Children in conflict with the law in Ukraine

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The project to monitor the impact of economic and social change on children in Central and Eastern Europe and the Commonwealth of Independent States (CEE/CIS), the MONEE Project, was initiated at the UNICEF Innocenti Research Centre in 1992. The project seeks to monitor, analyse and disseminate information on economic and social trends affecting children’s rights and wellbeing in countries in the region. A key feature of the Project is a network of correspondents in the 27 National Statistical Offices (NSOs). On an annual basis these correspondents complete an extensive data template which in turn is used for calculating indicators, supporting research of the project and, in due course, being made publicly available as the TransMONEE database and in tables and graphs of the Innocenti Social Monitor.

For a number of years, each participating NSO prepared a Country Analytical Report based on extensive outline from UNICEF IRC on a different theme on the situation of children every year. These analytical reports have provided valuable input into the research at UNICEF IRC and, as significantly, have also served as important national documents on monitoring aspects of child wellbeing in the countries. Some of these Country Analytical Reports have been issued by the NSOs (in the national language) as part of their publication programme.

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Ukraine. Children in Conflict with the Law

In view of the fact that on 1 September 2001, the Criminal Code of Ukraine came into force, while the Criminal Code of the Ukrainian SSR of 28 December 1960 became null and void, as well as the fact that on 1 January 2004, the Criminal Executive Code of Ukraine replaced the Corrective-Labour Code of the Ukrainian SSR of 23 December 1970, a number of indices and the methodology of their calculation may be incomparable for the period reviewed by the report – from the year 2000 to 2005.

An analysis of the features of juvenile justice effective in the country

1. The age span of criminal responsibility

In Ukraine criminally liable shall be persons who had turned 16 by the time when they committed a crime.

The notion “juvenile offender” implies that the delinquent is between 14 and 18 years of age.

2. Offences for which children may be hold criminally liable

Persons who commit offences when they are between 14 and 16 years of age are deemed criminally liable in accordance with the following articles of the Criminal Code of Ukraine:

- intentional murder (Articles 115-117);
- an attempt on the life of a state or public official, a law enforcement officer, a member of a community force that keeps law and order or protects a state border, a serviceman, a judge, a people’s assessor or a juror engaged in administering justice, defence counsel or other representative of a person offering legal assistance, or a foreign state official representative (Articles 112, 348, 379, 400, 443);
- deliberate grave bodily injury (Article 121; Part Three, Articles 345, 346, 350, 377, 398);
- deliberate bodily injury of medium gravity (Article 122; Part Two, Articles 345, 346, 350, 377, 398);
- sabotage (Article 113);
- banditry (Article 257);
- an act of terrorism (Article 258);
- the taking of hostages (Articles 147, 349);
- rape (Article 152);
- forcible satisfaction of a sexual desire in unnatural forms (Article 153);
- theft (Article 185; Part One, Articles 262, 308);
- robbery (Articles 186, 262, 308);
- robbery with violence (Article 187; Part Three, Articles 262, 308);
- extortion (Articles 189, 262, 308);
- deliberate destruction of or damage to property (Articles 194, 347, 352, 378; Parts Two and Three, Article 399);
- damaging communication routes or means of transport (Article 277);
- stealing or capture of railroad rolling stock or of an aircraft or of a sea or river vessel (Article 278);
- illegal capture of a means of transport (Parts Two and Three, Article 289);
- hooliganism (Article 296).

3. Punitive measures which may be applied to children who are in conflict with the law; their criteria and application

Punishment is a compulsion measure applied on behalf of the state and upon an appropriate court decision in regard to persons pronounced guilty of an offence, and it consists in restricting the rights and liberties of the convicted person.

The purpose of punishment is not only to visit retribution upon the convicted persons but also to achieve their correction, as well as to prevent committing a new crime either by the convicted person or by other persons.

The purpose of punishment is, by no means, to cause physical suffering or abasement of human dignity.

A court of law may apply the main or both the main and additional types of punishment to juvenile offenders proved guilty of an offence. The main types of punishment are: a fine, community service, corrective labour, arrest and confinement for a specified period of time. The additional types of punishment include: a fine plus the loss of a right to hold certain posts or to engage in some kind of activity.

A fine is meted out only to juveniles who have an independent income, their own means or property upon which execution may be levied. The size of a fine is established by the court, depending on the gravity of the crime committed and subject to the property status of the juvenile offender, in the amount of up to 500 statutory tax-exempt minimum (17 grivnas) incomes.

Compulsory community service is a punishment that may be administered to a juvenile offender aged 16-18 years for a term of 30 to 120 hours. It shall be done in one’s free time – free from studies or regular work, and its duration shall not exceed two hours a day.

Corrective labour is a punishment that may be imposed on a juvenile offender aged 16-18 years at the place of his/her regular employment for a term of two months to one year. In the course of corrective labour deductions from the offender’s earnings shall be made in favour of the state in the amount specified in the court ruling within the limit of 5 to 10%.

Arrest means keeping a minor, who at the time of sentencing has turned 16, in confinement in specialized institutions for a term of 15 to 45 days.

The punishment in the form of confinement, which is administered to a person who had not yet turned 18 at the time of committing offence, shall not exceed ten years. However, if it was a
particularly heinous crime, such as intentional murder, the term of imprisonment shall not exceed 15 years.

Confinement as a measure of punishment shall not be imposed on a minor who has committed an offence of small or medium gravity for the first time. Moreover, in the event of his/her sincere repentance and irreproachable conduct he or she may be exempted from criminal liability, and the court may apply to him/her compulsory measures of educational nature which are provided for in Article 105 of Ukraine’s Criminal Code, namely:

- a warning;
- limiting the juvenile’s leisure hours and establishing special rules of conduct for him/her;
- turning the juvenile over under supervision of his/her parents or caregivers;
- imposing on the juvenile the duty of making a compensation for the damage – if he/she is at least 15 years old and has property, funds or earnings;
- referring a juvenile to a special educational-correctional institution for children and adolescents until he/she is reformed, but for a term not exceeding three years. The conditions of the juveniles’ stay in such establishments and the procedure of their custody and release are stipulated by Ukrainian law.

In some cases the court may appoint a tutor to a juvenile offender.

In deciding on a punishment to a juvenile the court considers the circumstances which may mitigate or aggravate his/her guilt, as well as takes into account the conditions of his/her life and upbringing, the influence exerted by adults, intellectual development, etc.

If, having considered all the circumstances in regard to the offender, the court decides that the convicted person may reform without serving punishment, it may choose to free him/her from punishment (only in case of sentencing to deprivation of freedom) and release on probation. In this case the court fixes a probationary period during which the offender shall fulfil his/her obligations and refrain from committing a new crime. The probationary period is fixed at one to two years during which the court may impose on some person (with his/her consent or at his/her request) the duty of exercising supervision over the convicted person and conducting corrective work with him/her.

4. The number and type of correctional institutions in Ukraine specializing in the accommodation of children who are in conflict with the law; the number of children, inmates of correctional institutions for adults

At present in Ukraine the function of penal institutions for juvenile offenders is fulfilled by houses of detention and juvenile correctional facilities (in 2005 there were a total of 11 correctional institutions for children, including one for girls).

*Houses of detention* are intended for administering punishment in the form of arrest to juvenile offenders, as well as adults, who at the time of conviction were 16 years old and were convicted for crimes of small gravity.

Under the law, juveniles, just as other categories of offenders, are maintained separately from the rest.
Correctional institutions are intended for confinement of juvenile offenders for a definite term and involving them in socially useful labour.

At the end of 2005 the overall number of juveniles confined in penal institutions for criminal offences was 2,121 (2,459 in 2000; 2,123 in 2001; 2,386 in 2002; 2,403 in 2003; and 2,519 in 2004). Of that number 94.3% were male adolescents (in the respective years their percentage was: 94.7%, 95.2%, 96.2%, 95.6% and 95.2%).

An analysis of the situation of children in conflict with the law in Ukraine and their place within the system of juvenile justice

To sum up the situation in Ukraine concerning children who are in conflict with the law let us consider some relevant statistics.

During the period of 2000-2005 the internal affairs agencies detained annually between 22,700 and 29,600 juveniles accused of criminal offence (9.6-10.6% of the overall number of offenders). From 87.7 to 97.6% of those detained were brought to criminal responsibility. It should be noted that while the number of juvenile offenders decreased by 23.1% in 2005 as compared with 2000, there was a 7.1% increase in the proportion of juveniles brought to criminal responsibility.

An analysis of the gender structure of juvenile offenders reveals the following tendency: the proportion of boys increased in the said period from 92.5 to 93.7% and of girls – from 6.3 to 7.5%.

In 2005, property offences (theft, robbery and brigandage) topped the list of crimes committed by adolescents: 16,300 of them (71.7% of the overall number of juvenile offenders) committed 19,100 criminal offences (72% of all crimes committed by juveniles). Every three adolescents out of four committed offences as part of a group of criminals or as a group consisting entirely of juveniles; one in every nine adolescents committed a crime in condition of drug or alcohol intoxication.

It should be noted that the percentage of juveniles with previous crime record has been growing (from 8.4% in 2000 to 11.6% in 2005) in the overall number of juvenile offenders, despite a downward tendency of the absolute figure.

Incidentally, the share of children with a previous criminal record was stable in 2002-2005: persons with outstanding convictions accounted for 37.8-44.2%; amnestied convicts for 5.1-15%; persons who were under administrative supervision at the time when they committed a crime for 0.5-1.2%;
ex-convicts for 3.4-7.1%. Furthermore, adolescents who committed a crime within one year of their release from custody accounted for 39.8% in 2001 and 25.9% in 2005 of ex-convicts.

The total member of criminal offences in Ukraine registered by the law-enforcement agencies in 2005 amounted to 485,700, which is 12.3% less than in 2000 and 6.6% less than in 2004. As regards the proportion of criminal offences committed against children and young people, their number has grown by 24.6% in 2005 against 2000. Among the offences of this kind the largest proportion belongs to failure to pay alimony for the upkeep of children, which increased in 2005 by 20.1% against 2000, or 1.8 times.

The share of criminal offences committed by adolescents or in which they took part between the years 2000 and 2005 decreased by 1.3%, totalling 5.4% in 2005 or 26,500 such cases (in 2000 it was 6.7% or a total of 37,200 cases).

Among the offences committed by juveniles the so-called property crimes (theft, robbery and brigandage) occupy the first place – between 72 and 77.3%. The proportion of this type of criminal offences in the overall number of property crimes ranges from 8.3 to 10.2% (9.4% in 2000 and 7.9% in 2005).

The number of violent crimes committed by adolescents in 2005 went down by 19.4% as compared with 2000 and totalled 571, some 31.9% of which were associated with intentional murder (a decrease of 29.7%).

The number of criminal offences committed against children and young people and of crimes committed by adolescents in 2000-2005
(number of cases)

<table>
<thead>
<tr>
<th>Year</th>
<th>Offences committed against children and young people</th>
<th>Failure to pay alimony for the upkeep of children</th>
<th>Offences committed by adolescents</th>
<th>Property crimes committed by adolescents</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>37239</td>
<td>8959</td>
<td>10224</td>
<td>4583</td>
</tr>
<tr>
<td>2001</td>
<td>36218</td>
<td>10107</td>
<td>28778</td>
<td>3604</td>
</tr>
<tr>
<td>2002</td>
<td>32335</td>
<td>27932</td>
<td>27932</td>
<td>3604</td>
</tr>
<tr>
<td>2003</td>
<td>12386</td>
<td>5062</td>
<td>24505</td>
<td>5062</td>
</tr>
<tr>
<td>2004</td>
<td>33493</td>
<td>6973</td>
<td>25641</td>
<td>6973</td>
</tr>
<tr>
<td>2005</td>
<td>12346</td>
<td>7392</td>
<td>30950</td>
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</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>12734</td>
<td>12734</td>
</tr>
</tbody>
</table>

The number of violent crimes committed by adolescents in 2005 went down by 19.4% as compared with 2000 and totalled 571, some 31.9% of which were associated with intentional murder (a decrease of 29.7%).
Statistics relating to crimes committed by juveniles in the sphere of handling narcotic drugs, psychotropic substances, their analogues or precursors, as well as by persons aged 14-17 who have been diagnosed as “drug addicts”, require a separate analysis.

In 2005, criminal offences in the sphere of narcotic drugs, psychotropic substances, their analogues or precursors traffic were committed by 1,356 adolescents aged 14-17, which was 29.9% more than in 2000.

According to the results of identifying and registering persons who use narcotic drugs and psychotropic substances for non-medical purposes, at the end of 2005 4,573 juveniles were on file in law-enforcement agencies which is 14.5% more than in 2000; every other of them neither worked nor studied, while nearly one out of five had been diagnosed as a drug addict, and also one out of five had previously committed a criminal offence.

Over the past six years, property crimes committed by adolescents in a state of narcotic intoxication accounted for nearly 50% of all the crimes committed by them every year. It is true that in 2005 this figure was somewhat lower than in the previous years.

In 2005, the register of the criminal investigation departments for juvenile affairs listed 41,500 persons, prior and potential offenders (children living in dysfunctional families, those engaging in vagrancy, begging and so on), which is 4.3% more than in 2000.
As noted earlier, the proportion of adolescents according to their sex in this category has remained the same for the past six years: boys account for 91-92.4%, and girls for 7.6-9%. At the time of being registered by the criminal investigation departments, one out of five adolescents neither worked nor studied, one out of four had only one parent, and one out of three was a vagabond.

An analysis of the age groups of adolescents and juveniles in 2005 revealed the following increase in their criminalization: persons under 11 years of age account for 3.7%, those aged 11-14 for 19.6%, aged 14-16 years for 38%, and 16-18 years for 38.7%.

The above statistics show that children aged 14-18 years are most vulnerable from the viewpoint of social and material security and require psychological help and rehabilitation most of all.

Due to the closed nature of the existing judicial and penal system, the general public is not aware of the methods to solve the problem of re-socializing juvenile offenders. Most mass media consider this problem from the viewpoint of sensation without duly analyzing its causes and their interrelation. They do not cover the problem of influence the maintenance conditions of juvenile convicts exert on the development of their personality, do not describe ways in which their re-socialization could be achieved or contribute to making the penal system more open and democratic.

According to a research done by the Ukrainian Academy of Pedagogical Sciences, 57-76% of juvenile offenders have psychic deviations which, however, do not prevent them from controlling their behaviour or assessing the consequences of their actions. A research into the re-socialization of condemned juveniles has revealed a need for augmenting the role played by the psychological assistance at corrective facilities and for conducting special psychotherapeutic work with their inmates.

In 2005, the Ukrainian courts sentenced 176,900 persons to various penalties (23.4% less than in 2000). Of that number 9.9% or 17,600 persons were juvenile offenders (12.8% less than in 2000). Of the total number of convicted young people 93.3% were male juveniles.

The courts decided to free the majority (75.6%) of juvenile offenders from punishment; 20.7% of them had been sentenced to various terms of imprisonment and 3% – to community service or a fine.
We have to discuss today not only preventive measures against juvenile delinquency but also the creation of an integral system of combating criminality among juveniles which would comprise a clear strategy and tactics of crime prevention, of identifying and bringing to responsibility, in accordance with the effective legislation, persons who involve minors in criminal activity.

A prominent feature of juvenile delinquency today is the fact that the offenders are getting younger and younger. Criminal offences are committed by minors – children who have not yet reached, under the applicable law, the age of criminal responsibility. It is therefore necessary to work out a new, more effective regulatory basis for resolving this problem, an integrated system for registering and recording criminal offences committed by juveniles or with their participation accessible for all the government agencies and services concerned, and to elaborate uniform criteria of assessing the performance of these agencies.

There are considerable difficulties in the way of reducing juvenile delinquency in Ukraine which are associated with the slow creation of the necessary conditions for the functioning of juvenile justice in the country.

The problem of rehabilitating children who are in conflict with the law should be resolved parallel with the problem of making the conditions of juveniles’ confinement more humane. To achieve this it is necessary:

- to differentiate between juveniles in accordance with their psychodynamic parameters, which will make it possible to enhance the corrective effect;
- to reorganize the infrastructure of penitentiary facilities; to optimize juveniles’ interpersonal relations for the purpose of ensuring a positive socio-psychological influence and relieving the emotional tension;
- to monitor the socio-psychic development of juvenile convicts to prevent negative manifestations in their behaviour and identifying deviations in their development as personalities; to carry out research into and elaborate the psychological-pedagogic requirements for the stay of the inmates in the special sectors: for the new arrivals, for social adaptation and for intensive psychological observation;
- to raise the general public awareness of juvenile delinquency problems and convicted adolescents; to shape public opinion concerning the need for humanizing punitive methods in regard to juvenile offenders;
- to step up efforts by specialists and public organizations aimed at supporting the introduction of international standards of behaviour towards imprisoned juvenile offenders.