
THE OFFICE OF THE PEOPLE'S ADVOCATE'S ALTERNATIVE REPORT TO THE COMMITTEE ON THE RIGHTS OF THE CHILD (CRC)

Justice for children

Over recent years, the authorities have made good progress on strengthening the justice system for children by establishing new mechanisms taken from the experience of other countries and adapting them to the social realities specific of our country.

In this context, we should mention the most important efforts of the authorities to strengthen the justice system for children, including:

- amending and supplementing the Enforcement Code of the Republic of Moldova¹, in which additional guarantees on access to health services were inserted; the range of disciplinary sanctions was diversified and a number of safeguards to their application were included; the duration of the juvenile disciplinary confinement was reduced to 3 days, special conditions to impose the penalty being introduced.

- amending the law on state-guaranteed legal assistance, so that the children, victims of crimes, have the right to legal assistance guaranteed by the state, including to qualified legal assistance given regardless of income level.

- strengthening the mechanism of hearing in special conditions of child victims / witnesses of crime, and in this respect, art. 110² of the Code of Criminal Procedure being changed; child friendly hearings rooms were set according to international standards at the sites, which aim not to allow the re-victimization of the child in the process of legal hearing, which fortifies the national mechanism for child protection based on an individual approach³.

¹ Law No. 146 Of 14.06.2013 on amending and supplementing the Code of Execution of the Republic of Moldova No. 443-XV of 24 December 2004, Monitorul Oficial, no. 161-166 / 518 of 07/26/2013.

² This amendment is aimed at bringing the national legal framework in line with the provisions of Council of Europe Convention to protect children against sexual exploitation. The Convention was adopted in Lanzarote on 25 October 2007 and ratified by Moldova on 19 December, 2011.

³ The new provisions of the law govern the terms of hearing room and viewing room. Also, the concept of interviewer has been regulated, thus widening the list of specialists who can participate in the hearing of the minor, the number of hearings of the minor was limited, the suspect was excluded from the list of persons present in the viewing, etc. The importance of hearing a minor in a specially designed room is that not the child "serves" the prosecution and the judiciary, on the contrary, the state empowered authorities meet to help the child clarify the situation he went through or, where appropriate, he knows about. Thus, it becomes possible for the child to be less subjected to traumatic influences that occur imminently during typical procedural actions and the submitted testimonies to be respectively more profound and with a higher degree of veracity.

- strengthening the mechanism for collecting and processing data on the justice system for children by approving a unique table for the collection of statistical data both for children in contact with the law, as well as for those in conflict with the law.

- important amendments made to the Criminal Code and the Criminal Procedure by which, the retention period of the juvenile suspect in a crime was reduced to maximum 3 hours, except in special cases in which pretrial detention may be extended to four months. It was established the total remand in custody time for under-age defendants - maximum 8 months. Also, the minimum penalty was excluded, giving judges the possibility to apply a softer punishment of children. The criminal punishment for a series of offenses was reduced, the maximum term of imprisonment for children has been decreased from 15 to 12.6 years in case of series of offenses; in case of overlapping sentences for minors, the maximum sentence is 15 years. Life imprisonment for minors was also ruled out.

- adopting the Strategy for the development of the probation system for the years 2016-2020⁴, the part which refers to juvenile probation.

In the light of the mentioned progress, we have to remind that some problems, identified over the years, and in whose respect the authorities did not take appropriate and decisive action to address them, persist.

We find that judges rarely apply other coercive measures than detention, and the mediation mechanism is inoperative.

Although there have been efforts to reinforce the hearing of minors under special circumstances, however, it appears that interviewing rooms do not correspond in the area and are not used properly, including due to lack of staff or knowledge, technical conditions etc.

However, we found that the right to education of juveniles in custody is not properly carried out, the number of subjects(matters) being reduced, subjects are merged, and the opportunity to learn a profession to be able to integrate more easily into society when they are released from detention is also reduced. These issues are caused by the lack of appropriate conditions to realize the right to education of children in detention, including the lack of teachers.

A major problem relates to the prosecution of minors in detention in pre-trial centers where they hold and adults. Even if minors are detained in separate parts of the building,

⁴Government's Decree No. 1015 of September 1, 2015

complete separation is not assured, however, that does not prevent minors to interact with adult prisoners.

We are still faced with the problem of a legal and institutional vacuum regarding the children, who have committed offenses under the criminal law, but have not reached the age of criminal liability.

As for juvenile delinquency, we found, based on the analysis over several years of statistical data on juvenile delinquency, that most crimes committed by minors are crimes against property committed by minors who come from socially vulnerable families. We believe that this correlation between certain categories of crime and the social status of minors, who committed crimes, demonstrates the lack of socio-economic policies to support vulnerable families, the children and young people coming from these families. In the same context, we note that in terms of preventing and combating juvenile delinquency no significant progress, compared to previous years, has been made. Namely, because there is no public policy document, a national plan for the prevention of juvenile delinquency, prepared in accordance with international standards⁵, which would provide a holistic, comprehensive and multilateral approach.

Despite all efforts made by the authorities, it is imperative for the state to adequately provide the necessary financial and human resources, new legal and institutional mechanisms for their efficient and proper implementation.

RECOMMENDATIONS:

- *Adequate financial coverage of the reforms that are being implemented.*
- *Strengthening the mechanism for collecting and processing data on the justice system for children, by providing that relevant authorities work together and develop a database in accordance with the indicators approved by the Joint Order of the Minister of Justice and the Minister of Internal Affairs, no. 19 / 17 of January 26, 2015.*
- *Strengthening the mechanism for hearing minors by developing and approving quality standards on procedures for the hearing of minors, related to setting up the hearing rooms, the training of professionals in the field, and providing resources for the proper conduct of the hearings.*

⁵ United Nations Guideline for the Prevention of Juvenile Delinquency Known as the Riyadh Principles, Resolution 45/112 of December 14, 1998.

- *To create the institutional and legal framework concerning children who have committed offenses under the criminal law, but have not reached the age of criminal liability, to review the educational measures provided by criminal law to develop and increase the efficiency of their application, to establish the authorities and strengthen their role in the resocialization and reintegration of minors.*
- *Connection of the management system of juvenile justice with the Beijing rules.*
- *To develop and adopt a national plan to prevent and combat juvenile delinquency, according to the United Nations Guidelines for the Prevention of Juvenile Delinquency known as the Riyadh Principles.*
- *Develop and implement training programs for probation officers regarding the social reintegration of minors in conflict with the law.*

Children – victims of crimes

In recent years, there is an increasing number of cases of children's victimization through actions of attempt to their life, health, development, dignity and morality. Unfortunately, parents, legal guardians, or other persons, in whose care children are, are in the role of abusers. In 2015, according to the data of the General Prosecutor, 1334 criminal cases were initiated, in which 1381 children appear as victims of crimes. An increase by about 24% is registered compared to the same period of 2014, when 1073 criminal cases were initiated. Children appear as victims of crime as follows:

- property (thefts, robberies) - 348 criminal cases (391 criminal cases in 2014);
- family violence - 118 criminal cases (117 in 2014);
- violation of traffic safety rules - 84 criminal cases (87 in 2014);
- hooliganism - 53 criminal cases (47 in 2014);
- bodily injury of children - 32 criminal cases (35 in 2014);
- attempt to life - 6 criminal cases (7 in 2014).

In 332 criminal cases, the children have been victims of sexual assaults, of which in 39 cases they were abused in the family (by the biologic father - 11 cases, by the mother's concubine – 13, other relatives - 15 cases).

In 2015, there were 214 cases of violence against children committed in educational institutions, including among peers - 182 cases. Children often resort to violence during the breaks or after classes. we found that the Procedure of institutional organization and intervention of the employees of educational institutions in cases of abuse, neglect,

exploitation, trafficking of children, approved by Order⁶ no. 77 of 22 February 2013, of the Minister of Education, is applied with difficulty and the Methodology for the application of this Procedure⁷ is not observed.

Suicide among children remains a serious problem. During 2015, the number of suicide attempts among minors increased, 103 cases (96 - 2014) being registered, especially in children of the age between 13-16 (70 children).

Among the causes, which determine children to resort to such actions, experts list the following: school or sentimental failure, difficulties of children's adaptation, emotional imbalance on the background of lack of effective communication with parents or relatives.

In most cases of suicide or attempted suicide, the children grew and were educated in single-parent families or the parents were abroad, and the minors were left with grandparents or other relatives. Sometimes, the tense relations between parents, divorce, other family problems discourage children and the most sensitive ones resort to extreme measures.

RECOMMENDATIONS:

- *Ensuring continuous training of teachers on the application, based on the methodology, of the procedure for institutional organization and intervention of employees of educational institutions in cases of abuse, neglect, exploitation and trafficking of children, as well as continuous monitoring of compliance with its provisions;*
- *Strengthening the State's efforts to prevent and combat suicide, especially among children;*
- *Elaborate and implement programs to develop the parenting skills.*

Observance of children's rights in education

Inclusive education

Actions are taken at national level to ensure the rights of children with disabilities through further implementation of social inclusion programs. The process of inclusion of

⁶Suspected cases of abuse, neglect, exploitation, trafficking of child are registered in the education institutions in the Register of identified cases of suspected cases of abuse, neglect, exploitation, trafficking of children. The Director or the coordinator of the educational institution is obliged to register the complaints about suspected cases of abuse, neglect, exploitation, trafficking of children...

⁷Approved by Ministerial Order no. 858 of 23.08.2013.

children with special educational needs is provided in a number of laws⁸. This process involves developing support services for teachers, parents and children with special needs.

Inclusion of children with special educational needs was developed as a logical continuation of a global process, very important for the observance of the child's right to grow and develop in the family, namely the deinstitutionalization of children from auxiliary boarding schools.

Monitoring the development of inclusive education services, it has been observed that support services are growing, which is a positive factor for the proper implementation of the given reform, but the number of these services remains insufficient.

There was a systemic gap, due to a lack of specific procedural regulations on how to support the exit examinations for students with special needs in order to provide equal opportunities to students with special educational needs. This problem was resolved by the Ministry of Education as a result of the Ombudsman's intervention⁹.

The mentioned above instruction comes with clear regulations on how disabled students will sit their final exams, the procedure for examining the application and file of the student requesting exams under special conditions and patterns of documents to be attached to the file of the graduate.

RECOMMENDATIONS:

- *Adapt classrooms and study blocks to the needs of children with disabilities.*
- *Support and strengthen the efforts of inclusion in education of children with SEN through continuous development and improvement of teachers, of the necessary tools and mechanisms.*

Transportation of pupils to circumscription schools

⁸The National Programme for the development of inclusive education for the years 2011- 2020; Child development assessment methodology, ME Order No. 99 of 02.26.2015; The methodology of organization and functioning of the Inclusive Education Resource Centre, ord. ME, 26.02 No. 100 of 2015; Instruction for the organization of training at home, ord. ME No. 98 of 02.26.2015; Instruction on specific procedures for examining pupils with special educational needs, specific conditions, ord. ME no.156 of 20.03.2015; Regulations and specific assessment conditions of pupils with SEN who studied according to IEP, ord. ME No. 311 of May 5, 2015.

⁹At a meeting of 31 October 2014 with civil society representatives and the relevant authorities, organized by the Office of the People's Advocate, the participants exchanged views on the Instruction on specific procedures for the examination of pupils with special educational needs approved by the Ministry of Education on March 20, 2015 and on the Methodology for organizing and conducting the baccalaureate for the school year 2014-2015:<http://ombudsman.md/ro/content/reuniunea-de-lucru-asigurarea-conditiilor-adequate-pentru-organizarea-si-desfasurarea>

The structural reform in education started back in 2009 and continues to date, aiming to ensure every child's access of to quality education.

The essence of the reform is to reorganize educational institutions to optimize the costs for the process and conditions of instruction per pupil because of excessive costs to be borne for the maintenance of certain institutions, which were as ended by a small number of pupils because of demographic regression, especially in rural areas.

Thus, circumscription schools, to which pupils are transported to neighbouring localities, were created. In this context, since the start of the reform there were not enough resources to ensure the transportation of pupils to circumscription schools. There were times when students walked distances of more than 3 kilometers or the conditions, in which they were transported, did not meet traffic security rules.

Providing the transportation of pupils to circumscription schools was monitored in 2015 and the analysis of the monitoring results revealed that the Departments of Education in partnership with local government and educational institutions identify solutions to ensure transportation of pupils to district schools. In the situation, when the Department of Education or the educational institution does not have the transport unit, pupils are transported by rented transport units or pay pupils' roundtrip fares from financial resources. Transport units are not adapted to the special needs of children with locomotor problems. At the same time, students who go to district schools do not participate in extracurricular activities.

RECOMMENDATIONS:

- *To identify solutions for providing the participation of the pupils, who commute daily to circumscription schools, in extracurricular activities.*
- *Ensuring safe transportation units for all children, adapted to the special needs of children with locomotor problems.*

Catering pupils in educational institutions

According to the legislation governing the catering of pupils in educational institutions, only primary school pupils and pupils of the V-XII forms in the educational institutions in the Eastern districts of the Republic of Moldova under the Ministry of Education and in the educational institutions from the districts Dubasari, Causeni and Anenii Noi located in the security zone, are supplied with food free of

charge¹⁰. However, only the pupils of the V-XII dorms, who come from socially vulnerable families, are supplied free of charge on the account of local authorities.

The financial norms for the free catering of pupils for the year 2015 set by the Ministry of Education, amount to 7,45¹¹ lei / day¹² to cover the breakfast or lunch. Clearly, it is an amount that cannot cover the real nutritional needs for children aged 7-11. The daily diet of children should contain animal proteins - cheese, eggs, fish, meat, as well as fruits and vegetables.

Another problem is that food products are purchased by the public procurement procedure¹³ and the supplier of products is selected on the criterion - the lowest price offered. Therefore, given the financial resources allocated to this end and the provisions of the purchase procedure, the purchased products are of poor quality. Towards the end of 2016, several serious violations were identified and criminal cases initiated in this regard (damaged packaging, thawed fish, expired products, etc.).

Some educational institutions do not have school canteens, pupils are fed in classrooms or in kindergarten canteens.

Proceeding from the above, the problems related to poor quality catering and improper conditions, the state clearly admits the violation of the child's right to health, which affects the physical and intellectual development of children.

RECOMMENDATIONS:

- *To ensure the nutrition of children, especially those coming from vulnerable families for whom sometimes this is food for the entire day.*
- *Review financial rules for the catering of students in educational institutions and supplement financial resources to ensure adequate menus for the child's development.*
- *Providing educational institutions with quality food by changing the criteria for selecting suppliers of food products not only by the criterion - lowest price, but also product quality criteria.*
- *To set up spaces for pupils' catering to correspond to the requirements in the field.*

¹⁰Government Decision no. 234 of 25 February 2005 on catering pupils

¹¹Approximately 0,35 €

¹²Ord. ME no. 759 of 18 August 2016;

¹³Law No. 96 of 13 April 2007 on public procurement

Informal fees

Art. 35, para. (4) of the Moldovan Constitution establishes that "education shall be free." However various informal fees are being paid by parents in order to equip educational institutions, as well as for repairs, renting textbooks for the students of classes V-XII. Although children from socially vulnerable categories are exempt from such contributions, however, according to a sociological study conducted by the Office of the Ombudsman, about 65.8% of respondents believe that the financial possibilities are affecting children's right to education to a large extent. Thus, although it is considered that the fees paid by parents are voluntary, the study results demonstrate quite the opposite, representing a cause of limiting the child's right to education. The Ombudsman has examined cases in which children have been discriminated when refusing to pay these fees.

Informal payments made by parents are used to pay for covering the needs of education institutes.

RECOMMENDATION:

- *Providing free compulsory education in accordance with the Constitution and international standards.*

The curriculum

The national curriculum is considered overcharged, highly theorized and too complex. Most students fail to prepare their homework by themselves, and they seek the help of parents. To get good school grades, children have to devote most of their free time doing homework, being deprived of the opportunity to communicate with parents, to rest and to perform other tasks, activities.

This situation causes children to be overstrung, depleted and has a negative influence on their health.

At the same time, children do not acquire the skills and abilities that would be helpful in solving daily problems, faced in real life.

The education system does not contribute to the formation of adults with spirit of initiative, proactivity, personal opinion, tolerance and respect for human rights.

RECOMMENDATIONS:

- *Review the curriculum through the best practices of countries with effective educational systems.*
- *Providing education programs on human rights.*

Social protection of orphans and children without parental care

The most vulnerable category of children are the orphans and those left without parental care. Failure to provide orphans, graduates of boarding schools, with housing remained an unresolved problem by the authorities.

In accordance with Art. 19, para. (3)¹⁴ of the Law on Child's Rights no. 338-XIII of 15 December 1994 and of the provisions of Art. 41, para. (2) of the Housing Code to ensure this category of children with housing/residential premises.

On April 30, 2015, the Parliament of the Republic of Moldova adopted the Law on housing no. 75 and the entry into force of this Law repealed the Housing Code of Moldovan R. S. S. approved by law of the Moldovan R. S. S. no.2718-X of June 3, 1983. The new legislation operates with the notion of social housing, which is housing for people, who need social protection, and is granted on lease under Law no. 75. According to the aforesaid Law, social housing is granted on lease to registered individuals or families whose monthly income per family member does not exceed the subsistence minimum for the country. One category of beneficiaries, who receive housing as a priority, are the orphans who have come of age and have not received housing from the state¹⁵.

The law does not establish the conditions under which orphan children/young people, who have been or are registered with local authorities, are entitled to social housing.

Special protection of children at risk

¹⁴Children who come from a state institution for children, relatives, people assigned as legal guardians are assigned housing if their housing is impossible in the previously occupied dwelling.

¹⁵Art. 10, para. (2) of the Law on Housing

On 1 January 2014, Law no. 140 on special protection of children at risk entered into force, which clearly stipulates the powers of guardianship authorities in the field of child's rights protection. The given Law states that the identification, recording, assessment, assistance and monitoring of children at risk is performed by the guardianship authority¹⁶.

The assessment, assistance and monitoring of the child at risk is achieved through the use of the case management method¹⁷.

However, there are cases when the guardianship authority does not fulfil its responsibilities, the Ombudsman being forced to intervene in several serious cases of failure to take actions by the guardianship authorities representing serious forms of violation of the rights of children without parental care. It was necessary to appeal to the prosecution for reinstatement of children into their rights and punish the responsible persons who admitted the found breaches.

This is being caused by the violation of provisions of Law 140 on special protection of children at risk, which determines that a specialist in child protection should be hired, but at the moment, according to our information, only 3 (level 1) guardianship authorities have such a position filled, thus affecting system functionality.

Still, there are no institutional and legal mechanisms for appropriate intervention of the authorities in the case of street children.

RECOMMENDATIONS:

- *Streamlining and monitoring of social assistance services, through continuous surveillance of their activities, training and testing the knowledge needed to provide quality social services to children;*
- *Strengthening social support services through adequate funding, staffing and methodological tools;*
- *Strengthen the institutional and legal mandate to achieve proper social protection by the social assistance services.*

¹⁶Chapter II and III of Law no. 140 of 14.06.2013 regarding the special protection of children at risk and children separated from their parents;

¹⁷According to the Order of MMPSF no. 71 of 03 October, 2008;