social services is an obstacle even for those professionals in the sector who act with the best intention:

> *This has hindered our actions, as there is nowhere to accommodate the children whom we have to take away from the family, and we have to act fast (…). We don't have a crisis facility, and the only option for me is accommodating the child*

at a distance of 150 km or in Sofia, as this is faster. If I do so, then the Child Protection Department have to go and collect the child, but they don't have a car, so I have to go and bring back the child. The children live in a closed environment there, they are deprived of education. When I went there to collect the child, I was told [by the child] "Madam, we were in one of the rooms watching TV". [Former inspector at a Child Pedagogical Room (male)]

The lack of services is also a source of concern for judges in administrative procedures for protection and in criminal procedures:

I referred him to the State Agency for Child Protection, and I said that we didn't have foster parents for children with mental diseases, and they told me "we have a strategy" (…) I sent the judgment to Ms Fandakova [the Mayor of Sofia], and I said "Your inspectorate deals with the document turnover and meals, but not with what is happening to the people accommodated there… and your service is not good"- well, I didn't use exactly these words – "this is why there is no possibility for development there, these people are subject to degradation, this is pure vegetation." I haven't received an answer. [Judge from a regional court (female)]

The consecutive hearings of the case about placement in care of one child are conducted by different judges who are not familiar with the background, the context, they do not have feedback regarding the (in)efficiency of the measures taken, and, thus, the institutional actions are at risk of being inconsistent and chaotic. As a judge from a regional court put it: "It is like changing the surgeon in the course of the surgery, you simply don't do this";

When several children at-risk are to be separated from the same family, the social services initiate different files, and the cases based on them are heard by different judges due to the principle of random allocation of cases. Thus, the relevant judges are not aware that the children come from the same family, as a result of which the children (brothers and sisters) are placed at different services in different settlements, instead of being kept together;

While the social service has the same name, the content differs, as well as the quality of the support provided: *"while they are both family-type accommodation centres, it turns out that one of them accommodates only children with mental disabilities; he should not be placed there, but the court is not informed about this"*; or according to a judge in a regional court:

The director of the centre ran into me and asked me how come we referred both the victim and the offender to the same place – they end up being accommodated on the same floor, in two neighbouring rooms; and this rang a bell to me that we had no idea whatsoever about the various services and what they provide; so, I started visiting them all in order to see for myself what was going on there… but my colleagues, as a whole, don't do this, few of them go and see for themselves…

It often happens that children with different needs are mixed within one service – for example, *"crisis centres often accommodate neglected children, refugee children from Syria and Afghanistan, children released from correctional institution; these children should not be accommodated together; they have different needs"*.

The signals come too late, as the society is not sensitive to the issue of child suffering:

> *And when the trouble has already occurred, all the neighbours and relatives start explaining that there have been problems for years… and I ask them – what was the problem with you, why didn't you let us know earlier… but people keep silent, they would rather not say anything so that they don't get in trouble…* [Former inspector at a Child Pedagogical Room (male)]

It is this predominant perception of social alienation that explains the efficiency of the seemingly cheapest and easiest way to protect the interests of the child – the manifestation of *humanity*.

> *There are children for whom any measure, even the softest one, would be efficient …, and just a nice talk would have a positive effect on them…* [Judge from a regional court (female)]

Prosecutors, inspectors, social workers, district police officers, psychologists, etc. have given numerous examples about the efficiency of human empathy whose manifestations remain invisible to the media, heads of institutions and the public, but which solves problems and prevents their further escalation: *"80%, even 90% of the work we do is invisible, as it is efficient: going to see the family and talk with them and the children; explaining what programmes are available and what support they can rely on – this is what yields results"* [social worker]; *"I worked at the district police department for ten years, and I had hundreds of cases every year; but only two cases with children who got to the court, and the reason for that was that they themselves – as it turned out later – had been victims of violence at an early age: two teenagers, a boy and a girl; as for all the others, it is just enough to hear the child, to understand them – this doesn't seem complicated but you have to step into the shoes of the child…. And I never had repeated offences"* [now a regional prosecutor]; *"if you ask what my job is about, let me answer this way – these children just need someone to love them"* [Former inspector at a Child Pedagogical Room, male]; *"and then it was the language that helped me understand that it was not the children who created the problems but their parents, (…) I explained to the most aggressive ones that I wanted to show them what the detention place looked like so that they could understand where they were pushing their children... and they understood"* [a prosecutor];"

But why do our society, our communities and our families suffer from such a huge deficit of humanity? The prevailing opinion of the participants in the research is that all child offenders are also victims who need protection. It was only in one of the interviews in Sofia that the following view was expressed: *"There are no children who are that starved in Bulgaria – this is a stereotype, namely that he broke into the shop to steal some buns"* [a representative of a social service]. All the other interviews gave examples about serious material problems: *"he likes going to school but he is not allowed to, as he has to work – he knows how to milk the cows, how to do midwifery for calves, everything…"* [regional judge]; *"I know that if I keep them in the afternoon to do their homework at school and don't let them go home, they won't work in the afternoon and they will have nothing to eat tonight, and they won't come to school tomorrow"* [headmaster of a primary school]; *"and she told me – well, madam judge, what breakfast are you talking about – I go and f* for 2 lev so that I could have something to eat"* [regional judge]; *"the whole town had enough of him, because he was a hard recidivist; and I am trying to explain that a 14-year old child cannot be a recidivist; well, but this is what the report said – "criminal" and "recidivist"; and seeing what he did, I understand that he was just looking for a place to warm up, he would sneak into attics with "white chimneys",*

i.e. where there was smoke, so that he could spend the night at a warm place" [social service worker]; "and she came to us on her own, wearing only flippers; and I told her to go and see a gynaecologist, I explained to her where to go, what to say; but she wouldn't go, and then I understood that she didn't have money for a taxi; I gave her 2 lev, as that was what the taxi would cost to the centre; but still she wouldn't go; then I realized that she hadn't eaten; she turned out to be pregnant in the eighth month, and she hadn't eaten for three days" [representative of a social service]; *"I asked him to draw the place where he wanted to live, and he drew a house in which his brother was playing on the upper floor – instead of toys, he was playing with pots as they had never seen toys" [regional judge]; "now they are in the crisis centre, as the elder sister has suffered many times sexual abuse, and her brother has witnessed this – the sister is aged 15, and the mother offered her to adult men to earn some money for food" [social worker]; "the father was unknown, the mother was in detention, and we received a signal to check on the children – I walked into the house and saw the four them sitting naked on the floor and playing: their game was having a meal – each of them had a spoon in the hand and dipped it into the empty pot and put it in the mouth… and then licked his snot…"* [social worker].

When asked directly if we are a poor society that does not have the resources to take care of children, the typical answer is: *"No one can convince me that we are a poor society (…) We are simply a society that has its priorities wrong!"*

3. Partisanship in the public institutions

The economic vulnerability of large (Roma) groups makes many people dependent and victims of abuse, which also affects children. The pilot research has found indicators for pressure exerted by "local informal leaders", "the insurance mafia", influential "businessmen", government officials and politicians with the aim to ensure controlled political votes: *"I want to work, but they said I must pay 600 lev in order to be included in the programme; I don't have the money, and I took a loan to pay and get a job under the programme – you pay for everything here, you cannot start anything free of charge"; "they keep with themselves everything – our IDs and bank cards, because we are illiterate"* [Roma parents]; *"I alerted the prosecutor's office, as they had obviously forced him to sign such a declaration before a notary – I personally asked him, and, looking me in the eye, he couldn't lie and told me the whole story"* [regional judge].

These examples are indicative of the clear distinction that the society makes between "Roma criminality and Bulgarian criminality". Almost all the participants were making conscious efforts not to generalize based on an ethnic principle, and their statements contained many reservations: *"I know that this is a stereotype, but it's a real case"* (Former inspector at a *Child Pedagogical* Room *(male)*); *"I shouldn't be saying this, but if I am to distinguish the types of crime – with the Roma it is thefts, burglaries, while with the Bulgarians it is drugs, theft of vehicles, damaged property"* [prosecutor]; *"The case with the Roma child is clear – he has been sent to break into a shed or a basement and steal some iron; the Bulgarian child is either a drug addict or a squirt who is trying to attract attention; recently we have had most trouble with the new rich, as they think everything is allowed for them"* [former police officer]

A boy of Roma origin, aged, 13, was beaten at a public place by a middle-age man. The child was certified by a medical professional and lodged a complaint against the offender via a confidant. The prosecutor's office issued three consecutive decrees for terminating the criminal proceedings against the offender whereby it stated that the latter's behaviour had a publicly acceptable personal reason. The victim lodged an appeal before the court against the prosecutor's decrees. Court case form 2020, Regional Court of Lukovit.

The issue is that, given this attitude, Roma children are not perceived as a product of the social context in which they live but rather as "objective criminals". The explanation for this "objectiveness" can be "wrong DNA", their "blood", "culture", etc.; however, the more important implication is the impossibility "to remedy" this, as it is "objective".[8] Therefore, this inertia provides a very easy solution for all these groups who seem to have no will of their own, as there is something "objectively" wrong with them: just taking them out of the majority of the *reasonable mankind. Thus, you can ask: "Do you call these "braziers" Roma? What Roma are these, they are just animals who can neither read nor write, nor speak"* [former prison guard]. A consequence of "objectiveness" is the inefficiency of the measures laid down in the Prevention of Juvenile Delinquency Act or the Criminal Code, when applied with respect to Roma children:

> *Nothing is working with these children, this (the measures under the Law) is like a vaccine for them – you start with something small, and you gradually get used, and in the end, when he is back from the correctional institution or prison, it is not only that he has not been rehabilitated, he has become even worse – he knows how to hide things and what to say.* [Former police officer (male)]

> *"It is really hopeless! Do you know what can be of help? A good thrashing – when you catch him the first time, this is what will help! I don't mean that he will go back to normal and will stop stealing, but at least this will teach him a lesson not to go around stealing in my area! Otherwise, if he did it because he had nothing better to do, and if he doesn't come to his senses after spending one day in detention, then he is better left alone…"*

Nevertheless, one of these respondents acknowledged that there may be some solutions:

> *Roma children change their behaviour when they get caught stealing in other countries. Because the measures out there are strict. It takes only a few days – the child is placed with a foster family (but it's a family trained to work with such children, not like our foster families who are good for nothing and cannot find another job), goes to school, and there's no excuse. And he knows – if he doesn't observe the rules, there will be sanctions; if he observes them, it will be fine...*

However, it is not only the former police officer who finds it difficult to tell what measures would be efficient in protecting the best interests of the child, overcoming past trauma, and preventing potential future offending, as well as achieving full-pledged social integration. By and large, the feelings in

[8] This discourse was renewed by one of the governing political parties.

respect of this topic are far from being optimistic. The prevailing perception is that the failure to react with humanity and understanding at the very outset will result in an avalanche generating a criminal contingent and transforming the child into a hardened criminal.

4. Explanations about partisanship in the public institutions

It is this interpretation model that has the exploratory potential to explain the indirect evidence registered in the course of the research about recurring *"police tricks"* which are in breach with the rights of the child: summoning children as witnesses and not as suspects in order to avoid the requirement for legal defence, and thus the children will incriminate themselves and/or will incriminate their relatives/friends – *"we are all the time coming across such trauma from past experiences – the children feel very guilty, as they were alone when they were interrogated, and they turn in their relatives/friends; and then another colleague, a police officer, undersigned the testimony as a witness so that the evidence could be attached to the file; when the defence lawyer turns up, it is all over"* (psychologist from a service); the recruitment of children as informers by the police – *"the police catch him, intimidate him and tell him that now they will let him go but he must tell them what is going on in the neighbourhood; and thus he start reporting to the police and betraying his closest friends, and, unless something rings a bell to them and they beat him up, he goes on doing it, which rots him"* (social service worker).

The research team has received some information about cases of intimidation and physical violence against children, which is an issue requiring in-depth investigation in further research:

> *I don't say they don't beat them; it may happen; I am just saying that this an exception, as it is enough to scare them; if a child doesn't have respect for the very presence of a uniform police officer, beating will do no good* [Representative of a service (female)].

And this is what a parent said:

> *He was caught stealing, and he was really quiet, but the police officer said over his walkie-talkie that the subject was showing violent resistance – this must be a code of theirs, I don't know – and they dragged him out hitting and kicking him, they were pushing him down the stairs and pushed him into the trunk of their police car; its' true that he was steeling some iron items, but he was so skinny, no more than 50 kilos, and there they were - at least some 10 police officers with their guns out, surrounding a child.*

The parent of a child offender:

> *I receive a phone call telling me to go and collect him, and I was aware they had beaten him. And I told them: "you mother fuckers, you only have the guts to beat a child; why don't you take off your uniforms and go out into the street, then I'll see how manly you are".*

Another parent who is a politician:

> *I go to the police department, but dressed as I am when I work in the garden; and they start shouting at me, as if they were about to beat me, too; and he*

asks me do you know who I am, what education I have; it turns out he is kind of a sports teacher, as inspectors at the children's pedagogical rooms are required to have some pedagogical education; and when he hears who I am, he immediately lowers his profile – well, sir, why didn't you tell right away who you are, and this and that….

Future research should look, in the spirit of Foucault, into the links between "small gains" at the low level of criminal favouritism and "political favours" of which football fans, gangs, judges and prosecutors are often suspected by the public.

IV. Legal framework for the effective implementation of Directives (EU) 2012/29 and 2016/800 of the European Parliament and the Council

1. Directive (EU) 2016/800 of the European Parliament and the Council of 11 May 2016

The objectives of this section are twofold: 1) to present a brief overview of what individual assessment of *children who are suspects or accused persons in criminal proceedings* regulation and process looks like in Bulgaria and 2) to analyse each of the individual elements, which comprise a right to individual assessment in line with the two EU Directives.

i. Current law and practice regarding the Individual assessment of a child offender

It should be noted at this stage that in line with the existing provision of Art. 387 CCP on the data gathering about the child the Bulgarian version of Directive 2016/800 uses the term 'personal characteristics' as an equivalent for 'individual assessment' (IA) used in the English version. That term was criticised by the experts as follows: 1) the term IA better renders the meaning of this concept, as 'characteristics' has a narrower meaning; 2) IA has already been introduced as a legal term in some current laws: in the Persons with Disabilities Act (Art. 20 et al. where it is defined as 'complex'), in the Social Services Act (Art. 6, with a broader definition of the concept), and also in the Draft Law Amending CCP and the Crime Victims Assistance and Financial Compensation Act (in view of a fuller transposition of the Directive on Crime Victims).[9]

The minimum age of criminal responsibility for children as defined in the Bulgarian Criminal Code 1968 (CC) is 14 years of age.[10] The CC also stipulates that children may not at all be criminally responsible where their expert examination have found that the child does not understand the nature and meaning of the offence and is unable to manage his/her actions.[11] Under the Criminal Code of Procedure 2005 (CCP) in cases when a child has been formally charged, separate rules will apply as laid down in Chapter 30 – Special rules on examining cases of crimes committed by underage persons.

The effective normative ground to prepare something like 'individual assessment' is Art. 387 of CCP titled *Gathering data about the personality of the underage person*: 'The investigation and the prosecution shall gather data about the date, month and year of birth of the underage person,

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[9] See the opinion of the Social Activities and Practices Institute on Draft law amending CCP. "Individual assessment" is a professional term used in psychological and social work, a basic professional tool for the individual planning of activities in conformity with the person's specific needs, available resources, existing risks. The justice system uses individual assessment for the purpose of individualizing punishments, measures, and their execution. If the term is changed in the Bulgarian language, this will change its philosophy. Firstly, the personality characterization is a component of the individual assessment, but only a part of it; secondly, this is not the 'personality characterization' which exists in CCP, i.e. a professional assessment – a professional analysis and interpretation of all known facts which ensures a better understanding of the circumstances contributing to the crime, and the planning of activities.

[10] See Committee on the Rights of the Child: General comment No. 24 (2019) on children's rights in the child justice system No 24, § 21 (CRC/C/GC/24).

[11] Pursuant to Art. 31 of the Criminal Code: (1) Criminal responsibility shall bear a person who has reached the age of 18 who commits a crime in a state of sanity. (2) An underage person who has reached the age of 14 but who has not reached the age of 18 shall bear criminal responsibility *if the child were able to understand the nature and the meaning of the offence and to manage his/her actions.*

education, environment and conditions in which this person lived, and data regarding the probability for an adult to have influenced the commitment of the alleged crime.' The provision has been copied from the repealed CCP 1974.

So, the law currently speaks about 'collection of the data about the child' but not about its assessment. It is assumed that it is part of the evidence used in the criminal proceedings, which the judges participating in the research team agreed with. They further commented that there is nothing wrong with it since everything that enters the case files is considered on the basis of its evidentiary value for the proceedings.

The Bulgarian CCP does not explicitly set out the objectives of the data (IA). They can be construed from the goals of the punishment referred to in Art. 60 of the CC: The punishment imposed on underage persons shall serve, above all, to rehabilitate and prepare them for community service. We can assume that in view of the purpose of the punishment, the individual assessment/report will serve, in particular, to decide on the type of the punishment and its time frame, as well as to terminate the investigation and refer the case to the local commissions for the prevention of juvenile delinquency.

The data gathering is a responsibility of the investigation and the prosecution – both acting at the pre-trial stages. This implies also the momentum at which the data about the child should be collected – at the stage of crime investigation and prosecution. The court could always order however, additional expert opinions if needed.

In spite of the laconic wording of the article, the practice shows that even under these conditions it is possible to carry out an IA in compliance with all the circumstances relevant to the child set out in the Directive. The investigator as well as the prosecutor could collect information about the child from various sources and requesting the support from the inspectors to the Child Pedagogical Rooms (CPR)[12] (Art. 7, point 6 of the Regulation on the Child Pedagogical Rooms) and from the social workers at the Social Assistance Directorates (SAD) (Art. 15, para 6 of the Child Protection Act (CPA)) or from the Social Services Act (SSA). However, the information gathered in this way will be collected most probably in different protocols or reports as part of the overall materials of the case. The data will not be used to draw conclusions on the personal needs and necessary measures but only as an evidence for the purpose of the criminal investigation.

The weak points of the current law are:

1 The regulation is too abstract, placing the IA in the overall frame of evidence gathering. The law does not consider the fact that the child is involved in proceedings designed for adults. As a rule, it excludes coordination with child protection authorities, but does not prevent exchange of information.

2 It is not explicit regarding the needs assessment and measures that could be beneficial for the child during the criminal proceedings – protection, education etc. Rather, the aim of the IA is not simply to collect data about certain facts but to analyse data from the perspective of the best interests of the child and to propose measures beneficial for the child.

3 The competent structures to prepare IA do not have special training on CR and child development. Although with certain specialisation.

4 Good IA depends on the initiative of the professional but is not supported structurally.

[12] Structures under the Juvenile Delinquency Act 1958.

ii. The situation in practice

Individual assessments and reports by the social services

Almost all interviewed representatives of the legal profession (in particular, lawyers and judges) stated that the documentation for the case, including the personal characteristic (IA), is very often either in a bad state or does not provide sufficient information, which makes the personal meeting with the child very important for the judge or the lawyer who wants to do his/her job with responsibility and in good faith. The views expressed makes it clear that so far the IA has not been given a value that could focus the attention of the lawyers. They speak about reports from the social services:

> *"The social workers had drafted a very optimistic report, but I also requested a report from the institution, as I wanted to know if they want him there. And they said "no, we don't want him here – people are leaving, as he beats them, we cannot control him, we cannot change his behaviour".*

All interviewed judges, lawyers, as well as social workers were willing to give us examples about incomplete and unclear reports from the social services with lots of omissions and outdated data, actions plans from crisis centres, and reports from the local commissions for the prevention of juvenile delinquency which had been drafted by means of copy-paste *"as if it was the same child cloned at all these places"*, about data from the pre-trial stage which are inaccurate, incomplete or gathered from dubious sources. And this data does not relate to insignificant circumstances but to siblings in need of protection who are, however, on the territory of the neighbouring service; serious criminal offences committed by the children in the past; caring grandparents who live abroad, etc.:

> *A child said "I want to be with my grandparents, they are in Belgium". I asked "Did you get information about them?", as I didn't see any information about this in the application we had received. They said "well, they are in Belgium, how can we gather information about them?!?". The 21st century offers many means of communication, I don't care where these people are, it is better for the children to be with their grandparents than in an institution. This is, however, an example showing how in these cases the parents or the social workers spared some information or they simply didn't deem it necessary to include it in the report…* [Judge from a regional court (female)]

The representatives of social services interviewed under the project admitted these deficiencies and gave the following explanation:

1) the serious problem with the turnover of professionals in the system:

> *Working at a child protection department is very difficult, extremely difficult. This was one of the reasons why I retired, I didn't want to deal with Child Protection Department, they are understaffed – at present three persons are in charge of two municipalities.* [Public educator (male)]

2) the heavy bureaucratic burden which made a social worker *"dedicate three-fourth of their time to paper work" ("children are accompanied by a piece of paper indicating the names of those involved in the take-over, as if they were objects"; "the attitude is that one*

of the most important aspects of our work is the perfect documentation – the child itself is lost somewhere, and it is the folder with paper that becomes more important than the child");

3) the lack of professionalism – *"so much money was spent on training, but you cannot retain people under these conditions, they quit, in the best scenario they move to the services"; "the system suffers from a shortage of human resources, and people with secondary education are hired"*;

4) the lack of resources – *"there is not paper, no toner for the printer, there is nothing – here we have to buy everything with our money; the bought the air-conditioner, as it gets unbearably hot in the summer, you cannot breathe, it reaches 50 degrees"*;

5) the chaotic wasting of money, without any prior assessment of what is best to do (*"various activities and measures are financed, but it is all based on projects, there is no sustainability"*);

6) the partisanship in the system:

> *You are appointed a boss who is a geographer and has no idea whatsoever of this job, he has no experience but he is loyal to his party – a wooden head, no idea what it is all about, but he doesn't let you work; I wish he didn't hinder my work… it often happens that the court summons me to a case, and he intentionally doesn't let me go, he finds something else for me to do so that I cannot go to the court hearing; thus, it won't seem as if the court were giving us orders while we are in power…* [Social worker (male)]

The research under the project has identified yet another serious issue which puts at risk the interests of children – current and former legal advisors have signalled that the instructions received by the social services from the central office in the capital city are in contradiction with the legislation:

> *"They read these instructions as if they were the bible, and it's only them that they follow; and I keep explaining that the law says something different, but they won't listen; and there's nothing I can do – I just do what I am told to do by my bosses, but I refuse to coordinate it, I refuse to undersign; of course, then the court rules against us... it happens often; the court rulings are always against us…"* [Lawyer of social service]

This is the summary made by a professional from another town in relation to the same cases: *"regrettably, in Bulgaria the law is taught as if it were folklore – in a verbal form, from one person to another…"* [Regional Judge, female]

One of the most serious challenges in terms of giving priority to the child's best interests is, probably, the access to a professional expert opinion. Judges from regional courts have pointed out that it is extremely difficult for them to find medical professionals, psychiatrists, psychologists, etc. as expert witnesses for cases involving children – the same expert witness often has to travel and cover huge geographic areas, which results in additional costs or delays the hearing of the case. At the same time, the resources available for such expenditures are limited. The research has found evidence for only two individual assessments made within the meaning of Directive 2016/800 – the costs for one of them were covered by a pilot project with EU funding, and the other one by the court.

All the judges interviewed are sceptical as to whether a regional court could afford the costs for more than 1-2 individual assessments per year:

> *I cannot say that we are under pressure, but when I asked for such an assessment, an inspector was sent to carry out an inspection; we received a letter which –well, not directly – advised us to be careful and to reduce the expenditures… but if we reduce the fees for the expert witnesses, we run the risk of losing them… the issue was that what happened was related to pending cases which had not yet been completed…* [Regional judge (female)]

On the other hand, the expert witnesses themselves signalled about tension between their professionalism and the judicial discourse:

> *"The court expects from me to come up with an indicting assessment, to tell which parent bears a heavier guilt… as a professional I have a different thinking, I perceive the parents also as victims who need support…but this is something I won't tell the court, in this case it is pointless".*

iii. Individual assessment under the Directive and the attempted transposition in Bulgaria

This part will compare the Directive and the related regulations in the BG legislation, including in the Draft Law with regard to the IA: 1/scope of application of the IA, 2/objectives of the IA, 3/ procedural aspects of the implementation of the IA.

Directive (EU) 2016/800 of the European Parliament and the Council of 11 May 2016 *on procedural safeguards for children who are suspects or accused persons in criminal proceedings* had to be transposed in the Bulgarian legislation by 11.06.2019 (Art. 24 of the Directive). On 31.07.2020 the Bulgarian government submitted for public consultations the Draft Law for Amending and Supplementing the Criminal Code of Procedure (Draft Law)[13] that provides for the transposition of Directive (EU) 2016/800 in the domestic legislation. The term 'personal characteristics' is the term used.

iv. The right to individual assessment – scope and elements

The Directive, in contrast to the Bulgarian CCP, brings the concept that the IA is not merely one of the evidences in the criminal investigation but is a right, which is crucial for a child who is a suspect or an accused person in criminal proceedings (CP). This right is determined by the exercise of other rights (e.g., the right to information), but it also determines the exercise of other rights (e.g., the right to protection, education etc.). At the same time, the Directive reminds that **the best interest of the child** is a leading principle also in CP (Recital 8). This means that the interests of a child who is a suspect or an accused person shall be a primary consideration in the criminal proceedings (and in criminal policy – e.g., in case they compete with ideas about stricter criminal prosecution in terms of deciding on the type and duration of the punishment, etc.).

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[13] The Draft was then submitted to the National Assembly on 10 November 2020 and is still pending for voting: http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=5359

v. Subject of the right to individual assessment, scope of application in criminal proceedings

Two groups of individuals are subjects of the right under the Directive (Art. 1-2 and §11 et al. of the Recitals).

The Bulgarian CCP provides for a much narrower scope of application of the IA and does this applying the usual abstract and formalistic approach – the age of the person at the time of acquiring the status of accused in the criminal proceedings but not at the moment of committing the offence. This approach does not recognise the right to IA if the child does not have a formal status of accused. However this status could be obtained much later at the stage of the preliminary investigation, which creates uncertainty regarding child's procedural rights. Regarding the age criteria, the CCP does not give the right to IA in case the child attains the majority during the proceedings. The Directive applies a combined approach – the age but also a material criteria – if the child becomes in contact with criminal justice system.

The strict age criteria deprives a certain group of children from the enhanced protection, e.g. according to Art. 394 (1) CCP, when an adult was instituted as a party *to criminal proceedings* for a criminal offence perpetrated by him/her as an underage person, the case shall be examined **in the general procedure**. This is the case where: 1) the proceedings were initiated when the person was underage, but were completed after the person had reached the age of 18, and 2) the proceedings were initiated when the person is at 18 y/a. This approach is not in compliance with the Directive. Becoming of age has been used as formal grounds to terminate the more favourable treatment of the person, even though the criminal offence was committed as a child.[14] Art. 387 (2) of the Draft Law 2020 applies the same approach: “Right after an underage person **has been constituted as an accused person**, *the pre-trial authority* shall request that an inspector from a CPR …. should draft a characterization with the *personality characteristics* of the accused person, which shall be submitted in the case within 14 days.”

On the other hand, the status under CCP could also be used to avoid the full transposition and thus to deny the child the full protection. Art. 2 (1) of the Directive stipulates that it *“applies to children who are suspects or accused persons in criminal proceedings”*. Under the CCP there is no a status of ‘suspect’, at this stage the proceedings are still in hands of the police where various child's rights could be violated. The formal accusation comes a later stage. The status of an accused person then is crucial for the right of IA. Thus the attempt to transpose the Directive by the following: *from the time at which the underage person becomes an* ***accused person*** *till the final conviction thereof in the formal criminal proceedings regulated by CCP’* should be considered as incomplete. At the same time the CCP provides a general protection stipulating that, in the cases provided for in this code, the criminal proceedings shall be considered as initiated by the first action with which the investigation starts (CCP, Art. 23 (2)).

The practice in Bulgaria, however, makes the moment of the start of investigation very uncertain

[14] The purpose of this Directive is to establish procedural safeguards to ensure that children, meaning persons under the age of 18, who are suspects or accused persons in criminal proceedings, *are able to understand and follow those proceedings and to exercise their right to a fair trial, and to prevent children from re-offending and foster their social integration*. By establishing common minimum rules on the protection of procedural rights of children who are suspects or accused persons, this Directive aims to strengthen the trust of Member States in each other's criminal justice systems and thus to improve mutual recognition of decisions in criminal matters. Such common minimum rules should also remove obstacles to the free movement of citizens throughout the territory of the Member States. (Recitals 1 and 2).

because the child effectively comes into contact with the police but his/her status is confirmed at a later stage as well as not under the CCP but rather under the Ministry of Interior Act (MOIA). In this context, the jurisprudence of the European Court for Human Rights (ECtHR) under Art. 6, §1 ECHR becomes relevant.[15] In contrast to CCP the ECtHR holds that the concepts “criminal charges” and “criminal proceedings” are autonomous, and the criterion for their existence is a **material**, not a formal one.

The latter concerns a significant effect on the situation of the suspect in particular when the underage person is detained/deprived of liberty as a suspect for committing a crime under the Law on MOI. Therefore, the requirements laid down in the Directive should be introduced also through the relevant amendments to the MOIA in relation to the assumptions for the detention of a person “in respect of whom there is an indication that this person committed a crime” (Art.72 (1), p. 1 of MOIA). The incomplete transposition of the Directive in terms of its scope implies its incomplete transposition also regarding the right to individual assessment.[16] The Bulgarian criminal law doctrine proposed to the Bulgarian law-maker that this part of the Directive be transposed either by providing for the highest standard or by introducing a requirement for a specific assessment by the court[17], [18].

Another issue in the Bulgarian law is the denial of **defence** for the child (understood as the overall set of more favourable rules) in case the crime was perpetrated with an adult accomplice. Pursuant to Art.394 (2) of CCP, *“When the underage person is an accused person for an offence perpetrated with an adult accomplice, the cases shall not be separated, and the case shall be heard in the general procedure”*. This proves again that the law maker gives a priority to the proceedings rather than to the child’s best interests. The rationale of the Directive is that children benefit from reinforced protection in criminal proceedings. According to Chinova-Belejkov, “It is well known that when a directive does not provide for any exceptions, the Member States are not entitled to provide for any when transposing it. **Setting out exceptions would be assessed as incorrect transposition by the EU institutions** *(a formal argument, as the domestic law can always provide for a higher standard)*. This is why the provision of Art.394 (2) of CCP should be supplemented by specifying which special rules under Chapter 30 of CCP shall also apply when the underage person is an accused person for a crime committed with an adult accomplice.”[19] Co-perpetration should not hinder the exercise of the child’s rights in criminal proceedings. An argument for introducing a higher

[15] See Art. 23 and Recitals 29, 60 and 67 that refer to the Charter of the Fundamental Rights of the European Union (CFREU), the European Convention on Human Rights (ECHR), the case law of the Court of Justice of the European Union (CJEU) and the European Court for Human Rights (ECtHR).

[16] See more in the Position of the Bulgarian Helsinki Committee on the Draft Law for Amending and Supplementing CCP of 10.11.2020 at: http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=5359

[17] See: Margarita Chinova and Bojan Belejkov. “Necessary measures for the transposition of Directive (EU) of the European Parliament and the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.’’ *Yearbook of St. Kliment Ohridski University of Sofia, Law Faculty*, volume 86, 2019, p. 41-78. The authors consider three options for legal amendments: a) to provide for the highest possible standard – the provisions of Chapter 30 of CCP shall continue to apply after the accused underage person reaches maturity in the course of the proceedings; b) to provide for the implementation of only some of the rules laid down in Chapter 30 of CCP, as they are exhaustively listed – the ones related to the court panel, the mandatory participation of a defense lawyer; hearing the case in camera, etc.; c) to provide for the implementation of those rules which are deemed appropriate to be applied in the case in view of the circumstances and the degree of maturity of the underage person.

[18] Ibid. The upcoming amendments to CCP in this respect should take into consideration Recital 12 of the Directive. This standard is only indicative. However, if this standard is to be introduced, the provision of Art. 349 of CCP could be supplemented, for example, as follows: “When an adult is charged for a crime committed by him/her when that person was underage, the special rules laid down in Chapter 30 of CCP shall apply till the person reaches the age of 21 for criminal offences related to criminal proceedings in which the same person was an accused person before reaching maturity, and the proceedings shall be joined.”

[19] Op. cit., n.15. This is an acceptable solution, in particular if we compare it to the opinions of other researchers who deny the idea about any change for the sake of safeguarding the interests of the criminal procedure and implementing the criminal responsibility of the adult accomplice.

standard ensues from Art.1 of the Directive which stipulates that the Directive lays down common minimum rules concerning certain rights of children, in conjunction with Art. 23, **Non-regression**, which stipulates that nothing in this Directive shall be construed as limiting or derogating from any of the rights and procedural safeguards that are ensured under the Charter, the ECHR, or other relevant provisions of international law, in particular the UN Convention on the Rights of the Child, or the law of any Member State which provides a higher level of protection.

vi. Objectives of the individual assessment

The CCP does not stipulate for any specific objectives of the IA.[20] Pursuant to Art.387 (7) of the Draft Law 2020 'the purpose of the individual assessment is to assist the pre-trial authorities and the court with taking a decision on the *precautionary measures* to be applied in the course of the procedural actions and in relation to determining the type and duration of the punishment and the correctional measures imposed.' This wording does not fully implement the requirements concerning the purpose of IA. First and foremost, the Directive does not limit the goal pursued with the IA to assisting only the pre-trial authorities and the court. It concerns all "competent authorities". Secondly, its goal encompasses, in addition to the other goals referred to in Art.7 of Directive 2016/800, the decisions on whether any specific measure to the benefit of the child will be taken (paragraph 4a). For example, the individual assessment could facilitate the decision of the competent authority in charge of the conditions in which the underage person is detained; the education to be provided; and the reintegration measures to be taken during pre-trial detention or measures to meet a specific vulnerability – e.g. a disability of the child.[21]

The Draft Law stays in the old paradigm that the criminal proceedings should not be mixed up with any **specific measure to the benefit** of the child. It reveals a particularly serious issue with the *now effective criminal justice system in Bulgaria*, which does not provide any opportunities for the education and involvement of the child in reintegration programs while in detention. The exclusion of school-age children from the education system – which may last for months – constitutes a violation of their right to education in contradiction with Directive 2016/800 but also with Art.2 of Protocol No 1 to ECHR.[22] The Draft Law does not provide for any solution to address this serious deficit and bring the Bulgaria legislation in line with the requirements of the Directive.[23]

Our interviews revealed that the gap in the transposition of the Directive related to the IA and its goal to determine whether any **specific measure to the benefit** of the child is to be taken, is very serious in the Bulgarian context. The interviews identified that *the detention of children in remand custody lasts long periods*, sometimes exceeding the maximum 8-month period, and often without reaching a prosecution. While in detention, the children's right to education cannot be ensured; they

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[20] Chinova-Belejkov, considered this gap, and proposed a new wording of Art.387 of CCP: "IA is taken into consideration when actions are performed with the participation of the underage accused person; when precautionary measures are taken, and when the punishment is determined" Op. cit., n.15, paragraph 4. However, this wording does not fully comply with the requirements set out in the Directive, either.

[21] Position of the Bulgarian Helsinki Committee on the Draft Law for Amending and Supplementing CCP, opened for consultations on 31.07.2020.

[22] Art. 2 of Protocol No. 1 – Right to education: No person shall be denied the right to education. See more in: Guide on Art. 2 of Protocol No. 1 to the European Convention on Human Rights, at: https://www.echr.coe.int/documents/guide_art_2_protocol_1_eng.pdf

[23] This issue acquires ever more serious dimensions in view of the long time limits of pre-trial detention (up to one year) of underage persons, as provided for in the Draft Law (… the remand in custody measure within the pre-trial procedure shall not last longer than: five months if the person is accused of a serious premeditated crime; more than one year if the person is accused of a crime punishable with not less than 15 years of imprisonment; and more than two months in the remaining cases).

do not participate in social reintegration programs, as this would breach the presumed innocent principle (according to the police); mothers aged under 18 are separated from their babies due to the lack of conditions in remand facilities; children are entitled to only two visits per month, which often has the traumatic effect of repetitive abandonment. A former guard at the pre-trial detention facility:

> *Children have always been a problem for us, but there is nothing we can do. We only take care they don't commit suicide, but they are always trying – they cry, they cut themselves, they swallow spoons and glasses, as they have been told lies about it being better in the hospital… I recall a gipsy girl hanging herself sometime in the past, and then I had to write long explanations.*

While the pilot project does not allow an in-depth research on this topic, the findings so far give us reasons to believe that what could be expected is a reproduction of the disciplinary measures for "breaking the personality's backbone"[24] and control by imputing guilt, depriving of personality, developing dependencies, and crushing dignity.

Conclusions:

- The concepts about the rights and best interests of the child continue to be distant to the professionals who are outside the scope of social protection, child protection, and family law. Even the Draft Law for Amending CCP that is meant to transpose the Directive do not mention the best interests of the child, suspected or accused of committing a criminal offence. The rights of the child are presumed from the general legal provisions on a fair trial.

- The criminal justice system does not have the tradition of working with the other systems – social, education, health – when it comes to a child. The system is focused on prosecution, i.e., on achieving the goals of the criminal proceedings and the punishment. Neither CCP, nor the Draft Law for Amending CCP set out any objectives of the IA pertaining to useful measures for the child or special needs or specific remand measures. Therefore, it could be expected that again the IA would not have goals going beyond the criminal justice.

- The remand measures laid down in CCP are not differentiated based on the detainee's age, neither do they safeguard the child's right to education. The type of measures is not in line with the contemporary development of child protection policies and legislation. For example, there are no provisions regarding measures that would allow accommodating the child in a family environment when the child needs to be isolated from the crime-generating environment (e.g., specialized foster care). There are no provisions, either, for a regular review of the efficiency of the measure and its effect on the child. The time limits for the remand measure are disproportionate compared to its goal and the interests of the child – the period of the measure can be up to 8 months or 2 tears.

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[24] Hadzhijski Ivan, *Psychology of the Military Discipline* in the Collection "Optimistic Theory for our People", Sofia, 1997, Publisher: Otechestvo

vii. Carrying out an individual assessment (procedural aspects)

The implementation of IA should tale two steps: 1/ **assessment** of the **specific needs** of the child (in terms of protection, education, training and social integration) and 2/ determination of the necessary **measures**. Certain factors such as the child's personality and maturity, **the child's economic, social and family background, and any specific vulnerabilities that the child may have** as stipulated in (Art. 7 (2)) and Recital 36 of the Directive should be considered in this process. The IA should be adaptable (Art. 7 (3), Recital 37) and the best interests of the child should be taken as a primary consideration (Recital 8 and Art. 24 (2) of the Charter of the Fundamental Rights of the EU).

Several issues arise in relation to the Bulgarian legal framework, in particular the extent to which the now effective provisions can satisfy the requirements laid down in Directive, without introducing changes therein.

As proven so far, the now effective Art.387 of CCP stipulating for the personal characteristics of the child does not correspond to Art.7 (2) of the Directive regarding the scope and purpose of the IA. The Draft Law **amends and supplements** Art.387, as follows: "The individual assessment shall be based on data about the personality, the emotional and social maturity of the underage person, his/her economic status, social and family environment, prerequisites for vulnerability, delinquencies in the past and the measures taken, and any risk factors relevant to the circumstances of the case." However, there is no explicit stipulation that IA should identify the so factored specific needs of the child.

Determining the appropriate (useful) measures for the child is the second step in the process of IA (Art.7 (4), Recital 35). The information gathered and analysed should be used by the competent authorities when deciding on the appropriate and efficient measures: special measures during the criminal proceedings (remand measures, etc.), as well as the scope of the child's criminal responsibility and the appropriateness of imposing the specific penalty or applying an educative measure.

The Draft Law 2020 stipulates in this regard: "The purpose of the individual assessment shall be to assist the pre-trial authorities and the court with deciding on the remand measure and the other precautionary measures in the process of the procedural actions, and when determining the type and details of the penalty and the educative measures imposed."

It is obvious that the law-maker finds it difficult to break out of the narrow understanding of the best interests of the child in the context of the criminal proceedings. The child continues to be perceived only as a subject of the criminal proceedings. The broader perspective of the child as a person with evolving capacities and a holder of rights to education, protection and others, is still missing.

viii. Other procedural elements

The Directive lays down some other procedural requirements for the IA, in particular: a child-sensitive approach, respect for the child's private space, competences, participation, training, representation, and time limits. A very important note: Recital 7 of the Directive acknowledges that it *"promotes the rights of the child, taking into account the Guidelines of the Council of Europe on child-friendly justice"*.[25]

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[25] At: https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016804b2cf3

Child-sensitive approach: it means that the process should be tailored/adapted to the child as a participant. This would require revising the whole Bulgarian CCP, not just amending some provisions with the aim to simulate the transposition of the Directive.

The Directive stipulates that the child shall be informed about their right to IA at the earliest appropriate stage in the proceedings (Art.4 (1)(b)(i)) in a manner appropriate to their age, maturity and level of understanding, taking into account any special needs, including any communication difficulties, that they may have (Recitals 1 and 55). The Draft Law amends Art. 219, para 4 CCP only by the wording 'in a manner appropriate to their age', all the rest remains outside the scope of amendments.

The interviews provide a broader picture about the implementation of the right to be informed. First, it became clear that the obligation to provide information is not fulfilled in practice. One of the reasons is the absence of a holistic assessment of the child's needs that could also identify the necessary steps for adapting and providing the information in an accessible manner. Moreover, the professionals involved in criminal proceedings do not have the skills needed to work with children. What makes is worse is that a part of the professionals involved think that working with a child is a "boring obligation". According to a social worker, the police perceive working with children as a *"burden"*, children *"are not given any explanations", "the information is not adapted to make is understandable for the child. The approach of the police is that having the documents available and in order is enough, while as for the rights…"*

In terms of the obligation to provide information to children involved in criminal proceedings, a psychiatrist made the following point:

> *"We should bear in mind that the child might not want to be informed, as the topic has a traumatic effect, and, if the information is presented in an inadequate manner, this can worsen the trauma. This is why, it is very important how the information will be presented, without making it painful for the child."*

Regrettably, the provision of information to children is a topic entirely overlooked in the pre-trial phase. When the case reaches the court, both judges and lawyers make efforts to discharge this duty, but it is already late. The lawyers interviewed have shared that they always talk with the children, and they give them information about the specific proceedings; however, they do so *"by using their best abilities to work with children which they have acquired in an empirical manner and not as a result of special trainings"*.

According to comments of lawyers involved in civil law cases, it all depends a lot on the judge assigned to the case. There are judges who make efforts to inform the children, and to do so *"by getting down to their level"*; they hold meetings with them in their office, not in the court room, and then they *"take off their official robes in order to shorten the distance"*. However, discharging this duty once again depends on the relevant professionals, and on their skills to work with children which they have acquired in their practice. The lawyers interviewed have pointed out that there are also rare cases when the children who appear at court hearings *"are prepared, and they have been provided with information by the SAD"; "By way of rule, however, it never happens that an overall assessment is made of the child's needs for support or the needs for information provision". In addition, a lawyer stated that often "he doesn't have any time to communicate in advance with*

the child suspected of committing a crime and to provide information to the child. It turns out that the child has already been interviewed at the pre-trial stage, has got scared, nobody from the police informed him of his rights".

ix. Participation of the child in individual assessment

As per the Directive: Art.7 (7): "Individual assessments shall be carried out ***with the close involvement of the child*** *… and involving, where appropriate, the holder of parental responsibility, or another appropriate adult as referred to in Art. 5 and 15, and/or a specialized professional (…)".*

There is no such a provision in the CCP but the Child Protection Act provides for mandatory participation of the child in any administrative and judicial procedure which concerns rights or interests of the child; the child shall be heard if he has reached the age of 10, unless this might harm his/her interests (Art.15). The Draft Law for Amending CCP stipulates in its Art. 387 that *"The individual assessment shall be carried out with the participation of the underage person, and, when appropriate, with the participation of a parent, custodian or another person who is the care-taker of the accused person under the law, as well as other persons who have information about his/her personality, including persons indicated by the child concerned."* Pursuant to the Directive, when this is contrary to the best interests of the child, and the child has not designated an appropriate adult or the adult designated is unacceptable for the competent authority due to the best interests of the child, **a representative of the child protection institution can be designated to take part in carrying out the individual assessment** (Art.7(7) and 15).

According to the respondents of our interviews involved in civil law cases, the specialists from the Child Protection Department (CPD) should meet with the child and the parents, and make an assessment of the environment and the necessary measures for the protection of the child. However, the report often *"tells the story of the opinion of the child and the parents"*, without making a real assessment of what would guarantee the best interest of the child. The high turnover in the child protection departments results in a lack of interest and a professional approach to drawing up the reports and, respectively, presenting them before the court. It often happens that court hearings involve social workers who are not familiar with the case, have not taken part in drafting the report, and do not know the child: *"I am not familiar with the case, as my colleague works on it, but she is on sickness leave and I am substituting her"*.

x. Specific impact of COVID 19

Under the conditions of the pandemic, in particular, the social workers do not hold a meeting with the child and the parents, but talk with them over the phone. According to one of the respondents, a psychiatrist-expert witness: *"When an assessment of the child is made in order to determine the support framework, the experts have to get an impression of the direct environment. The assessment shouldn't be made in the professionals' offices but at the place where the child lives, as this allows assessing the environment itself."*

xi. Competence and coordination

The individual assessment shall be carried out by qualified personnel, following a **multidisciplinary approach**[26] (Art.7(7)). Specialized staff may also be involved (Art.15).

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[26] It will be important to define in our project what this might mean. It could be, for example, the joint involvement of various professionals, the child, intermediary/speech & language therapists, etc.

The current provision in CCP does not specify the authority that gathers the data about the child. The Draft Law (2020) stipulates that the mandatory IA shall be carried out by an inspector from the Child pedagogical room (CPR). This is not in compliance with the standard set out in the Directive. Several issues arise: what capacity does the inspector from the CPR have to carry out the IA and what source of information will be used? These questions do not have answers in any (publicly available) regulation. Pursuant to the Regulation of the CPR issued by MOI in 1998, the inspector has a number of functions in gathering information about the child and others (Art.7 of the Regulation) but neither of them could be associated with a capacity for carrying out an IA. This is confirmed by the requirements for the job: pursuant to Art.27 (2) of the Prevention of Juvenile Delinquency Act, CPR inspectors shall have higher pedagogical education, which would mean that they have knowledge about the methodology of teaching but not about people, in particular children. As the above provisions prompt, they have information, but they don't have the skills and training to conduct an investigation concerning the factors referred to in the Directive, and to carry out an individual assessment for a child.

This view was also shared by other experts according to whom the proposed amendment does not ensure a professional approach in carrying out the IA and the participation of the child and their family members. According to the experts: *"Assigning the IA to CPR inspectors raises serious issues in terms of the requirement for qualified specialists, and in terms of mixing the functions of investigating a crime, which are police functions, with the functions of investigating the child's characteristics and identifying his crime-related needs. These concerns have deepened in the current context of failing to observing the requirement for pedagogical qualification of these specialists and hiring graduates form Ministry of Interior Academy. The gathering of information for an individual assessment differs in terms of both its purpose and methodology from the gathering of information for the investigation of a criminal offence."* [27]

Art.15 of the Child Protection Act stipulates that in relation to every case involving a child the court shall inform the Social Assistance Directorate with jurisdiction over the child's current address; SAD shall send a representative who shall express an opinion or, if not possible, shall submit a report. The Draft Law for Amending CCP (2020) takes into account this legal norm and stipulates that *"When the circumstances of the case require so, the pre-trial authority shall request that the relevant Social Assistance Directorate draws up a social report on the family and social environment of the underage person. The report shall be submitted within 14 days and shall be considered an inseparable part of the individual assessment."* This proposal ensures just a formal compliance with the requirements for a multidisciplinary approach laid down in the Directive.

Moreover, this attitude is shared by the interviewed psychiatrists acting as expert witnesses, and lawyers shared a similar opinion:

> *"Regrettably, the work done by the SAD is very formal. The reports they draft are formal and don't contain the necessary information, they don't have a multidisciplinary nature".*
>
> *"The SAD don't have the necessary professional psychologists and jurists, and they don't cooperate with the other institutions involved in the process. In practice, the individual assessment, as required in both directives, is not carried out at all. There is no coordination among the SADs, the CPRs and the police."*

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[27] Position of the Institute for Social Activities and Practices on the Draft Law for Amending CCP at: http://www.strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=5359

Another respondent, a lawyer, said: *"A specific assessment of the child's needs is not made in the pre-trial phase. Neither, in the trail phase; there are, of course, exceptions which are due to the human factor."* The lawyers interviewed have confirmed that there are judges who request, in the course of the judicial proceedings, a complex assessment of the child participating in the procedure, and they involve all the stakeholders in this assessment: the SAD/CPD, the CPR, social services providers, etc., the aim being to identify potential solutions for the issues related to the child. The very process of conducting such an assessment promotes cooperation among the responsible institutions and creates positive practices. Regrettably, these are sporadic phenomena which depend, to a large extent, on the personality of the judge. This proves that *"judges whom the local community approves can be factors and play a leading role in changing attitudes"* (attorney at law, female). Another lawyer respondent confirmed that: *"the court can use its discretion to gather further evidence, for example, by assigning a psychological expert report drawn up by an expert witness or another type of expert examination."* This does not occur often, however, and if such an assessment is assigned in the criminal proceedings, this happens at the trial stage when it is "too late". Furthermore, these assessments are not based on a common algorithm. The professionals engaged in carrying out the assessment do their job, being guided by their own views and understanding of what should be done, and the instructions given by the court. The interviewees think that *"such an assessment should be made as early as possible, at the pre-trial stage where it should be ordered by the prosecutor's office and carried out by a contractor/a service provider"* (attorney at law, female).

To sum up, we can hardly expect a quality output from the process in the absence of a holistic assessment of the child's needs. The interviews have clearly pointed to the fact that given the absence of a legal requirement for assigning such an assessment, it is the reports drawn up by the CPD that are usually relied on, and these reports, as already pointed out, are formal, in most cases incomplete, and cannot serve their purpose. While there are positive practices with cases where *"depending on the presiding judge, such an assessment is requested and is assigned at the pre-trial stage"*, these are individual cases, and not the regular practice. The possible steps towards the implementation of the IA of the needs of children involved in criminal proceedings could be studying and promoting best practices which already exist in some courts, and piloting such an assessment at an earlier stage of the criminal proceedings: at the pre-trial stage and at the very first encounter of the child with the judicial system. One of the lawyers interviewed was of the opinion that *"the existing paradigm of child justice is far from being holistic. There is no interaction and joint actions among the institutions involved. The specialists working with children at various institutions often don't know each other; they should be aware of ways in which they can jointly solve the problem."* Nevertheless, there are judges who have made efforts towards uniting the individual institutions and making them interact.

The solution better than a social report would be the IA to be assigned to the Coordination Mechanism regulated in Art.36 of CPA, which reads, as follows: *With a view to ensuring protection for a child at risk or victim of violence or exploitation, the Social Assistance Directorate shall set up a* ***multidisciplinary team*** *whose members work together till the completion of the case, and draw up an action plan for the protection of the child or for the prevention of violence. The team is led by the social worker designated by the head of SAD. The team includes a representative of the regional department of the Ministry of Interior (a regional inspector, an inspector from a CPR or an operative), a representative of the regional prosecutor's office, and a representative of the municipality. The team leader has the discretion to invite for participation a representative of the regional health inspectorate, the Child's family doctor or a representative of the hospital sending the alert on the*

case, a representative of the regional education inspectorate and of the school, kindergarten or another educational establishment, and a representative of the state-funded social services used by the child.

The Coordination Mechanism can be applied to the IA in an adapted form, for example: the pre-trial authority sends a request to SAD; SAD sets up a multidisciplinary team under the terms laid down in Art.36 of the Child Protection Act, and the team makes the individual assessment based on the established standard.

xii. Time limits

Pursuant to Art.7 (5) of the Directive, the IA shall be carried out **at the earliest appropriate stage of the proceedings and before indictment**. On the other hand, as the rights set out in the Directive have a timeframe with an initial and a final point, Art.7 (5) should be interpreted in conjunction with Art.2 (1) of the Directive. The IA should be carried out within the relevant proceedings before the completion thereof with a final judgment (it encompasses also the appeal against the judgment of the first-instance court) or a court ruling or a prosecutor's decree for termination of the proceedings. The starting point is the point at which the child has the first encounter with the police, as from the time of confirming the status of the child of being suspected or accused of committing the crime, i.e. within the criminal proceedings. The IA could also be carried out after the accusation if this **is not contrary** to the child's best interests and precedes the trial (Art.7 (6)). The IA can be updated if its basic elements change significantly during the criminal proceedings (Art.7 (8)).

The issue here is that while the Directive requires that the IA be completed by the accusation, and only under exceptional circumstances after that point, the Draft Law provides for exactly the opposite: that the IA shall be carried out after the indictment, and when the circumstances of the case require so, the IA may also be carried out before that point. The lowest possible standard has been introduced in a formal manner with the aim to just "report" on the transposition of the Directive, and not on attaining the goals pursued thereby. The problem is that before accusation the child is a subject of pre-trial investigation and an IA is needed for determining his/her needs and corresponding measures.

It is worth noting though that the proposed amendment introduces two types of IA: a mandatory one, following the constitution of the child as an accused person, and another - optional one, which is assigned at the discretion of the *pre-trial authority* – a police officer, an investigator or a prosecutor. The optional assessment is carried out by SAD in the form of a social report. The Directive allows that the IA be carried out later, which should, however, be j**ustified with the child's interests**. The Draft Law stipulates that the authority's decision on assigning an IA shall be determined by the circumstances of the case (and Recital 39). The child is once again left in the periphery of the system. The issue is that the system has not been "taught" to think and act through the prism of the child's interests. The child is just an instrument for the criminal proceedings.

The first encounter the child has with the criminal justice system is the crucial point in terms of the protection of his/her rights. The lawyers interviewed pointed out that the participation of a defence lawyer *"is not ensured for the child as from the very first encounter with the criminal justice system", which is also valid for the supporting professionals. "The social workers from the CPD act in a formal manner and don't have the capacity to support the children as participants in these procedures."*

The lawyers interviewed also gave numerous examples when children offenders do not have access to legal aid and assistance by a lawyer in the pre-trial procedure:

> *"It often happens that a lawyer is hired by the child's family or a defence lawyer is appointed from the legal aid at the first hearing in the trial phase. At that point it is already late to adequately organize the child's defence, and many of the child's rights are violated."*

The interviews have also found that, regardless of the legal requirements and the general provisions of CCP laying down the accused person's right to remain silent, not to incriminate himself/herself, to have immediate access to legal defence, this does not happen in practice with respect to children suspected of committing a crime. Instead, in most cases they are interviewed in the absence of a lawyer in the pre-trial phase. Observing the requirements set out in the law is rather an exception than a rule. A lawyer participating in the interviews stated:

> *"I am appointed as legal aid at the first trial hearing when everything has already happened, the child has been interviewed as a witness in the presence of a representative of the children's pedagogical room, and then has been constituted as an accused person."* (Attorney at law, female)

The interviews reveal that the police and/or the inspectors from the CPR participate in the detention of a child for an alleged perpetration of a criminal offence and: *"from the very outset these children are confronted with the state prosecution, they are often deprived of any support, including assistance by a lawyer, and they incriminate themselves and their relatives at the first interviews"* (Attorney at law, female). Therefore, it could be recommended that: at least the main questions asked should be listed in advance for the psychologist; an audio/video recording of the interview should be made, thus the interview recording can be watched; training is needed and courses on this topic should be developed at the university level and at the specialized facilities for qualification upgrading.

A final point: the IA shall be taken into account by the court till the final judgment Art. 2 (3) and Art. 3 (1)).[28] According to Chinova-Belejkov, CCP introduces a higher standards, as the special rules for underage persons under Chapter 30 of CCP *apply in all cases, irrespective of the stage of the proceedings, …., whether the accused person is detained or has been imposed a less severe remand measure.*[29] The authors comment, however, that the special rules under Chapter 30 of CCP shall not be applied at the pre-trial stage when the crime in respect of which charges have been raised is not punished with deprivation of liberty. Recital 16 of the Directive offers a similar clarification. Derogation from the obligation to carry out an individual assessment: only if warranted in the circumstances of the case and provided that it is compatible with the child's best interests.

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[28] The Directive does not concern proceeding which are not conducted before the court (Art.2 (6)).

[29] Nevertheless, an amendment has been proposed: *„This legal regulation it rather laconic, hence it should be supplemented in order to ensure the full transposition* of the Directive. The provision of Art.387 of CCP should be supplemented with several new paragraphs that could have the following wording: (4) "The IA shall be taken into account when performing actions with the participation of the underage accused person, when imposing precautionary measures, and when deciding on the penalty". **(5) "The IA shall be carried out as soon as the underage person has been constituted as an accused person. Charges can be raised before the court also in the absence of an IA, if this is in the interest of the underage accused person, but the IA should be available to the court till the beginning of the court session ruling bringing the accused person before a first-instance court."** According to the Directive, this is a late stage.

xiii. Training

The Directive obliges the Member States to ensure that those involved in criminal proceedings with children have specific training, without prejudice to their judicial independence (Art.20). Furthermore, the Directive requires that the person carrying out an IA shall be qualified and shall have the ability to work with specialized staff (Art.7).

Lawyers interviewed within this study have stated that all the representatives of the legal profession need to be trained in working with children. As the legislation does not provide for the obligation to organise and conduct such trainings, individual professionals – judges and lawyers – take the initiative and seek counselling with specialists with the aim to improve their skills to work with children. Bar associations organize various seminars and trainings, but so far there have not been any on working with children. In addition, *"the trainings organized through the bar associations and the centres for training lawyers have a focus on more commercial aspect of law"* and there has been no information about any training on working with children. In this respect, one of the respondents has shared that all his colleagues seek advice and support from other professionals (psychologists, social workers) *"by using their personal contacts and friendly relations. Therefore, the human factor acquires particular importance, given the gap in the system in terms of conditions and prerequisites for safeguarding the rights of children involved in judicial proceedings." In addition to the need for training, one of the lawyers interviewed defined as "very useful the joint meetings and events, including trainings with representatives of various institutions whose competences are related to children's rights. These institutions should know each other, and, if the need be, take joint actions. A mechanism for the interaction among these institutions should be developed."*

A psychiatrist, an expert witness, stated that *"judges seek counselling, via informal talks, on what should and what should not be done. Therefore, the court needs trainings, upgrading their social skills. Judges need to acquire some of the skills of social workers and psychologists."*

2. DIRECTIVE (EU) 2012/29 establishing minimum standards on the rights, support and protection of victims of crime

The objectives of this part of the study are: 1) to present a brief overview of what individual assessment of *children who are victims of crime* regulation and process looks like in Bulgaria at the moment and 2) to analyse each of the individual elements, which comprise a right to individual assessment in comparisson with the two EU Directives.

i. The Directive in the Bulgarian legislation on carrying out individual assessment of the victim

Unlike Directive (EU) 2016/800, Directive 2012/29/EU has been transposed into the Bulgarian legislation through the Law for Amending and Supplementing the CCP, effective as from 5 Nov. 2017, the Crime Victims Assistance and Financial Compensation Act (amended, 2017). This triggered an expert debate on the quality of the legal changes as well as on the application of the new provisions incl. with regard to individual assessment (supported by the EC).[30],[31]

[30] At present the Commission has 21 infringement procedures underway in relation the incomplete transposition of the Directive against Austria, Belgium, Bulgaria, Slovakia, Slovenia, Hungary, France, Croatia, the Check Republic, and Sweden. Report of the European Commission to the European Parliament and the Council on the Implementation of Directive 2012/29, COM(2020) 188final.

Therefore an additional attempt to fully transpose this Directive is done with the Draft Law for Amending CCP 2020 provides also for the full transposition of Directive 2012/29 in the national legislation.

Other laws relevant to the support for crime victims are also: Child Protection Act, Legal Aid Act, European Protection Order Act, Protection of Persons in Criminal Procedure Act, Asylum and Refugees Act,[32] Combatting Trafficking in Human Beings Act, Protection against Domestic Violence Act, Persons with Disabilities Act.[33]

ii. The Individual assessment of a child victim of crime

Pursuant to Art. 144 (3) of CCP, an expert examination can also be instituted with the aim to identify the *specific protection needs* of a witness in relation to his/her involvement in the criminal procedure.[34] There is no special provision with regard to a child victim. The justification of the provision is as follows: “The new paragraph of Art. 144 of CCP lays down a special reason for requiring an expert examination with the aim to identify the specific protection needs of a witness in relation to his/her involvement in the criminal procedure. The aspects to be assessed are *the risk of secondary and repeat victimization, the possibilities for intimidation and retaliation, which serve as the basis for deciding on appropriate protection measures.*”

It is obvious that the transposition of the Directive is incomplete. It could be claimed that the term *expert examination* diminishes the value of the individual assessment as a right of the child victim. The focus remains on the evidentiary value of the examination for the criminal proceedings. However, the IA is not an evidence within the meaning of the Directive, but rather a tool to safeguard the protection of the child victim, a condition for access to special protection measures with the aim to both attain the objectives of prosecution and protect the victim’s dignity and rights.

The consultation with judges revealed their understanding of these issues: they do not find this status of the IA as a problem, since all the data gathered by the criminal court is valid evidence. According to judges, the criminal justice system does not have an established practice of cooperating with the child protection system, the social, health and education systems. The pre-trial and trial authorities are interested in the child mostly as a witness, and do not take care of coordinating the child’s protection and the protection of other rights. Ensuring such care in the

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[31] Social Activities and Practices Institute (SAPI). Project “Hear the Child – Is Justice Becoming Child-sensitive?” JUST/2013/JPEN/AG/4601, JUST/2014/JACC/AG/VICT/7465 at: https://sapibg.org/en/project/listen-to-the-child; https://sapibg.org/en/book/ocenka-na-potrebnostite-na-decata-v-konflikt-ss-zakona-v-blgariya; https://sapibg.org/en/book/model-za-individualna-ocenka, accessed in March, 2021

[32] Art. 25. (amendments SG No 89 of 2020) (1) An unaccompanied underage or minor alien who seeks or has received international protection, who is on the territory of the Republic of Bulgaria shall be represented in the procedure laid down in this law by a lawyer from the legal aid list of the National Bureau for Legal Aid, designated by the Chairperson of the Bureau or by an official empowered thereby.

[33] For example: Art. 20. (1) Persons with disabilities, depending on their needs, shall have the right to an individual needs assessment which shall be a complex one. (2) The assessment under paragraph 1 shall examine the functional difficulties of the person with disabilities related to his/her health status, and the existence of barriers to carrying out every day and other activities, and the type of support. Art.53. 6. Provision of information in an accessible format to persons with various types of disability, including in the Bulgarian sign language, Braille and a version easy to read, Art.65 et al. Art. 67. (1) The judicial authorities and all the state institutions shall provide persons with disabilities with an effective access to justice on a footing of equality with all the others, including by means of procedural and age-appropriate support measures in view of their role in all stage of the procedure. (2) The curricula of the National Institute of Justice and the Academy with the Ministry of Interior shall include training programs for working with people with disabilities.

[34] Pursuant to Art.144 (1) of CCP, when clarifying certain circumstances of the case requires special knowledge in the area of science, arts or technologies, the court or the pre-trial authority shall institute an expert examination.

criminal procedure requires that the duty to coordinate the child-related measures should be expressly laid down in the law. What is further needed is a change in the cultural mindset of the criminal justice authorities so that the victim would be a holder of rights and protection.

The term 'specific protection needs' is defined in §1, paragraph 4 of the Additional Provisions of CCP: such needs "arise *when it is necessary to apply additional means for protection against secondary and repeat victimization, intimidation and retaliation, emotional or mental suffering, including the respect for the victims' dignity during interviews*." This definition deviates from the objectives of IA provided for in the Directive. Pursuant to Art. 22 (1), IA has two components: firstly, the specific protection needs are assessed, and the Directive lists criteria for that purpose. Based on the needs identified, the protection measures referred to in Art. 23 and 24 are determined for the relevant child.

The two components are shifted and mixed in the CCP – the understanding is that there will be needs if it is necessary to apply protection, instead of vice versa – the specific needs identified require the protection measures. Thus, the protection needs do not depend on the specific situation of the victim, they are assessed in the context of the very existence of a victim. When the victim is a child, Art. 22 (4) of the Directive provides for the *presumption* about the existence of specific protection needs in criminal proceedings: "For the purposes of this Directive, child victims *shall be presumed to have specific protection needs* **due to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation**. To determine whether and to what extent they would benefit from special measures as provided for under Art. 23 and 24, child victims shall be subject to an individual assessment as provided for in paragraph 1 of this Article." The ground for this presumption is recognizing that the child has a special vulnerability in the situation of a crime victim. It results from the status of the child as a developing human being, the lack of means for self-protection, and the damaging impact of violent crimes on all the rights of the child. CCP does not take into account this presumption and introduces **a uniform status for the expert examination**.[35]

On the other hand, CCP contains a special provision on interviewing a minor or underage witness which has been added in view of the transposition of the Directive: an interview with a minor or underage witness in the country can take place in a setting where measures are taken to avoid any contact with the accused person, including in specially equipped rooms or via video conferencing (Art. 140 (5) of CCP). The following conclusions can be drawn based on the interpretation of the provision: 1) CCP presumes that children have special needs in relation to the criminal proceedings; 2) Nevertheless, it does not provide for an expert examination to identify the level of vulnerability, and sets out a general rule for applying measures to prevent any contact between the victim and the offender (these measures for adults depend on the special needs identified – Art.139 (10) of CCP); and 3) The measures are possible but not mandatory – they depend on the decision taken by the leading authority at the relevant stage of the criminal proceedings, and this decision may be determined by a number of reasons: lack of technical equipment, a personal assessment, concerns in the course of the case and requests from the accused person and his/her defence lawyer, etc. Another deficiency of the regulation is that measures are envisaged only for interviews in a protected environment. The other protection measures are not present as a possibility/obligation in CCP (see the text below). A general drawback of this legal framework has been identified, namely the abstract nature of the norms and the reluctance to lay down more criteria for individual assessment depending on the specific circumstances or characteristics of the individuals concerned.

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[35] Report of the European Commission to the European Parliament and the Council on the Implementation of Directive 2012/29, COM(2020) 188final.

iii. The objectives of the Directive

The objectives can be defined as direct (explicit) and indirect (implicit) ones. They are merged in the following wording of Art.1 (1): "(…) *ensure that victims of crime receive appropriate information, **support and protection and are able to participate in criminal proceedings***."

In other words, the objective is facilitating the participation of the crime victim in the procedural actions aimed at detecting and punishing the offender. This is the way to attain the objectives of prosecution and ensure the efficiency of the criminal policy, including general prevention. In parallel, another goal is enhancing the procedural presence of the victim in the criminal proceedings (CP). This requires that the rights of the victim in the CP should be sufficiently protected. The Directive helps to achieve the balance between the protection of the accused person in the CP (the right to a fair trial, Art.6 of ECHR) and the protection of the victim – his/her dignity and rights (Art.1 (2))[36]:

*"Member States shall ensure that victims are recognised and treated in a respectful, sensitive, tailored, professional and non-discriminatory manner, **in all contacts with victim support or restorative justice services or a competent authority, operating within the context of criminal proceedings.** The rights set out in this Directive shall apply to victims in a non-discriminatory manner, including with respect to their residence status."* This wording seems to refer to yet another goal – the Directive is not limited only to the scope of the criminal proceedings and the victim's rights; it breaks out of this narrow scope and regulates rights related to the victims' rehabilitation and social reintegration, including financial compensation for criminal injuries, also outside the scope of CP. Art. 8 and 9 of the Directive can be interpreted within this meaning.[37]

According to the guidance provided by DG Criminal Justice in relation to the transposition and implementation of the Directive, a core objective of this Directive is *"to deal with victims' needs in an individual manner, based on an individual assessment and a targeted and participatory approach towards the provision of information, support, protection and procedural rights"*.[38] The overall philosophy of the Directive, however, does not limit the needs assessment to safeguarding the specific procedural rights, but covers the whole range of crime victims' rights to defence, protection, rehabilitation and compensation which are at the core of the priorities of the EU policy on crime victims. The competent authorities have the discretionary right to determine the ways of assessing these needs, as Art.8 does not explicitly require an official needs assessment. In reality, there is an implicit requirement to introduce internal procedures or protocols for assessing the

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[36] See: Dobrinka Chankova. The protection of the victims of crimes – out of the time. De Facto, at: https://defakto.bg/2021/02/22/%D0%B7%D0%B0%D1%89%D0%B8%D1%82%D0%B0%D1%82%D0%B0-%D0%BD%D0%B0-%D0%B6%D0%B5%D1%80%D1%82%D0%B2%D0%B8%D1%82%D0%B5-%D0%BE%D1%82-%D0%BF%D1%80%D0%B5%D1%81%D1%82%D1%8A%D0%BF%D0%BB%D0%B5%D0%BD%D0%B8%D1%8F/ , accessed in February 2021

[37] See "Minimum standards on the rights, support and protection of victims of crime". Комисия по граждански свободи, правосъдие и вътрешни работи PE618.057 European Parliament Resolution of 30 May 2018 on the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (2016/2328(INI)), b. "z", and: Report from the Commission to the European Parliament and the Council on the Implementation of Directive 2012/29/EU COM(2020) 188final: The objective of Art. 8 and 9 is that victims have acces to general and specialist support services in conformity with their needs. These services shall be confidential, free of charge, and shall be provided in the interest of the victims before and during the criminal proceedings, as well as within an appropriate time limit after the completion thereof. Family members shall have access to support services in conformity with their needs and the injuries sustained.

[38] EC, DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 JHA, December 2013,, p. 4, "Victims Directive – Content and Approach".

support needs of the victims and their families (in conjunction with Art. 22 regarding the individual assessment). The assessment can usually be carried out by a service for providing support to victims.[39]

iv. The subject of the individual assessment

Pursuant to Directive 2012/29, it is direct and indirect crime victims that have the right to individual assessment (Art. 1 and 2(1)). (Art. 2 (1)(c) and 22).[40] The child has the status of a direct victim within the meaning of the Directive when the child has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence (Art.2(1)(a)(i)). The child has the status of an indirect victim when a relative of the child has died as a result of a crime, in particular a parent, but also family members (Art.2(1)(a)(ii)).[41]

The Directive applies extra-territorially: in relation to both criminal offences committed in the Union and to criminal proceedings that take place in the Union (Recital 13, and Art. 4-6 of the Criminal Code). It confers rights on victims of extra-territorial offences only in relation to criminal proceedings that take place in the Union. The nationality of the child who is a victim is not relevant in terms of their access to the rights laid down in the Directive.

The Bulgarian legislation contains the same concept of crime victim. Pursuant to Art.74 (1) of CCP, a victim shall be a person who has suffered material or non-material damages as a result of a crime.[42] Within the meaning of Art.74 (2) of CCP, the heirs to the direct victim shall also be victims.

The issue is whether the rights of the child victim, as laid down in the Directive, are valid only in criminal proceedings for the relevant crime, i.e., whether the victim status is recognized only if criminal proceedings have been instituted and the child has a procedural role therein. According to the official interpretation, the answer is negative: the victim should enjoy all the rights laid down in the Directive, irrespective of whether the victim participates in the criminal proceedings: „The notion 'role of the victim' **determines** in particular the procedural rights of victims set out in the Directive and should not be confused with the definition of 'victim' included in Art. 2. **A victim falling within this definition is a victim notwithstanding his/her 'role' in the national criminal justice system** "[43] (see also Recital 19).[44]

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[39] Ibid, p.24.

[40] Report of the European Commission to the European Parliament and the Council on the Implementation of Directive 2012/29, COM(2020) 188final.

[41] Although it only applies to family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death (Art. 2(1)(a)(ii)). 'family members' means the spouse, the relatives in direct line (parents, grandparents), the siblings (Art. 2(1)(b); The Member State may determine which family members are considered indirect victims (Art. 2(2)).

[42] The obvious issue with this wording is that a matter relevant to the merits of the case (whether a civil or a criminal one) – namely, the existence of damages suffered – become a matter concerning the constitution of a party in the criminal procedure. This is why it is by far more convenient for the Bulgarian criminal procedure if the persons who suffer damages are predefined, instead of being identified on the basis of circumstances that are not laid down in the law. Andrey Georgiev. "Which persons have to right to claim compensation for non-material damages caused by the death of a family members", at: http://gramada.org/%D0%BA%D0%BE%D0%B8-%D0%BB%D0%B8%D1%86%D0%B0-%D0%B8%D0%BC%D0%B0%D1%82-%D0%BF%D1%80%D0%B0%D0%B2%D0%BE-%D0%B4%D0%B0-%D0%BF%D0%BE%D0%B8%D1%81%D0%BA%D0%B0%D1%82-%D0%BE%D0%B1%D0%B5%D0%B7%D1%89%D0%B5%D1%82/ accessed in March 2021

[43] DG Justice Guidance Document related to the Transposition and Implementation of Directive 2012/29/EU.

[44] This is also a topic for a separate research. "The identification of victims continues to be an issue in many cases in the country, according to the interviews. The representatives of the institutions such as the police, for example, expect the victims to self-identify themselves. The situation is similar in many other areas: many professionals have not been specially trained to identify victims of specific crimes for a variety of reasons such as organizational issues, lack of

Such a possibility exists in the Bulgarian legislation. The Crime Victims Assistance and Financial Compensation Act lays down rights of the victim not necessarily in the context of criminal proceedings (e.g., Art. 12, para 2, p. 3-4). The purpose of the law is: “to recognize and safeguard the protection of rights and legal interests of crime victims” (Art. 2). Art. 3, supplemented with a view to the transposition of the Directive, stipulates that, under the terms and the procedure of this law, assistance can be provided to victims who have suffered material and non-material damages caused by common crimes, and financial compensation to victims who have suffered material damages caused by crimes which are specifically indicated. The child who is a crime victim has also the right to the protection provided for in CPA, which right does not depend on institution of criminal proceedings.

The Directive, however, takes the view that in the event of prosecution against the offender, the victim’s rights may depend on the position the victim has in the criminal proceedings. The perspective of the Directive is that the variety of the national criminal justice systems should be *taken into account. Hence, pursuant to Recital 20: The role of victims in the criminal justice system and whether they can participate actively in criminal proceedings vary across Member States, depending on the national system, and is determined by one or more of the following criteria:*

- *whether the national system provides for a legal status as a party to criminal proceedings;*

- *whether the victim is under a legal requirement or is requested to participate actively in criminal proceedings, for example as a witness;*

- *and/or whether the victim has a legal entitlement under national law to participate actively in criminal proceedings and is seeking to do so, where the national system does not provide that victims have the legal status of a party to the criminal proceedings.*

  Member States should determine which of those criteria apply to determine the scope of rights set out in this Directive where there are references to the role of the victim in the relevant criminal justice system.

The CCP applies the aforementioned criteria for the victim’s role in CP. The victim as such is a person with legal status only in the pre-trial phase of the procedure initiated for common crimes, and is a party in the criminal procedure as from the pre-trial stage, provided, however, that the person has requested to be constituted as a party and has indicated an address for summoning.[45]

resources, and turnover of the staff. The professionals do not identify themselves as part of the system for protecting victims and children, either, and do not regard the reporting and referral of such cases as their duty. The same is the situation with medical professionals, even in cases involving children. The Child Protection Act requires that everybody who has information about a child at risk or a child who is a victim of violence shall report to the SAD; a fine may be imposed as a sanction on those who fail to report. Nevertheless, the cases of referral by medical professionals and teachers are rare.” See Diliana Markova and Donka Petrova. “A Review and Analysis of the Bulgarian Legal Framework for the Rights and Protection of Crime Victims and Its Application: for a More Efficient Implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime.” 2018, Animus Association Foundation, Bulgaria, at: https://www.supportvoc.eu/wp-content/uploads/2019/03/National_Report-Bulgaria_BG.pdf accessed in March 2021.

[45] See more at: Vasil Petrov. “The Victim’s Rights in the pre-trial procedure.” 2014, at: http://web.uni-plovdiv.bg/paunov/Stidia%20Iuris/broi%202%20-%202014/Vasil%20Petrov.pdf , accessed in March 2021. The author claims that there is no compliance with the Directive whose Art.6 stipulates that the victim may not participate in CP. Other authors consider this as contrary to the Directive, i.e. the victim must always be informed in order to receive a status.

A prerequisite for such a request is, of course, the mandatory notification of the victim by the police or prosecution authorities.[46] The victim's unawareness of these rights will result in a vicious circle.

The child victim can be constituted as a party with a variety of statuses at the trail stage: as a private prosecutor or as a civil claimant (in addition to being a witness); and as a private claimant for private crimes. **The persons constituted as private prosecutors and civil claimants can also be witnesses**, unlike the persons participating as private claimants. The participation of the child as a civil claimant allows the child to receive compensation for the material and non-material damages caused by the crime (Art. 76-88 of CCP) without the need for a separate civil procedure.[47] Constituting the victim as a civil claimant depends to a large extent on whether the victim received information at the beginning of the process and on the use of legal aid and assistance by a lawyer, which still rarely happens in Bulgaria.[48]

The Directive calls for a timely assessment which will be carried out at the earliest stage in the criminal proceedings, as this is the point at which the procedure-related risks emerge for the victim (Recital 55). Of course, the first point (the point when the victim files the complaint about the offence or is invited to an interview or is constituted as a party to the case) at which the victim has its first contact with the law enforcement authorities needs to be clear.[49]

v. Objectives of the individual assessment

Art. 22 (1) lays down the right to IA which is common to all victims. The child's right to IA is laid down in Art. 22 (4): "For the purposes of this Directive, child victims shall be presumed to have specific protection needs **due to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation**. To determine whether and to what extent they would benefit from special measures as provided for under Art. 23 and 24, child victims shall be subject to an individual assessment as provided for in paragraph 1 of this Article."

The Resolution of the European Parliament emphasizes *the fact that individual assessments are crucial to the empowerment of all crime victims by informing them of their rights and the right* to make decisions in the procedure in which they participate, and if they are children – the right to **access to specific procedural safeguards which apply to them as from the very beginning of the criminal proceedings**.[50] According to the objectives of the Directive (Art.1 (1-2)), "Member

[46] Ibid. According to Petrov, a precondition for the victim to enjoy the rights is that the victim should explicitly have requested in the pre-trail phase to be constituted as a party and to have indicated an address for summoning in the country – Art.75 (3) of CCP. An absolutely plausible assumption would be that the victim was not aware of these actions before the initiation of the pre-trial procedure, hence the victim cannot be expected to have indicated an address for summoning. Therefore, there is a certain risk that, given the authorities' failure to act in good faith, the victim will not be able to exercise his/her rights. This is why the first item on list in Art.75 (1) of CCP is **the right of the victim to be informed of his/her rights in the criminal proceedings**.

[47] The victim is recognized the right to compensation under a civil claim in the criminal proceedings in cases where the latter is terminated. See Interpretative Ruling No 1 of 2013 of the Supreme Court of Cassation.

[48] In 9 of the 11 cases monitored, no financial compensation has been granted. Out of all the victims, only one did not participate in the court hearings as a witness. She was represented by a lawyer (at the two instances of the case), and was constituted as a civil claimant and a private prosecutor. See Milena Kadieva, Ioana Terzieva and Emanuil Kolarov. "Attitude towards Victims of Human Trafficking in the Courts in Bulgaria. A Monitoring Report." 2012, project "Supporting the Right of Victims of Human Trafficking in Bulgaria, Slovakia and Romania to Receive Legal Aid – a Human Rights-Based Approach" (HOME/2011/ISEC/AG/4000002581) implemented by Animus Association Foundation.

[49] Specifying clearly and precisely the moment at which criminal proceedings are considered to begin for the purposes of the Directive (recital 22) in order to allow for victims' enjoyment of Directive rights from the earliest opportunity within the context of their national legal systems.

[50] EC, DG Justice Guidance Document related to the transposition and implementation of Directive 2012/29/EU of the European Parliament and of the Council of 25 October 2012 JHA, December 2013, p. 4, (2016/2328(INI)).

States shall ensure that in the application of this Directive, **where the victim is a child, the child's best interests shall be a primary consideration and shall be assessed on an individual basis**. A **child-sensitive approach**, taking due account of the child's age, maturity, views, needs and concerns, shall prevail. The child and the holder of parental responsibility or other legal representative, if any, shall be informed of any measures or rights specifically focused on the child." The conclusion is that the child-sensitive approach in CP, where the crime victim is a child, shall be based on the determination of the best interests of the child, which should be done in compliance with the objectives, factors and procedural safeguards laid down in Art.22 of the Directive.

vi. Content of the individual assessment

The individual assessment consists of carrying out a case-by-case assessment and identifying three types of circumstances related to the child:

1. the child's specific **needs** of protection;

2. the child's **specific vulnerabilities** in respect of *secondary and repeat victimization, intimidation and retaliation during the criminal procedure*;

3. *whether and to what extent* the child victim could benefit from the special measures referred to in Art. 23 and 24 (Art. 22 (4)).

The provisions have been interpreted by DG Justice of EC in the following way[51]: The core objective of this Directive is to deal with victims' needs in an **individual manner**, based on an **individual assessment** and a targeted and participatory approach towards the provision of information, support, protection and procedural rights. Special attention is given to special support and protection for victims of certain crimes, including victims of gender-based violence, predominantly women, and due, in particular, to the high risk of secondary and repeat victimisation, of intimidation and of retaliation. The Directive also insists on a **child sensitive approach, whereby the best interests of a child victim must be the primary consideration** throughout their involvement in criminal proceedings. "

The Draft Law for Amending CCP (2020) introduces the IA in the Crime Victims Assistance and Financial Compensation Act, and not in CCP. The law-maker obviously is firm in rejecting to present new concepts into the traditional regulation of criminal procedure legislation, and does so in a separate law. Nevertheless, the new "Chapter 2 "a"" **Individual assessment of Crime Victims** deserves a positive assessment.

vii. Criteria for carrying out an individual assessment

The Draft Law seems to accept the presumption and therefore sets out that 'specific protection needs' shall be considered to exist when: 1. The victim is a child or a person with disabilities; 2. The person is a victim of terrorism, human trafficking, a crime contracted by or committed in implementing the decision of an organized criminal group, a crime under Chapter 2, Section VIII of the Special Part of CCP, a crime committed in the context of domestic violence or a racist or xenophobic crime; 3. The victim is in a state of material dependence or another dependence on the offender. This means that the child victim always has a right to IA and its purpose is to determine the extent to which the child

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[51] Ibid.

could benefit from the special protection measures that CCP lays down for victims ('whether and to what extent"). This approach is individual unlike the general, abstract, standardized approach of CCP.

In addition, the Directive acknowledges that in the event of certain offences the child victim has the right to reinforced protection[52]: trafficking, sexual exploitation, domestic violence,[53] gender-based violence,[54] terrorism. Protection under these assumptions should also be acknowledged in other laws.[55] Furthermore, children with disabilities also need reinforced protection within the CP, which is due to the serious barriers to persons with disabilities participating in the procedure. This requirement has been introduced with the Draft Law.

This confirms the conclusion that the Directive is introduced in the dominating paradigm of CP – efficient prosecution in compliance with the standards of a fair trial in respect of the accused person (Art.6 of ECHR). The protection of the crime victim in the procedure has not been completely introduced. The gaps with regard to the child victim are more serious.[56] The practice of stigmatizing a child who is a victim of sexual offences is particularly widespread – at the police, the prosecutor's office, and even the court.

The factors to be taken into consideration in relation to IA are as follows:

1. *Personal characteristics* of the victim such as age, gender and gender identity or expression, ethnicity, race, religion, sexual orientation, health, disability, residence status, communication difficulties, relationship to or dependence on the offender and previous experience of crime (Recital 56).

For the sake of comparison, the factors are ranked in the Bulgarian draft law, as follows: first and foremost, the *type and nature of the offence and the related circumstances; the type and extent of*

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[52] Additional protection for some categories of victims: Recital 7: Directive 2011/99/EU of the European Parliament and of the Council of 13 December 2011 on the European protection order (9) establishes a mechanism for the mutual recognition of protection measures in criminal matters between Member States. Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims (10) and Directive 2011/93/EU of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography (11) address, inter alia, the specific needs of the particular categories of victims of human trafficking, child sexual abuse, sexual exploitation and child pornography.

[53] Recital 18: Where violence is committed in a close relationship, it is committed by a person who is a current or former spouse, or partner or other family member of the victim, whether or not the offender shares or has shared the same household with the victim. Such violence could cover physical, sexual, psychological or economic violence and could result in physical, mental or emotional harm or economic loss. Violence in close relationships is a serious and often hidden social problem which could cause systematic psychological and physical trauma with severe consequences because the offender is a person whom the victim should be able to trust.

[54] Recital 17: Violence that is directed against a person because of that person's gender, gender identity or gender expression or that affects persons of a particular gender disproportionately, is understood as gender-based violence. It may result in physical, sexual, emotional or psychological harm, or economic loss, to the victim. Gender-based violence is understood to be a form of discrimination and a violation of the fundamental freedoms of the victim and includes violence in close relationships, sexual violence (including rape, sexual assault and harassment), trafficking in human beings, slavery, and different forms of harmful practices, such as forced marriages, female genital mutilation and so-called 'honour crimes'. *Women victims of gender-based violence and their children often require special support and protection because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation connected with such violence.*

[55] In Bulgaria it is partially introduced in the Child Protection Act, Protection against Domestic Violence Act, and Combatting Trafficking in Human Beings Act.

[56] According to the report of Milena Kadieva et al., it is only in one of the cases – the Court of Appeal in the city of Plovdiv – that the victim was supported by the court but with the aim to gather evidence, namely she was escorted by representatives of the judicial guards to a combined psychological and psychiatric expert examination in the interest of the proceedings. The procedure was a specialized medical assessment of her physical and mental state after the act of human trafficking with the aim of sexual exploitation. Later the victim was escorted by the judicial guards to her relatives in order to guarantee her security.

the damages caused; the age, intellectual development, emotional and social maturity and education of the victim, as well as other personal features. Furthermore: if the person is a victim of terrorism, human trafficking, a crime contracted by or committed in implementing a decision of an organized crime group, a crime under Chapter 2, Section VIII of the Special Part of CCP, a crime committed in the context of domestic violence or a racist or xenophobic crime; the victim is in a state of material or another dependence on the offender. Obviously, important factors related to the gender and sexual orientation are missing. For example, the European Parliament emphasizes that the chance of becoming a victim of violence is by 2 to 5 times higher for women with disabilities than for women without disabilities, and 34% of women with health issues or disabilities have experienced physical or sexual violence by a partner in their lifetime.[57]

A Resolution of the European Parliament recalls that individual assessments are particularly necessary for the victims of human trafficking and the child victims of sexual abuse, given the social, physical and psychological repercussions of these crimes; recalls that all individual assessments should be gender sensitive, given that women and LGBTI victims of gender-based violence require special attention and protection owing to a high risk of repeated victimisation, and that specific measures and specialist support should therefore be ensured.[58]

2. *The type and nature of the crime* – for example, whether it is a hate crime, a bias crime or a crime committed with a discriminatory motive, sexual violence, violence in a close relationship or whether the offender was in a position of control.

In addition, Art. 22 (3): In the context of the individual assessment, particular attention shall be paid to victims who have suffered considerable harm due to the severity of the crime; victims who have suffered a crime committed with a bias or discriminatory motive which could, in particular, be related to their personal characteristics; victims whose relationship to and dependence on the offender make them particularly vulnerable. In this regard, victims of terrorism, organised crime, human trafficking, gender-based violence, violence in a close relationship, sexual violence, exploitation or hate crime, and victims with disabilities shall be duly considered. The EP Resolution recalls that individual assessments are crucial for victims of trafficking in human beings and children – victims of sexual abuse, in view of the social, physical and psychological consequences from such offences.[59]

Therefore, the EU Strategy for the protection of victims envisages:

> *Key actions of the European Commission:* promoting an integrated and targeted support for victims with specific needs such as, for example, child victims, victims of gender-based violence or domestic violence, victims of racist and xenophobic crimes, LGBTI + victims of hate crimes, elderly victims and victims with disabilities, by means of EU financing options and the EC campaign for raising awareness about the victims' rights.

The Draft Law gives the authority carrying out the IA the discretion to assess these circumstances, and the guidance is implicitly provided via the list of offences and the circumstance of dependence between the perpetrator and the victim.

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[57] See European Parliament Resolution on the situation of women with disabilities (2018/2685(RSP).

[58] See European Parliament Resolution of 30 May 2018 on the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (2016/2328(INI)), p.16 of the recommendations.

[59] Ibid. The Report of the European Commission to the European Parliament and the Council points out that, for example, in some MS the process of individual assessment does not take into account the fact that the crime was a bias one or a crime committed with a discriminatory motive.

3. *The circumstances of the crime* – for example, whether the victim lives in an area with a high criminality rate or many criminal gangs or whether the country of origin of the victim differs from the Member State where the crime was committed. According to the Draft Law, the assessment of these circumstances depends on the capacity of the assessing authority. A manual or some guidance could be provided to the relevant bodies; this, however, is not acceptable in the Bulgarian practice.

At this stage IA should identify the special protection needs of the child, as well as specific ones depending on the degree of vulnerability to secondary and repeat victimization, intimidation and retaliation (Recital 58).[60] The Draft law does not particularly ensure the high level of specificity required by the Directive. Thus, we traditionally keep to the format of general and abstract norms which are difficult to apply for untrained police officers, prosecutors, and even the court.

Another substantial gap in the proposed amendments relate to the child's specific rights. When carrying out an IA, the best interests of the child are the primary consideration. This principle and the right of the child (Art.3 of CRC) are laid down in the Directive (Art.1 (3) and (4)), but not in the Draft law. Pursuant to Art.22 (6) of the Directive, "Individual assessments shall be carried out with the close involvement of the victim and shall take into account their wishes including where they do not wish to benefit from special measures as provided for in Art. 23 and 24." The victims' concerns and fears in relation to proceedings should be a key factor in determining whether they need any particular measure (Recital 58). There is no such mention in the Bulgarian Draft Law but the general provisions help in this direction. When an IA is carried out, the child must be heard and his/her views must be taken into consideration under the conditions referred to in Art.12 of CRC and Art.15 of the Child Protection Act.

The Bulgarian NGOs and services providers elaborated the following list of factors, based on the Directive, in the process of assessment of the child's needs:

- cognitive and emotional maturity, difficulties in communication;
- vulnerability (whether it is a factor for additional vulnerability of the child and whether the vulnerability limits the child's capacity to reveal and provide information to the justice system via the standard approach; and the IA should inform about the need for additional work and a professional who can help the child speak and tell the story);
- the child's readiness to participate in legal procedures (in psychological, emotional and cognitive terms);
- the level of trust the child has in the system and the other unfamiliar persons;
- others.[61]

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[60] Several Member States have not complied or have partially complied with the requirement for introducing this assessment. This impacts the overall compliance of the provisions regarding the specific protection measures laid down in Art. 23 and 24, which are based on the individual assessment – Report of the European Commission to the European Parliament and the Council.

[61] See Nadya Stoykova, Nelly Petrova and Darinka Yankova. Op cit., n 37.

viii. Determination of special protection measures

The second step in carrying out an IA is *determining the specific type of the special protection measures*, which ensue from the child's specific needs identified. The extent of any such measure should be determined without prejudice to the rights of the defence and in accordance with rules of judicial discretion. The victims' concerns and fears in relation to proceedings should be a key factor in determining whether they need any particular measure (Recital 58).

The special measures are measures against *secondary and repeat victimization, intimidation and retaliation against the child* (Recitals 53, 57, 58, and Art. 23 and 24 of the Directive). It should be taken into consideration that victims of human trafficking, terrorism, organised crime, violence in close relationships, sexual violence or exploitation, gender-based violence, hate crime, and victims with disabilities and child victims *tend to experience a high rate of secondary and repeat victimisation, of intimidation and of retaliation*. Particular care should be taken when assessing whether such victims are at risk of such victimisation, intimidation and retaliation and there should be a strong presumption that those victims will benefit from special protection measures (Recital 57).

The special measures whose application is determined by the IA are set out Art. 23 and 24. They are two types. General measures for all victims (Art. 23 - Right to protection of victims with specific protection needs during criminal proceedings), and general ones only for child victims (Art.24 - Right to protection of child victims during criminal proceedings). The child victim can benefit from both types of measures.[62]

The Draft Law stipulates that based on the data gathered and the information ascertained following the procedure under Art.7b (2) and (4), the members of the team shall make an assessment of the protection measures to be taken with respect to the child concerned. It should be emphasized that IA falls entirely outside the scope of the criminal proceedings and the focus of attention of the leading authorities – the prosecutor or the court. It is not clear at what point and if at all the IA is submitted to these authorities. Equally strange is how the members of the assessing team will decide on the protection measures to be taken, and who will impose these measures.

The general (special) measures are:

1) *during criminal investigations* to victims with specific protection needs:

a) interviews with the victim being carried out in premises designed or adapted for that purpose;

b) interviews with the victim being carried out by or through professionals trained for that purpose;

c) all interviews with the victim being conducted by the same persons unless this is contrary to the good administration of justice;

[62] Art. 23 (1) provides for an exception from the application of special measures – if operational or practical constraints make this impossible, or where there is an urgent need to interview the victim and failure to do so could harm the victim or another person or could prejudice the course of the proceedings.

d) all interviews with victims of sexual violence, gender-based violence or violence in close relationships, unless conducted by a prosecutor or a judge, being conducted **by a person of the same sex as the victim**, provided that the course of the criminal proceedings will not be prejudiced.[63]

The Draft Law proposes the following amendment to CCP which conforms to the Directive: "Interview of a witness with specific protection needs".

Art.139a. (1) The interview of a witness with specific protection needs shall be conducted by taking measures to avoid any contact with the offender, in particular by means of video conferencing or telephone communication in conformity with the provisions of this code.

(2) Unless this will seriously hinder the criminal proceedings, the interview of a witness with specific protection needs, shall be conducted:

1. in premises designated for that purpose;

2. in the presence of a pedagogue or a psychologist;

3. by the same investigating authority, if a repeated interview is needed.

(3) The presence of a pedagogue or psychologist shall be mandatory where the witness with specific protection needs is minor or underage. When this is the case, the interview shall be conducted also in the presence of the parent, guardian or custodian.

(4) At the request of a witness who is a victim of domestic violence or a crime under Chapter 2, Section VIII of the Special Part of the Criminal Code, the interview shall be conducted by a person of the same sex as the victim, unless this prejudices the criminal proceedings. This provision shall not apply when the interview is conducted by a judge or a prosecutor."

2) *during court proceedings:*

a) measures to avoid visual contact between victims and offenders including during the giving of evidence, by appropriate means including the use of communication technology;

In Bulgaria, the National Network for Children has alerted for years now that practices which do not ensure the children's rights are applied with respect to children who are victims of crimes and/or witnesses in criminal proceedings. Such children are interviewed many times in the presence of many people, unfamiliar persons, even in the presence of the accused person. They are interviewed by staff who are not specialized in working with children and are highly inappropriate for that purpose. In addition, in spite of the numerous recommendations about not using the face-to-face meeting with the offender as evidence when the victim or the witness in the procedure is a child, which is also

[63] According to the report of Milena Kadieva et al. "…from time to time, all the parties to the proceedings treat the victim "just as a prostitute", and not as a victim. The reasons in the judgment partially reflect some of the personal views of the parties to the case which are also shared by the public at large, namely that this case of trafficking is not the "classical one", as the victim had already been a prostitute…"

contrary to the requirement to ensure as many guarantees as possible for avoiding contact between the victim, the members of their family and the accused person, the face-to-face meeting is still used as a means of evidence.[64]

In the court, judges provide information to victims only in their capacity of witnesses (i.e. the fact that the witness is also a crime victim is not taken into account). Only one witness who had a lawyer at both the first and second instances was constituted as a party to the cases in two out of the twelve cases mentioned (she participated as a private prosecutor and as a civil claimant). All the other victims were interviewed only in their capacity of witnesses.[65]

In two of the cases monitored, the victims stated that, after the initiation of the proceedings, the accused persons or their friends and relatives had exerted pressure on them to change their testimony. In addition, in the course of the criminal investigation some victims were interviewed as witnesses in the presence of the accused person.[66]

b) measures to ensure that the victim may be heard in the courtroom without being present, in particular through the use of appropriate communication technology;

The comparison of the safeguards for the rights of children who are suspected or accused of committing offences and for the rights of children who are crime victims shows that CCP formally lays down more safeguards for the rights of children who are suspected or accused of committing offences than of those who are crime victims. This, however, is not due to the fact that these safeguards concern children but to the fact that CCP has a stronger focus, as a whole, on the rights of the suspected/accused person. As it has been pointed out, the crime victim, including a child victim, has the right to information at the pre-trial stage, respectively the victim can be interviewed as a witness, and at the pre-trial stage the victim can be constituted as a civil claimant. Unless constituted as such, the victim will remain just a witness and will not benefit from safeguards for the rights to participation and support, in particular when the victim is a child.

c) measures to avoid unnecessary questioning concerning the victim's private life not related to the criminal offence; and

d) measures allowing a hearing to take place without the presence of the public.

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[64] Statement of the National Network for Children. At: https://www.parliament.bg/bg/parliamentarycommittees/members/2577/standpoint/ID/12191?fbclid=IwAR3Md1gxeqo8z5uczQmtkuOW1TvpIAP3Lrh1B18IoNCS3d6kAh1uS2T3v6s; accessed in March 2021

[65] Milena Kadieva et al. Op. cit. n. 50.

[66] Ibid.

The following *additional measures* are applied in respect of the child victim depending on the findings of the IA (Art. 24):

a) in criminal investigations, all interviews with the child victim may be audio-visually recorded and such recorded interviews may be used as evidence in criminal proceedings[67];

According to the experts, taking specific measures against repeat victimization of underage persons who are interviewed as witnesses or as crime victims has been regulated **as an option, not as a rule**, in the criminal proceedings. Most of the lawyers interviewed think that the rights of children witnesses or crime victims whose purpose is preventing repeat victimization are nor safeguarded. The hearing, respectively the interviewing of such children takes place in the court room, in the presence of all the parties to the proceedings; the interviews are often conducted several times at the request of either the prosecutor or the procedural representative of the defendant, and the requirement for a single interview is not observed: "The requests made by the parties turn out to determine the number of interviews." The children are interviewed many times by persons who do not have special training, and often in the presence of the offender.

Neither rules for the procedures to be followed, nor requirements for the hearing or the professionals conducting it, have been regulated. Children are often interviewed by investigating police officers or staff of the CPR who apply the same methods to the children who are victims or witnesses of crimes as those applied to children-offenders. They are not familiar with the psychological aspects of telling the story about traumatic experiences, as a result of which the interviews often traumatize the children.[68]

b) in criminal investigations and proceedings, in accordance with the role of victims in the relevant criminal justice system, competent authorities appoint **a special representative for child victims** where, according to national law, the holders of parental responsibility are precluded from representing the child victim as a result of a conflict of interest between them and the child victim, or where the child victim is unaccompanied or separated from the family;

c) where the child victim has the right to a lawyer, he or she has the right to legal advice and **representation, in his or her own name**, in proceedings where there is, or there could be, a conflict of interest between the child victim and the holders of parental responsibility.

The last two measures are not at all familiar and would not be accepted in the Bulgarian CP. However, they reflect some typical assumptions in the Bulgarian context, and should be introduced as soon as possible; the main obstacles pertain to the patriarchal nature of the law, the non-systematic approach to the victim's rights, the fact that these rights are used as instruments, and the failure to regard the child as a holder of rights. *When the child is not a party in CP, this always causes problems; the tradition does not allow appointing a representative, it must be explicitly regulated, according to the judges.*

The Draft Law stipulates that the IA shall be carried out without undue delay on the basis of talks with the person concerned. In other words, IA shall rely only on talks with the person; the interests and the assessment are not at all a criterion.

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[67] The procedural rules regarding audio-visual recordings referred to in paragraph 1 (a) and the use thereof are laid down in the national law. The new provision of Art. 140 (5) of CCP provides for the possibility for interviewing minor and underage persons by taking measures to avoid any contact with the accused person, including by means of specially equipped premises or video conferencing.

[68] See Diliana Markova and Donka Petrova. Op. cit., n 46.

The Draft Law provides for two types of IA – an ordinary one and an extended one. The bodies responsible to carry out, without undue delay, the IA on the in communication with the person, are either the Ministry of Interior or the organizations supporting victims who have established the first contact with the victim. In the cases referred to in Art.7a (2) and when doubts arise that the victim has suffered serious harmful consequences from the crime, an extended individual assessment shall be carried out. It is worth mentioning that "the right of child victims to be heard in criminal proceedings should not be precluded solely on the basis that the victim is a child or on the basis of that victim's age" (Recital 14 and 42). While the **child's age**, maturity, views, needs and concerns are relevant to determining a child-sensitive approach in conformity with Art.1 (2) and Art.10 of the Directive, it **cannot serve as a formal ground to refuse the hearing of a child**. Such a ground would not be in accordance, either, with the philosophy of the Directive, namely ensuring the active participation of the victim in criminal proceedings by eliminating the risks for secondary victimization. The provision of Art.15 of CPA that limits the possibilities for hearing children who have not reached the age of 10 in administrative and court procedures should be read and applied in the above context.

The CCP does not set out age restrictions in respect of interviews but provides for possible restrictions in cases of vulnerabilities. Pursuant to Art.118 (3) of CCP, persons who, due to physical or mental disabilities, are not able to correctly understand the facts relevant to the case or give credible testimony thereon shall not participate as witnesses. The capacity to correctly understand, remember and reproduce the facts shall be established via an expert examination. Art.144 (2) of CCP requires a mandatory expert examination where doubts exist as to the witness's capacity, in view of their physical and mental state, to correctly understand the facts relevant to the case and give credible testimony thereon.

The CCP stipulates that child victims shall have the right to information in the pre-trial phase; however, the requirements that the communication with the victims should be in a simple and accessible language, taking into account the individual characteristics of the victim, including potential disabilities, are not complied with. The respondents to our study expressed a firm view that *"the procedure for providing information is not applied in the hearings of children involved in criminal proceedings". "Even when the child is accompanied by family members and a social worker attends the hearing, such information is not provided"* [Judge from a regional court (female)]

As regards the hearings of child victims, lawyers working in the area of protection against domestic violence have mentioned cases where the court shows reluctance to hear the child. The judge refuses to hear the child and relies on further data and an expert examination, thus transferring the responsibility to expert witnesses and other professionals, mainly psychologists. *"In the meantime, out-of-court activities are carried out with the child, but the child is not heard in the court room, and this hearing is very important for the outcome of the case. Hence, on the one hand, there is a better understanding of children's rights, but still not all judges have experience in working with children, and the way in which the hearing is conducted depends very much on the expertise of the relevant judge in the case."* Of course, the respondents also shared some good practices about cases when the judge conducts the hearing of the child in a child-sensitive environment, and makes efforts to support the child: *"The judge does not wear the robe and sometimes the hearing takes place in the judge's office, in the presence of a psychologist or a social worker."*

By way of rule, the hearings of children in trial proceedings are attended by a social worker from a CPD whose task is to support the child. It is also possible for the court to appoint an expert witness, a psychologist, for the same purpose. According to the respondents, however, it often happens that

the social worker “attends formally the interview or the hearing of the child, and then says that this is the child’s opinion or that the child was heard/interviewed in an adequate environment and freely expressed their opinion. However, such a hearing or interview is not at all safeguarded against potential manipulations of the child”. This is valid for all children, no matter they have disabilities. The situation is by far more complicated and discriminatory when it comes to children with disabilities. The only reasonable facilitations for children with disabilities are the existing ramps in the buildings of the relevant institutions, which is just an adaptation of the physical environment. The respondents have not had any experience with the provision of facilitations for the hearings of children with mental disabilities who participate as victims or suspects in criminal proceedings.

ix. The blue rooms and the hearing of children

At present the hearing of child victims mostly takes place in so called ‘blue rooms’, which almost exhaust the concept of child-friendly justice’ in Bulgaria. All the participants in the research were familiar with the blue rooms and what purpose they serve; moreover, most of these room are, indeed, painted in blue. The main concern is that these rooms are not used or are rarely used. Representatives of NGOs, municipalities and services in charge of managing these rooms across the country have stressed that while they organize numerous awareness-raising and advocacy campaigns concerning the advantages of the blue rooms among investigating police officers, judges and prosecutors, the inertia is too strong and in reality it is only several hearings per year that take place in these premises, and one of the blue rooms in a regional city has not been used for over one year since it was commissioned.

> *“Last year we had only one hearing of a child in this room. This year it has been two hearings. We organized many meetings with judges, prosecutors, police officers and investigating police officers with the aim to promote our service and the blue room. In other words, advocacy for child victims – so that they would have their hearings in the specialized premises… But nothing has been achieved. They all keep saying “yes, we know, but it seems easier for them to have the children interviewed at the police department.”* [Representatives of the services in a regional city] …

According to the opinions of lawyers from Sofia, the blue rooms in large cities are not used, as the judges have an excessive workload and do not have procedural time to make arrangements for the blue rooms. The judges themselves agree with these observations:

> *It is a luxury to dedicate 30 minutes to the hearing of a child; this is why it is usually a chaos in my cases.* [Judge from a regional court (female)]

This is why a lawyer from Sofia shared the following: “it is only once that I dared to ask for a hearing in the blue rooms, and I have never done it ever since, as I have the feeling this sets the court against my clients.”

It is mostly representatives of the civil society sector who shared the view that using the blue rooms is not a matter of either time or specific technical skills but rather of values

> *In the beginning we had many referrals of children from the neighbouring city and region, and the colleagues from these cities made arrangements and*

> *travelled – the issue is not with the logistics but with the wish of the institutions that, once they have embraced the idea, the hearings with children take place in these rooms.* [Person from a NGO]

This explains why it is usually the younger judges among our respondents that are willing to adapt the procedural environment to the child's needs. There are, however, judges who "cannot imagine taking off the robe and acting at the level of a child":

> *When I was still a junior judge, we had to hear a child, and I told my colleagues – let's take off the robes and go down for the hearing – and they started fretting and looking around – what would it feel like not wearing the robe* [Judge from a regional court (female)] …

This is why such judges usually take advantage of the fact that the law allows not having a hearing at all, as this "may prejudice the child's interests". However, this is what it looks like in the eyes of one of the children:

> *I was interviewed by a good and a bad judge – the good one talked with me and it was OK; the bad judge is bad, because she doesn't know how to dress – she was wearing a black robe that pupils used to wear in the 50s.* [A child, see the details in case study No 7]

Most judges who acknowledge that they avoid hearings or interviews in the blue rooms usually point out two reasons:

1) technical issues – microphones which do not function, narrow, dark (due to the Venetian glass which blocks visibility) and inconvenient premises, lack of air-conditioning, physical remoteness of the blue room, poor quality of the recording, untrained assistants who interfere in the interview – "I don't have access to the mike, and I ask the question to the technical assistant, then the assistant conveys it to the psychologist, and the latter "translates" it into a language understandable to the child; we end up with Chinese whispering, and 2) looking down at the children: "it is one thing if you have to work with young children; but these are not young children, they are aged 16-17, many of them are recidivists who are already veterans in the court and know what it is about."

Here are some more authentic statements by judges on the issue of the arrangements for hearings in the blue room in a regional city:

> *The technical assistant didn't give me the mike so that I could moderate the process. It is the technical assistant that holds the mike and the judge has no access to it. The psychologist asks the child a question, but the technical assistant doesn't understand that the question has not been exhausted, and goes on to ask another and yet another question, and we end up with a mess* [Judge from a regional court (female)]

This results in:

> *It seems to be in a way the Bulgarian approach – we should have something in place, a procedure, but how appropriate this procedure is, this is not quite*

clear… I tell them "You read the Convention the way the devil reads the Bible". (…) When I went to M. I had 10 interviews. One of the cases was a child who was a victim of lechery. This child had to specify the respective sexual organ 10 times, calling it "the thing", what does "the thing" mean (…) An hour later the young child said: "I'm tired, tell me what you want me to tell you, and I'm going to say it, as I want to go home." [Judge from a regional court (female)]

The psychologists interviewed have also confirmed the inadequacy of such a "reading". Moreover, the point is that "when you take a person who is already an adolescent to a room with bunnies and pink roses on the walls and wooden toys in the basket, you label this person as immature, as being childish, and not as a personality who is expected to assume responsibility for what he says and does." An interesting finding from the research is the fact that, contrary to the initial expectations, the practice of using the blue rooms was also criticized by psychologists and psychiatrists who are expected to assist children with their hearing.

My experience was that I had a double role. The court seems to use me to wash its hands, it says "I am using a psychologist", but there I don't act as a psychologist. [Psychologist, expert witness for a regional court]

Here is the reason for this impression of the court "washing its hands": (1) "as a psychologist I have to first of all meet the child, get a feeling of the child, and not proceed straight away with the hearing":

I saw the children in the corridor, I introduced myself to the mother and said: "I am your tanti". Anyway, I was lucky to grab this opportunity before the hearing. [Psychologist, expert witness for a regional court]

2) "In the blue room I am the only one who has the badge reading 'psychologist', as the procedure requires so, but in reality, I don't act as a psychologist – the only thing I do is conveying what I hear in the headsets to the child, without being able to react, to show empathy when I see suffering; I hear the next question in the headsets, and I have to continue…" This feeling of the importance of the 'psychologist label' is intensified due the absence of feedback about the course of the case and the evolution outside the context of the case:

I don't have follow-up of the results from my cases. Sometimes I just happen to hear that my expert opinion had an impact, that had it not been for my expert examination, the judgement would have been different. (…)

I had read the documentation of the case, and that was my decision, it had not been suggested to me as the expected decision. They don't expect this to be part of my job. I myself was not prepared, I asked, but the answer was only "you have ***to attend****".* [Psychologist, expert witness for a regional court]

This, however, has the following effect:

3) "the child feels I am not authentic, that it is someone speaking through me, and starts worrying, feeling insecure, which is the opposite to the idea behind the blue room.

4) this insecurity is sometimes intensified due to the requirement to inform the child in advance about the people who will be observing him through the glass but whom he won't be able to see:

> *Children have a different level of development – she was 16, a victim of lechery, but she didn't want to talk about this. I didn't have any doubts that she had suffered lechery… She told me "I will run away if the judge asks me, even through the glass.* [Psychologist, expert witness for a regional court]

5) "The expert witness is faced with a dilemma: take care of the interests of the child or satisfy the interest of the court; furthermore, such practice leaves the child with the impression that there is something hidden, another agenda, which in itself is traumatic"; and, finally,

6) "in terms of the blue rooms, I can see a much broader issue with our society – we exaggerate with our efforts to protect children against any negative emotions, instead of teaching them how to deal with them; we cannot protect them forever against negative emotions, they are part of life, and they must learn to overcome them."

> *This is why I feel used, an instrument of the court which says that if I am a psychologist, then I did this. But I have my skills which I cannot apply in this context.* [Psychologist, expert witness for a regional court]

The issue with the blue rooms is a part of the bigger topic about hearings conducted with children, and the attitudes in this respect. As it has already been pointed out, the hearing of children is largely at the discretion of the court. The law stipulates that in any administrative or judicial procedure which concerns rights or interests of a child, a hearing of the latter shall be held if the child has reached the age of 10. If the child has not reached the age of 10, a hearing may be held depending on the level of development of that child, and the court shall deliver a reasoned decision on this.

> *Some judges don't use psychological expert examinations, as probably psychology or psychiatry can be perceived as pseudoscience, it may seem subjective… this is what I call lack of trust in scientific justification.* [Psychologist, expert witness for a regional court]

Of course, there are also judges who always prefer to hear the children, and they have learnt from their professional experience to determine, in view of the child's age and development, the most appropriate place for the interview or hearing – the court room, the judge's office, the cafeteria or the blue room. Both these judges and all the participants in the research are unanimous in terms of the *need for training* on how to work with children, how to interpret the body language, how to interpret the metalanguage used by children.

> *The truth is that when I started working in 2010, I had no idea what I should do and I started learning on my own, I bought books, attended seminars, hosted exchanges of experience (on the topic).* [Judge from a regional court (female)]

In order not to rely on self-training, it is important that specialized courses for working with children be introduced in the curricula for undergraduate students:

The university is very much focused on the regulation of property matters in the relations between spouses, namely dividing the property in divorce proceedings, and the part with the opinion of the child seems to be left behind. I haven't learnt this at the university, it was not taught. [Judge from a regional court (female)]

The judges who conduct hearings and interviews with children in their practice, have given numerous examples about the way in which the child's participation in the procedure, the information shared by the child, his feelings and preferences have reversed the course of the case and/or have provoked decisions which were entirely different from the ones that would have been taken based on the documents available.

I have experienced in almost half of my cases huge discrepancies between what I read in the documents related to the case and what I identify in the course of the hearing.

Moreover, judges have shared even more serious concerns:

The grandmother is already there, and the head of the child protection department, and I ask them: "Did you lie to the court, what is going on?"… I ordered an expert examination, I wanted clarifications concerning the state of that child. It turned out that it was all due to the trauma in the head as a result of this trampoline… and the foster grandmother explained to me that while the child was sitting on the potty, he all of a sudden jumped up and hit his head. I don't mean it is intentional, but it is just neglect… I asked for explanations from the CPD why this information had been withheld – nothing (…)

Why do I hear every child? Because they lie! I tell them that the next time it happens I am going to refer it to the prosecutor, because this is abuse of trust, they counterfeit documents… [Judge from a regional court (female)]

Some of the lawyers interviewed have stated that one of the biggest challenges in hearing a child is preventing the parents' influence. According to them, preventing this influence can be achieved only with the support of trained psychologists who, by playing a game, can assist the child with the answers to specific questions in order to gather reliable facts. According to psychologists, however, some lawyers are part of this "influence

I think that (…) the interference of lawyers is very specific… they do so through their job and competences – "I am doing my best to defend my client", which is not always the case… [Psychologist, expert witness for a regional court]

As a result of this:

There are children who are veterans in terms of hearings. Maybe there should be an upper limit on the competition between the parents and their lawyers. This situation seems to be somewhat invalid or flawed. [Psychologist, expert witness for a regional court]

Before the hearing, by way of rule, children are not informed about the type of the procedure in which they will participate, how the situation will evolve, and why they are in that situation:

> *It often happens that a child comes for the hearing, and waits in front of the room. But the social worker who is obliged to attend the hearing does not turn up; hence, the hearing does not take place and the child is taken away from the court, and the judge does not explain to the child what happened – why he was in the building, what changed, why the hearing didn't take place, will he come again.* [Psychologist, expert witness for a regional court]

The situation with children involved in procedures for protection measures is similar. Social workers providing services for child victims of violence have shared that these children perceive the services which should support them as a form of repression and punishment:

> *The children don't know why they were accommodated in a crisis centre, nobody has explained to them why they are there, and they often say "when my conviction is over" I am going to do this and that. This is not a protection measure for them but punishment. They say the same thing in the hearing before the court* [Social worker from a service (male)]

x. Capacity for expert examinations in criminal proceedings

The Draft Law 2020 does not repeal the provisions of CCP regarding the expert examination. Therefore, it remains an option for the individual assessment; it is, however, unclear how it will be combined with the IA under the other law. The concern is once again that the approach might be formal.

CCP stipulates that "an expert examination can also be instituted to identify specific protection needs of a witness in relation to his/her participation in the criminal proceedings" (Art.144 (5)). 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 by persons who have special expertise to examine specific items or other circumstances relevant to clarifying particular circumstances.[69]

The Ordinance has an Annex on the types and categories of expert examinations which do not provide grounds for a positive answer. The closest such category is No 3: "Judicial expert examination of the mental state". **Types**: 3.1 Judicial psychiatric expert examination. 3.2. Judicial psychological expert examination. 3.3. Judicial psychological and psychiatric expert examination. 3.4. Judicial expert examination of the mental state based on written data. By way of comparison, the criteria to be applied in the expert examination are: personal characteristics of the victim; the type or nature of the crime; the circumstances of the crime (Art. 22 (2) of the Directive). The psychological and psychiatric competence can satisfy a small part of these criteria. According to judges, there are no standards for carrying out expert examinations – each expert applies their specific approach depending on the issues raised by the court. It is possible to also institute complex expert examinations.

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[69] In conformity with their procedural arrangements, expert examinations are: 1. individual and collective; 2. homogenous and complex; 3. initial, additional and repeated. Expert examinations are collective when they require the participation of two or more expert witnesses. Expert examinations are homogenous when their tasks require expertise in one scientific field. Expert examinations are complex when their tasks require expertise in various scientific fields Art. 5 of the ordinance).

Assigning an expert examination to expert witnesses with such a profile does not meet the requirements set out in the Directive. According to the Bulgarian experts, "if regulated in this way, the expert examination cannot deliver its role, as it cannot be **multidisciplinary**, it cannot be carried out as early as possible in order to define the victim's character as being vulnerable and to assess the victim's needs for specific protection and support measures. The expert examination is assigned to an expert witness whose competence is unclear." [70] Other experts interviewed (pedagogues, psychologists, social workers) shared their opinion that the content of IA, as derived from the Directive, determines its nature of a social assessment conducted by an inter-agency and multi-disciplinary team (IMT), as it comprises an assessment of both the victim's state in a medical and psychological perspective and the type of crime and the links to the alleged offender.

The Draft Law provides for two types of IA – an ordinary one and an extended one. The IA shall be assigned to: the bodies of the Ministry of Interior, investigators or organizations providing support to crime victims, who are the first ones to establish a contact with the victim, and shall carry out, without undue delay, an individual assessment on the basis of an interview with the person. When the victim approaches another person, body or organization other than the ones referred to in paragraph 2, the alert shall be referred to the bodies of the Ministry of Interior for the purpose of an IA. The issue is what capacity these bodies have to carry out IAs.

When the victim is a child always an extended IA should be carried out. Then the MOI bodies or investigators, without undue delay, shall set up teams with the participation of representatives of the Social Assistance Directorate and the local administration. Depending on the specifics of the case, the team can also include representatives of the organizations providing support to victims, the family doctor, a psychologist, and other appropriate professionals.

It is obvious, *firstly*, that the approach for a coordination mechanism in cases of violence against a child set out in the Child Protection Act is applied, and, *secondly*, the criminal justice law-maker does not wish to provide for the child protection bodies to play the leading role in carrying out the IA in cases of children victims of violence. The better legislative approach would be the opposite one – applying the coordination mechanism under the Child Protection Act with MOI leading the team.[71] The option proposed falls within the model of the institutions acting in parallel, which is strongly criticized at present, and which wastes the institutions' poor capacity to work with children.

A requirement for an IA standard has also been laid down: within a two-month time limit from the promulgation of the law in the State Gazette the National Council for assistance and compensation to crime victims shall develop and submit to the Minister of Justice the form under Art. 7b (6) of the Crime Victims Assistance and Financial Compensation Act.

Art.22 (5) and (7) of Directive allows flexibility in carrying out the IA. It is not necessary to always assess all the factors described; the extent of the IA may be adapted according to the severity of the crime and the degree of apparent harm suffered by the victim.[72] The Draft Law provides for such an option: in the event of emerging new evidence that can substantially affect the victim's personality,

[70] Nadya Stoykova, Nelly Petrova and Darinka Yankova. Model for Individual Assessment of Vulnerable Victims and Inter-agency Cooperation with Victims of Crime. SAPI, 2017. At: https://sapibg.org/en/book/model-za-individualna-ocenka , accessed in March, 2021

[71] During the discussions on the draft law for amending and supplementing CCP at the Ministry of Justice, a concern regarding the absence of traditions/practice in terms of introducing an individual assessment, which was disproved by NGOs.

[72] European Parliament Resolution of 30 May 2018 on the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime (2016/2328(INI)), т.16.

the IA and the extended IA shall be updated. As regards the expert examination in CP, a second one can be conducted – there is no explicit provision prohibiting this, according to the judges, if additional information is available, the court institutes another expert examination.

xi. Special protection of refugee children and children with disabilities

Children with disabilities and refugee children are particularly vulnerable participants in criminal proceedings. All the issues with the child protection system and the child justice system that have already been presented are also relevant to this group of children. In addition, there are other concerns in relation to children with disabilities such as the lack of capacity and facilitations for the participation of children with disabilities in judicial procedures, the lack of documents, communication barriers, lack of specialized linguistic knowledge, etc.

In respect of these two groups of children, the system should make more efforts to safeguard their rights. The respondents in the interviews have not shared special experience with these two groups of children. Most of the representatives of the legal profession do not have specific skills for working with children with disabilities. The needs assessment of children with disabilities is crucial to their participation, as it also identifies the necessary procedural facilitations which should be provided by the court, including with regard to the hearing of children. An issue to be emphasized is the absence of a concept about the need for child victims to be assisted with their participation in the proceedings. Moreover, CCP has introduced some restrictions regarding the credibility of the testimony of people with disabilities. These restrictions concern physical or mental deficiencies (persons who, due to physical or mental deficiencies, are unable to correctly understand the facts relevant to the case or to give credible testimony about them shall not be witnesses). Based on this provision, children with disabilities, in particular children with intellectual disabilities, may not at all be heard as witnesses. In other words, instead of an obligation to provide assistance, the law allows the exclusion of such children.

The Asylum and Refugees Act, in its 2020 version, provides for special representation of unaccompanied children. Pursuant to Art.25 (1-3) of this law: an unaccompanied or minor foreigner who seeks or has received international protection and is on the territory of the Republic of Bulgaria shall be represented in the procedure laid down in this law by a lawyer from the legal aid register of the National Bureau for Legal Aid or by an official authorized thereby. The representative shall have the necessary knowledge in order to be able, in conformity with the principle of the best interest of the child, to assist the unaccompanied underage or minor foreigner with the enjoyment of their rights and the fulfilment of their obligations laid down in this law.

The representative shall not be a person **whose interests are in conflict or may be in conflict with the interests of the unaccompanied underage or minor foreigner**. The representative of the minor or underage foreigner who seeks or has received international protection shall, till the person concerned reaches majority, have the following powers in the procedure under this law: 1. ensure the person's legal interests in the asylum procedures till the completion thereof with a final decision; 2. Represent the person before all administrative bodies, including social, health, educational and other institutions in the Republic of Bulgaria in view of the protection of the best interest of the child; 3. Play the role of a procedural representative in all procedures before the administrative and judicial authorities.

The provision is the result of changes in the law in the course of many years in an attempt to ensure the most adequate wording in the EU asylum context. The hopes are that, in addition to the appropriate wording of the legal provisions, there will be safeguards for their efficient application, as substantial capacity has been developed in this area with the support of external resources. Furthermore, the findings show good practice and case law among lawyers and judges. This legal text is in contrast with the regulation of the representation of Bulgarian children.

V. The context in which the two Directives will be applied

The value prerequisite for child-friendly justice is the respect for the child's personality and dignity. This, however, requires treating the person as a holder of rights, which in Bulgaria continues to be a huge issue in respect of both adults and children. And it is not a matter of trainings, beliefs or values but of *practical social relations of empowerment*. The predominant practices of socialization, starting with the family, the kindergarten and the school, do not contribute to the empowerment of children and the respect for their opinions, preferences, and interests. For example, it is only next year that Bulgaria will have its first textbook whose content in based on the pupils' interests expressed in advance. This is why, we can explain the reaction of the respondents in the research who were surprised when we asked about the opinion and position of the children themselves – it is acceptable for children to have perceptions and memories but not their own opinion and plans for the future:

> *"but they don't know what they want"* [Commission for the prevention and juvenile delinquency]*; "whether we ask them or not, we don't have much choice what to do with them"* [social worker]*; "they can be manipulated – they don't have their own opinion at this age, it is their angry parents that talk through them"* [psychologist]*; "I talk with her for an hour, and she is answering me by using cliches, I ask her if has any thoughts of her own in her beautiful head:* [services]*; "he cannot say what he is going to do, as he doesn't have a role model to follow, he tells me he doesn't have to go to school in order to drive a car, as he can buy the driver license"* [Commission]*; "let's fix the documents (during the hand-over of a child in a crisis centre) and go, as we have work to do"* [accompanying police officer]*, etc.*

Given the fact that children are not subjects who can have their own life and wishes, then they should have the order imposed by others, by adults through discipline and sanctions:

> *"the father must step in and talk some sense into him, and tell him that these are the rules and he must observe them, whether he likes them or not" [service]; "they spoilt him so much while he was abroad, he argues over everything; if he stays with me here, it will take me two weeks and he will look me into eyes and will obey me" [grandmother]; "the issue is that as a result of this financing of education teachers don't have power anymore, and thus the pupils go their way, as they know they cannot be expelled because the school needs them for the delegated budgets – it's too much freedom"* [parent].

It is in this perspective that inspectors, judges and prosecutors who waste their time with child-sensitive interviews and hearings are perceived as weak-willed people who make the problems even worse: "and I hear them whisper behind my back in the corridor – this judge, why doesn't she take this hooligan home and see for herself what it is like" (regional judge).

> *This is the problem with these compassionate judges who project their motherly feelings on the offenders – they want to take care of them, and I can even image how they take a spoon to feed them and them wipe their mouth with the bib.* [Representative of a service]

It is understandable why people who have this thinking say: “it’s no use speaking about sensitive justice for offender – they are criminals, some of them are recidivists, why should we make it easy for them” (service). The solution is not support but even stricter sanctions – with respect to the parents, and the children, so that they could be taught order. However, this order being external, objective, imposed, “whether you like it or not”, the sanction cannot result from the parents’ actions, but from the public “institutions”.

The research has revealed numerous mental scars caused to children by their parents who beat them, give up their responsibility, as they cannot manage the situation and subordinate them to their will through threats or bribery: “especially when it comes to drugs, the alerts are most often from parents” (service); “the parent feels at a loss, and the child feels betrayed” (psychologist); “the mother took her 14-year old daughter to the police department in the middle of the night, because she was chatting with a boy in viber, and said – here she is, you do what you have to do, I cannot stand it anymore; and they took her to the crisis centre, now we are working with her” (service); “I have had cases when we learn from our users how their parents took them to the police just to sober them up, as they know some of the people working there – and these children suffer a huge trauma, we have seen traces of vomiting, urine, blood on the walls” (service).

> *My mother learnt that we had played poker with money, and when I was back home from school, she had called a police officer in uniform, someone she knew, so that he would explain to me where I am heading: and the police officer handcuffed me and tied me to the radiator, just to show me what it is like; the handcuffs were so tight that my hands went blue, and my mother didn’t say anything, she seemed happy.* [A young man registered at the Child Pedagogical Room]

Following the same rationale, if children do not have their own will, they cannot have inner motivation, either, to observe the rules; therefore, the sanction has to be an external one, through pressure from the community, the public opinion. Given this, it is not only the measures laid down in the Prevention of Juvenile Delinquency Act that seem to be efficient, as the offending children must feel ashamed of their deeds in front of the ‘significant others’, but all the other forms of public pressure seem not only unacceptable but also imperative. This is the way to reproduce secondary and tertiary victimization of children who are subjected to reproach, ridicule, contempt and ostracism from their classmates, parents, teachers, neighbours and relatives, and these have been imposed by the local commissions for the prevention of juvenile delinquency.

> *Local commissions for the prevention of juvenile delinquency: they deliver justice and execute sentences – they impose measures and implement them without a time limit; they open their correctional files and the CPD may attend, but they don’t participate. I am not allowed to attend, even though I know the child; everything is done behind closed doors, I don’t have problems with the access into the court. I filed a complaint, they told me they would check, but I haven’t received an answer.* [Representative of a service]

It is obvious that the misunderstanding in terms of what the blue rooms and child-friendly justice are all about is not due only to the lack of training, brain washing or fake news, but also to the social environment. Hence, the child’s right to be informed has been degraded to the level of intimidation about what it will be like in the detention facility and in prison if he does not pull himself together;

the child's right to assistance by a lawyer is substituted with the presence of an inspector from the children's pedagogical room who has pedagogical background but is part of the MOI system; the documentation from the local commissions is drafted by means of copy-paste, as children who are not bearers of rights are alike; the child's right to understand is exercised via "the Chinese whispering" among the judge, the technical assistant and the psychologist; the child's right to an individual assessment of the specific needs is substituted with reports and expert examinations which describe the cutlery and vaccinations.

The manifestation of this reluctance against the recognition of the child as a personality is: 1) the economic pressure by the CPD with respect to the services exerted by means of control over the referrals issued (as the system will be disrupted if children get to know what they want; or the good quality of the reports and assessments delivered by the social service providers will bring to light the lack of capacity of CPDs); 2) the reluctance to accept the legislative reforms of those who defend "traditional family values" (because if the child is a personality, he/she will not unconditionally obey, and mothers will want emancipation). It is easier to transfer the child from one institution to another, without the child knowing what he wants: "they put me in a car and we go, and I don't know where we go and for how long; at the previous place I had a bike, the stoker had given it to me as a gift for helping him with the heating system, but I couldn't take the bike with me, because I didn't know they were moving me to the other place for such a long time; I also had a tablet and a jacket, but I didn't take anything with me".

This is the starting point of the accelerating downward spiral of repression against children: they are not holders of rights, and this is the reason why we sanction them with ultra-modern social tools of public pressure, while the traditional communities are in a crisis and the anomy does not allow developing new ones; this is why these tools do not function and have to be replaced with repression (which is also doomed to being ineffective unless children can be taken out of the environment and there are new opportunities), and thus we get to the prison from which the child will be released as a "well-experienced hooligan who will let them catch him again in late autumn in order to spend the winter in a warm place."(regional judge).

VI. The way forward

The system deficiencies which are sporadically compensated through personal leadership

The empirical research carried out under the project has found evidence about remarkable manifestations of *individual initiatives* taken by representatives of various public institutions with the aim to solve specific cases giving priority to the best interests of children from various age groups, living in different social environments and settlements. This exceptional dedication to the children's cause takes sacrifices in terms of personal time, efforts, family tension, career and resources. This is why outsiders define this dedication as "heroism", "war", "missionary work", "self-sacrifice". There are manifestations of personal commitment in the court, the social services, the commissions for the prevention of juvenile delinquency, the CPR, the prosecutor's office, the schools. Such strong personalities usually succeed in mobilizing and focusing resources, competences, experience, expertise for all the institutions involved with the aim to save a specific child in a specific difficult situation.

Lack of decentralized institutional framework

However, the need to make additional personal efforts which exceed the operational field of the participants, as regulated in the law, is a symptom of the existence of *systemic deficiencies* – the research provides us with reasons to assume that the child protection systems is in a state of entropy; that at the local level it is the personal qualities and efforts but not the institutional infrastructure that determine the output of the system.

The structural deficiencies are largely due to the overburdening of the systems which are under a double pressure. On the one hand, the social anomy, the crises of the communities, families and the primary structures of the civil society generate tensions which require regulation through institutions. On the other hand, the excessive party influence within the state institutions contributes to administrative hypertrophy. Hence, instead of being addressed through *decentralization delegation of powers and empowerment* of the local communities and institutions, the crises are addressed by means of palliative *overregulation*. This secondary bureaucratic overburdening of the systems raises additional barriers to their effectiveness and efficiency, and generates new waves of problems.

Excessive formalization

The consequence is excessive formalization which creates a Gordian knot of unclear competences, vague responsibilities, staff turnover, and deficit of resources, experience and public trust. This trend explains the *passive attitude* of most of the professionals involved in the process of protecting children's rights, and the acute need to put additional personal efforts into preventing the systems from burning down.

Deficit of professionals

Social work has its own principles, ideology and basis which are often unfamiliar to those working in the child protection system and the child justice system, as they lack the necessary professional background. CPDs experience a huge turnover of social workers, some of whom do not have adequate education, either. It often happens that the heads of CPR, crisis centres for children and

other services are former military or police officers who do not have the appropriate capacity to work with children. What is also missing very often is a simple empathy as a result of the reproduction of role models from the socialization in the hierarchy-based institutions of the army and the police. The multi-disciplinary approach to working with children is not an established operational norm. Moreover, it is applied ad hoc, and is largely dependent on the personal leadership of the professionals engaged in the relevant case.

Predominant expectations

The predominant belief is that these problems can be solved if the Gordian knot is drastically cut by means of three typologically relevant approaches: 1) a *radical* reform of the systems through a comprehensive legislative change; 2) uncompromising institutional control and *strict sanctions* against the staff and the institutions failing to ensure the protection of the best interests of the child; 3) a large-scale awareness-raising campaign amongst the public and a training campaign amongst the specialists which will trigger a widespread change *in public values and attitudes* so that the respect for the child's personality, the care for his inherent gifts and potential, the promotion of the child's spirit of initiative and creativity, his full-pledged socialization, and the respect for the child's dignity would become a key public priority.

Barriers to child-friendly justice

The thesis of the project team is that, if left on their own, all these three predominant ideas about solving the problems in this area are counterproductive. The reason is that, instead of promoting the prerequisites for establishing the status of a holder of rights, for personality development, empowerment, and decentralization, they *constitute the actors as objects, as agents of an external administrative will* who are subjected to hierarchy-based control from above. The pilot research, however, provides reliable empirical evidence that it is **the failure to respect the child's status as a holder of rights that is the biggest challenge to the exercise of child-friendly justice in Bulgaria**. Hence, the main recommendations which the pilot research allows us to make.

VII. Main recommendations

The project team shares the understanding about “the broader ontology of the personality” – in the case of children, the development of the personality and the manifestations of the holder of rights depend on social relations established in practice, which are typical of what we sum up as modernity: a self-generating development through free competition, the promotion of entrepreneurial attitudes; the rule of the secular law guaranteed via public institutions which depend on the civil society; the democratization of the political systems; the freedom of speech, a developed culture of pluralism and civic participation. In this context, the basic macro-structural prerequisite for the efficient institutionalized protection of the rights of the child and the priority of the child’s interests is the successful **public modernization**. This is why the recommendations are summarized in three groups which are not mutually exclusive but presuppose each other.

The first group consists of measures that can alleviate the current crisis, and thus open opportunities for more in-depth reforms. These are: piloting, adapting and multiplying the *innovative models* of child-friendly justice; specialized *trainings* of the professionals working in the area of child justice, including the introduction of training courses for undergraduate students; drawing up separate protocols for the *use of the blue rooms* for interviews and hearings of children which are adapted to the child’s age and level of maturity as well as of their personal circumstances; adequate technical provision, expanding the network of blue rooms in the country, trainings of the staff in charge of the blue rooms; adopting a national standard for an *individual assessment* of children carried out by a multi-disciplinary team of specialists; building systems for supervision, specialized psychological and professional support for the professionals in the social policy and justice systems who are involved in serious cases with children in need of protection, victims, witnesses or offenders.

The second group is based on the principles of *empowerment and decentralization*, including the introduction of public policies aimed at more transparency in the work of the institutions involved, civil and media control: guaranteed access for journalists, civil activists, experts, etc. to information that is relevant to the public in relation to the work of the child protection institutions across the country; building a uniform national system for gathering reliable statistical information related to children and their special protection by the society; combination between budget and project financing of the activity of the child protection departments and community-based services; real administrative and financial decentralization of the social services and agencies; a new Exemption from Criminal Responsibility of Underage Persons Act which will replace the outdated Prevention of Juvenile Delinquency Act; improved coordination and communication among institutions, building a national network of accessible quality services at the local level, working with the local communities in the long run, large-scale information campaigns among parents and the society on the topic of the rights of the child, child protection and child-friendly justice; implementing public social policies with a focus on training and employment, instead of social assistance policies which reproduce long-term dependencies, hinder emancipation and independent life, and do not respect the dignity of the personality.

The third group of recommendations are aimed at targeted and systematic promotion of the structural prerequisites for full-pledged public modernization, as the empirical research conducted by our team has confirmed the assumption that the development of the institutions and practices of child-friendly justice in Bulgaria is undermined by the reproduction of values, attitudes and social tools which are typical for pre-modern societies. In this context, the macro-structural prerequisites

for the development of a social environment, a favourable socio-cultural context, and institutional infrastructure which will stimulate the exercise of child-friendly justice are the elimination of all the obstacles to the free movement of people, goods and services, the respect for the principles of the rule of law and the division of powers, media independence, inalienable safeguards for the protection of the citizens' individual freedoms and political autonomy.

VIII. Conclusion

As the objective of this part of the pilot report is to propose a reference framework in the sociological perspective which will be used for further in-depth and detailed research on the topic of implementing of IA as integral part of a child-friendly justice in Bulgaria, we deem it justified to also propose a number of abstract typological *assumptions* which will serve as an outline for the context of this important social issue.

The development of the market as a macro-structural precondition for modern societies exerts a powerful pressure to systematically overcome all the barriers to free competition related to values, religion, origin, professional privileges, etc. At the level of law-making, this translates into an imperative transition from the traditions of natural law (where the prerequisite is the rule of a universal order which precedes and substantiates the legal norms) to the principles of legal positivism which will contribute to the emancipation of the law against any predetermined moral imperatives by building a system with an internal consistency of rules and sanctions. The processes of rationalization of the classic modern universal and abstract law evolve under the pressure of at least two driving (seeming) contradictions. *Firstly*, the contradiction between (a) legal liberalism which promotes the rule of individual freedoms through the development of human rights; and (b) legal republicanism which has a focus on the political autonomy of citizens. This contradiction is seeming and formal, as individual and political freedoms presuppose each other at the empirical level. *Secondly*, the contradiction between the universal nature of human rights and the local conditions for their protection (this contradiction is also seeming, as in the absence of a claim for universality it is not possible to accumulate social energy for them to be applied locally).

The bitter experience of humanity with the totalitarian law-making (the Weimar Constitution was not repealed by Hitler's regime, and the 1936 Soviet Constitution continues to be an excellent example of internal coordination and radical detachment from the real world) has sharpened sensitivity to the unspoken prerequisites of legal positivism, and has once again brought to the fore the issue about the tension between the legality and the legitimacy of the norm, the discrepancy between the rule of the legal norm and the rule of law. At the macro-structural level, a strong social impetus for the practical implementation of the abstract claim for the legitimization, in terms of procedure and content, of the "legal" has come from the implosion of the domestic markets in western societies, which has been experienced both: 1) as a **decline** of: (a) values (due to the development of the cornucopian culture); (b) the economy (due to "the cultural contradictions of capitalism"); (c) international relations (due to the collapse of the colonial system); and (d) the national states (due to economic globalization which affected the taxation and social welfare systems), and 2) as a new **opportunity** for: (a) improving the quality of democracies (due to participatory culture and practices); (b) overcoming the serious social crises (by means of the social policies implemented in social welfare states). The same macro-structural prerequisites have the simultaneous effects of: 1) making visible the gap between the claim for the universality of human rights and the *de facto* inequality of women, religious and ethnic minorities, vulnerable groups, including children, etc.; 2) eroding the conditions for the existence of the classical industrial nucleus family. In the welfare states, this issue has a legislative solution by means of changes, in particular in the labour and family law whose purpose is to compensate the *de facto* inequalities of opportunities. The concern, however, is that this type of regulation shows a tendency towards *paternalism of overprotectiveness*. This triggers secondary discrimination and a silent substitution of the holder of rights and the respect for personal dignity with public appeals for compassion and (self-)pity. The remedy for this situation (in the context of child justice and protection) can be ensured along two main lines of action: 1) the privatization

of the social and protection services, as the state does not act with due diligence and (re)produces paternalism or 2) special protection for families and local (religious) communities, as they are guardians of family values. However, the experience (at least in the USA) shows that privatization is not the solution, as it leaves the protection of the common interest outside the scope of public control over the policies implemented; while the attempts to preserve the family by protecting it in a sterile environment weakens the immune system of the families themselves and once again prevents both women and children from becoming holders of rights.

This project reflects the social struggle for institutional safeguards for the respect of the personality and the dignity of all human beings, including children, foreigners, migrants, people with physical or mental disabilities, etc. by means of *transparent public policies* on the basis of deliberative public discussions.

But where do we stand?

If the above paragraphs have substantiated the relevance of the understanding of child-friendly justice in the context of human rights which recognize the personality as a fundamental value of modern societies, then we have good reasons to make a brief review of this topic in Bulgaria. There are several favourable (only in this context) historic prerequisites: 1) Back in the Ottoman times, the Ottoman law empowered women, as daughters were also entitled to be heirs, and the law of the land prohibiting the fragmentation of inherited fields, pastures and orchards did not apply; 2) The delayed and slow industrialization of the society in the first half of the 20th century did not result in a deep division in terms of the physical work done by men workers and women housewives; 3) The socialist societies being shaped by ideologies, the claim for equal opportunities and the missionary belief of the Komsomol that everybody can reach ideological maturity translated into the overall system of educating and re-educating those who are prone to deviations. Thus, the children's pedagogical rooms and the local commissions for the prevention of juvenile delinquency set up under the Prevention of Juvenile Delinquency Act rely on a system of traditional community-based sanctions – derision, shame, reprimand, humiliation, avoidance, rejection. This system may have been efficient at the beginning of the second half of the 20th century. However, the planned socialist industrialization exerted a strong modernization pressure whose economic manifestation was the system of "the shortage economy" (Kornai), and its political manifestation was the tension between the economic nomenclature and the party one, while at the level of everyday life the manifestation was the discrepancy between "the big truth" and "the small truth" in the variety of values.

This division and the gradual widening of the gap between ideology and practice, the tasks of the five-year plan and the black market, etc. cannot be compensated with legitimate regulation, as the clear rules would be conducive to claims for recognizing the holder of rights, which would threaten the political power from the grassroots of the primary party secretaries up to the highest level of the political bureau. Therefore, the need to introduce requirements which are impossible to meet, which ensure resources for control and arbitrariness in an environment where everybody are potentially guilty, whatever efforts they make and whatever results they achieve. This, of course, evolves into a system of nepotism, dependencies, slanders, and obligations.

After 1989 the model has been reproduced due the absence of structured civil interests demanding political representation. In our country political parties have names such as the party of the Tzar, the party of Boiko, the party of Mareshki, etc. Political parties are not constructed on the basis of the bottom-up approach (through the resources of the civil society) but of the top-down approach

(through participation in the government). This results in the hypertrophy of the state apparatus, the revival of feudal structures, political corruption, and suffocates public development. Instead of being a guarantor for the protection of the common interest (the development) by promoting the rule of law and the free exchange of commodities and services, the state favours those economic agents who secure political support, and sanctions those who would assist the political claimants. It is understandable that the party-based nature of the systems cannot yield reforms and efficiency, as it is the loyalty to the party that is leading, and not the quality of the work done. This is why in the sectors of the child, mother and child health, child justice, etc., it takes exceptional individual efforts to save a specific child in a specific situation. And this will not change before a critical mass of free citizens emerges, free citizens who have political claims resulting from their bottom-up development, and not from their access to the political power.